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INDIAN GAMING REGULATORY ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON INDIAN GAMING REGULATORY ACT: ROLE AND FUNDING OF THE NATIONAL INDIAN GAMING COMMISSION

MAY 14, 2003
WASHINGTON, DC

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INDIAN GAMING REGULATORY ACT

WEDNESDAY, MAY 14, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 9:55 a.m. in room 216, Hart Senate Building, the Hon. Ben Nighthorse Campbell, (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Akaka.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Committee on Indian Affairs will be in session.

We will now proceed to the oversight hearing on the Indian Gaming Regulatory Act: The Role and the Funding of the National Indian Gaming Commission. We have just one panel, and that will be Phil Hogen, chairman, National Indian Gaming Commission, Washington, DC, accompanied by Nelson Westrin and Chuck Choney.

Next we will have Ernest Stevens, chairman, National Indian Gaming Association, Washington, DC. He will be accompanied by Mark Van Norman.

Mr. Hogen, please come up and have a seat.

Your complete written testimony will be included in the record. If you would like to abbreviate your remarks, please feel free to do that. Welcome to the committee.

STATEMENT OF PHIL HOGEN, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION, WASHINGTON, DC, ACCOMPANIED BY NELSON WESTRIN, VICE CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION; AND CLOYCE "CHUCK" CHONEY, COMMISSIONER, NATIONAL INDIAN GAMING COMMISSION

Mr. HOGEN. Good morning. Thank you, Mr. Chairman. We much appreciate the opportunity to come tell the story of the National Indian Gaming Commission this morning. We have a lot to say, and we know we do not have a lot of time to do it, so I will try to get right to it.

But first I would like to introduce the other members of the National Indian Gaming Commission who are with me here today. Our vice chairman is Nelson Westrin. Nelson is the former executive director of the Michigan Gaming Control Board. He was there

when that gaming regulatory body started. He put it together and he brings a great deal of expertise to our body. We really appreciate having him on board.

Cloyce "Chuck" Choney is the other member of the Commission. Chuck is a Comanche from Oklahoma. He spent 26 years with the Federal Bureau of Investigation. He knows his way around Indian country and investigations. We are just delighted to have him part of our team. That has really strengthened our relationship with members of the Federal law enforcement family.

We want to talk about basically three areas today. We are bureaucrats so we are going to talk about our funding and our budget. We want to talk about the mission that we have and how we attempt to perform that mission. Finally, we want to talk about what we view are some shortcomings in the Indian Gaming Regulatory Act that tend to complicate our performance of that mission.

Before I launch into that, I want to say that we think we know our place within the Indian gaming scheme of things. We would not be here if it were just for the Federal Government. Indian gaming was created by Indians, by leaders that brought economic development to their reservations where that was desperately needed. Without their vision and without their leadership, there would not be an industry. We would not be here.

With respect to the gaming that is occurring out there, there are several key players that perform the regulatory functions. The front line, all day, every day regulation is performed by tribal regulators. We think they do that job very well.

Our role is rather a secondary role. We support and provide oversight of that regulation, that tribal gaming commissions perform for their tribes. Of course, under the tribal-State compacts for class III gaming, States, too, can and do play supporting roles. But most of the manpower, and all of the money that is spent to regulate Indian gaming, is provided by the tribes. They are doing a commendable job. Our oversight, we hope—and we think it does—tends to lend credibility to that first line regulation that tribes do.

There is a dynamic tension that exists between these levels of regulators, but we think that is to be expected in that kind of a relationship. But we think we have a good and positive relationship with tribes and their tribal regulators.

Now, getting to the funding part of the presentation, since 1997, the National Indian Gaming Commission's operations have been funded solely by tribes—fees that are collected on class II and class III gaming, as well as some lesser amounts that are collected for services, particularly the fingerprint processing that we do for tribes in cooperation with their background investigations. We also charge some fees in connection with the background investigations we conduct when we are doing management contract reviews.

The fees that we collect, of course, are capped by the statute, capped currently at $8 million. Exhibit number 2 of our written statement is a pie chart that shows that about 85 percent of the dollars that we current spend are basically fixed costs—salaries and money we spend to keep the doors open at our office here in Washington and our five field offices.

The CHAIRMAN. Is that the red portion of your chart?

Mr. HOGEN. Yes; the lion's share is basically uncontrollable, so to speak. We have to pay that whether or not we are working hard.

The CHAIRMAN. You had better be working hard.

Mr. HOGEN. We absolutely try to do that.

That is the picture. Right now we are spending the full $8 million basically to do that. Of course, the industry itself, as this chart demonstrates, is on an upward trend. We do not know that it will always go at that level or at that rate, but recently that is the way it has been going. That is good. That means that puts dollars on reservations where they are supposed to go.

But it also means that we have more to do. With the same amount to do more, we have to be creative. But during this period of time, there have been more tribal gaming operations and there have been larger tribal gaming operations. We have come up with some more requirements that we have to get out there and verify, such as our minimal internal controls standards and the environment, health, and public safety provisions that we are responsible for overseeing.

The gaming itself is becoming more complex. It is a more technical industry. We have to be better at what we do. In 2001, NIGC spending to hit the ceiling. We collected all the $8 million. We could not hire any more people or do anything more. So we had to put in place a hiring freeze. We had to restrict the travel of the investigators and the auditors. We had to suspend a consultation circuit riding program where they would go out around Indian country. We have been able to only minimally upgrade equipment, training, and the technology that we utilize. We are in a bind over there.

Also appended to our testimony is a copy of our organizational chart. It shows who works for us and what they do. It also shows the vacancies. We have 19 field investigators in our five field offices and here in our Washington office. Right now, three of those positions are vacant. We have seven auditor positions; three of those positions are vacant.

The CHAIRMAN. Those are positions all in the Washington office?

Mr. HOGEN. No; these are the whole team; five field offices and the Washington office.

The CHAIRMAN. The positions that are vacant. Are they out in the field are they mostly here in Washington?

Mr. HOGEN. They are both. It is probably weighted a little more to the field because that is where the people are. But if and when we get dollars to fill positions, the field positions will be the first ones that we will backfill.

We also have had some senior positions open. We currently do not have a general counsel. We do not have a director of Congressional affairs. We have folks acting in that capacity. That means that those acting folks cannot do the jobs that they were doing before.

The good news in connection with that, and the fact that there were vacancies in our positions in the Commission membership means that we saved some dollars. We were not paying those big salaries. With those savings, we were able to hire some of the people and fill some of the slots that we had not filled before.

But notwithstanding the shortage of folks that we have, we are still doing a lot of work. We made 329 "routine" site visits to field offices during 2002. We conducted 75 training sessions out at reservations or in tribal facilities. We made 226 visits that were made to address specific problems. That is not across the board because 148 of those occurred at our Tulsa office where we have struggled with where you draw the line between class II and class III gaming.

Indian gaming is extremely diverse. In some cases it is far flung and remote. Geography and special circumstances tends to influence how we distribute those field visits and so forth. If you are in Tulsa and you need to go to the Muskogee Creek facility, you are ten minutes away. If you are in the St. Paul office and you need to go to Pine Ridge, you have to spend $1,000 and a lot of time on the airplane and behind a steering wheel. So it is not all divided up the same way, so to speak.

We have a strong audit team. The audit function is probably the newest group that has been developed at the National Indian Gaming Commission. First of all, they review the audits that all tribes have to have performed and send to NIGC. Those audits are helpful, but of course, they basically show the financial position of the facility. They do not say that they have looked under every rock to see if anything was wrong. But occasionally we do that kind of an audit as well, a fraud or an investigative audit.

Most recently we have been doing minimal internal control audits which have been extremely productive. We came out with these minimum internal control standards that say things like:

> When you take the money out of the slot machine you have to have somebody from security there. You have to have somebody who is going to account for the money. You have to have a witness. They all have to sign the paper.

There are things like that. You have a track record on these undocumented cash transactions. When we do a MIC audit, we go out and look at the paper trail for those things and try to see how the operation is running. This provides great oversight from our perspective. I think the tribes are extremely well served when we look at them and tell them where there are some shortcomings.

Ideally, our auditors tell us we would do one of those MICS audits at each facility about every 5 years. Last year, 2002, we were only able to do five of those. That is 5 out of 300 operations. At that rate it would be a long time to make the full circuit. We cannot do that with the staff that we currently have.

In terms of the background investigation process that the tribes initially perform and do well, we help process those fingerprints. In 2002, we processed 30,000 fingerprints, sending them on to the FBI and sending the results back to the tribes. We looked at over 24,000 employee background investigations. We are part of that team, and that keeps us busy.

We also, of course, review and approve the tribal gaming ordinances. You might think that would be something that would just be a one-time deal from each tribe, but there are changes. For example, Arizona not long ago, expanded gaming to include black jack. Each of the tribes had to revise its ordinance, send it in to us, and we reviewed it. Of course, there are new operations where they send in new ordinances. We also review and approve manage-

ment contracts. That is a slow but a very thorough process. That keeps us busy. Like other agencies, we get a lot of Freedom of Information Act requests. We spend a lot of time and resources responding to the FOIA requests.

To do all of the things we are supposed to do, frankly with the growing industry, we need more resources and we need more money. The way we are funded now is exclusively by the fees that we get from class II and class III gaming. The good news for the tribes, of course, is as those total dollars expand, the rate that they have to pay us to fund that $8 million goes down.

The first thing the three new Commissioners did when we came on board was to set the rate for calendar year 2002. You cannot do that until the end of the year because you do not know exactly how much money has been generated out there. We set the rate. We lowered the rate. It was set at 65 cents per thousand dollars. For every thousand dollars of tribal revenue out there, they sent us 65 cents.

When we set the rate for this year, 2003, because we could see the expanding industry, we were able to reduce that to 59 cents per thousand dollars. In the 2003 budget, the President had requested $2 million in appropriated taxpayer dollars to supplement our $8 million for the operation. Of course, when Congress put the budget to bed here with the Omnibus Funding Bill earlier this year, there was a deficit looming and they did not appropriate that money. We are still at the status quo, or the $8 million fee cap level.

However, the Omnibus Funding Bill did raise the cap for 2004, raising it from $8 million to $12 million. That was the appropriators' vision or view of how to address this situation. We further understand that that was a message to you, to this committee, saying, "If you want to change or fix the way NIGC is funded, you have a window of opportunity to do this."

We understand that you folks can wave the wand. Maybe when we get to 2004, that $12 fee cap will not be there or maybe you will change the structure. As we understand the $12 million fee cap, it is a one-time deal. It is not changed forever; it is changed for 2004. You might make that permanent, or you might entirely change the formula.

That puts us in a little bit of a bind in terms of what to do when. If we go out and hire more people who we would expect to pay over the years and we spend part of $12 million, if it is not going to be there in the out years, we are in trouble. We will have to RIF those people and that would not be good.

We can buy some new equipment and get some needed training and so forth, but we are hesitant to open more doors or hire a lot more people. We want to know what the stability of that funding will be.

In terms of what we would do if we had more money, this is how we would spend the money if we had $10 million instead of $8 million. We would hire more auditors. We would hire more investigators.

The CHAIRMAN. My old eyes can barely see that chart let alone the printing on that chart. Do you have those printed up for the committee?

Mr. HOGEN. Yes; I believe it is attached to the statement.

The CHAIRMAN. We do not have any of those charts you have shown so far.

Mr. HOGEN. I apologize for that.

The CHAIRMAN. Provide those for the committee, if you would.

Mr. HOGEN. We certainly will.

In addition to that, we have a copy of our budget showing how we spend it by the month and by the item. We will provide it to the committee and, of course, we have provided it to the tribes.

How can we maybe better set the rate of the fees? Here is what I think you should do. I think rather than setting a finite number there—$8 million, $10 million, $12 million—set it at a percentage rate. If the industry grew, so, too, would the fees to regulate that industry. If it contracts, we need less money and it would go down.

Right now the maximum for the fees is 5 percent. Well, of course, given the experience we have had since 1988, that is an outrageously high fee. We would never need that much money. If we had one-fiftieth of that; if we had one-tenth of a percent as the fee cap—that is not the budget; that is just the maximum—then if you had a $12-billion industry, then we would get $12 million. If you had a $13-million industry, we could get $13 billion.

We think that would be an approach that you might want to consider in terms of giving us some stability so that as the industry grows we could grow and we could make some long-term plans.

The last thing I want to say about that is that fee cap is just that. That is not the budget. In 2004, we have a fee cap of $12 million. I do not think we could intelligently spend that much money if we wanted to; $10 million, yes. We have a plan for that. But just because the fee cap is there, that does not mean that we would seek all of that money.

So that is our story with respect to our budget and our funding. At the conclusion of my statement, I will try to respond to any questions you might have.

Before we conclude, I want to talk about things that we think might be changed in the Indian Gaming Regulatory Act that would assist us. There are probably a couple of things that everybody who is in Indian gaming agree on with respect to IGRA. No. 1, is that it is not perfect. No. 2, everybody is afraid that if it is ever amended, it will be amended in a way they will not like. There is not much impetus to change it.

In years past, ordinarily there has been a bill introduced to amend the Indian Gaming Regulatory Act. The National Indian Gaming Commission has most often been in the reactive posture. They were asked after it was introduced, "what did we think". Typically, NIGC said, "Well, we do not like it exactly that way."

We are here to offer some suggestions that we think might be considered before a bill like that gets introduced.

First of all, with respect to the authority of the National Indian Gaming Commission with respect to class III gaming, the lion's share of Indian gaming revenue is in class III. The scenario is that there is a tribal State compact that will be negotiated which will, in part, address the structure of the regulation.

Yet, the Chairman of the National Indian Gaming Commission has the authority and the responsibility to close or to fine a facility if it is not operating correctly or in compliance with the Indian

Gaming Regulatory Act, or the NIGC regulations, or the ordinance that the tribe passes.

I construe that to be authority over all the gaming—class II and class III. But if you comb through the act, it does not clearly say that we have authority over class III activities. Sometimes when we knock on a tribe's door, doing our oversight, and we say, "We would like to look at those records," they say, "Wait 1 minute. Those are class III gaming records. You do not have the authority to look at those." Then we end up in the court hassling about that.

Someday if there is no change in the law, the court will clarify that. I think they will find that we have that authority. But with the stroke of a pen, I think Congress could clarify that and that would be of assistance to all.

I would like to move on to folks that do consulting, vending, development agreements, and so forth, for tribes. Under the current structure, we have authority to oversee management contracts. If a tribe and a developer want to set up an arrangement whereby the group manages the facility for the tribe, they send us that contract. We look at it in the role of the Federal trustee to make sure that the tribe is not being taken advantage of. We put our stamp of approval on it if it passes that review.

If, in fact, management contractors are out there and they run afoul of what they have agreed to or any of the acts we are responsible for enforcing, we can penalize them. We can suspend the contract. We can impose a fine. We think that is helpful to tribes.

There are not very many management contracts out there. There are over 300 operations but there are only 15 of those that are run pursuant to a management agreement. In the history of the National Indian Gaming Commission, only 40 management contracts have been approved. There are 21 currently in our pipeline or under consideration or review. It is easy to see that is the exception and not the rule.

I am not here to say that is a bad deal. In many cases the tribes are doing the right thing managing operations by themselves.

The CHAIRMAN. 300 are managing their own operations?

Mr. HOGEN. There are 300 total, and only 15 of those are under a management contract. There are 285 without a management contract. But of that 285, there are a large number where somebody else is really doing part of the operation—a third party consultant, a third party vendor, a third party developer. They have not entered into a classic "management contract" that we have reviewed and approved.

There are a couple of things that concern us about that. First of all, when it is not a management contract, we have no role in looking at their background. They may be perfectly suitable people, but we, at this level, have never had an opportunity to check into that like we could do if it were a management contract.

The CHAIRMAN. That means some tribes are hiring groups under a consultant capacity or some other name rather than a management group?

Mr. HOGEN. Right. I am sure one of the reasons that tribes and developers do that is that it is such an onerous process to go through our management contract review process. I am hoping we can streamline that.

There are people out there that are determining who wins and loses the bets, that handle the money, that are not under our review, and in some cases, are not even subject to even tribal background reviews.

If, in fact, those folks run afoul of the rules and run off with the tribe's money, we have no authority over them. What I would like to see is an amendment that would give us a role to do that, whether it be licensing or oversight. And, also to say that if, in fact, they do make off with the tribe's money, there would be an arrangement for them to disgorge or refund what they defrauded the tribe. We think we could clean up the industry.

We do background investigations for management contracts, but in many cases that is the cream of the crop. These people can pass muster. The people who want to sneak in under the cover of darkness would want to avoid a management contract.

Moving on to the Supreme Court's 1996 *Seminole* decision which said tribes cannot sue States if States refuse to negotiate in good faith, I think everybody from the tribal side would agree that has been problematic. Of course, the Secretary of the Interior is now working through procedures in a couple of situations to try to come up with rules for a compact that can occur where the States have not agreed. There are challenges and there will be continued challenges to that process.

Our concerns are twofold: First of all, we think that the playing field should be leveled again so that the States and the tribes are on the same footing. Right now the States cannot get sued, so they have an advantage.

Second, in those environments where there is obviously a question about the fairness of the State refusing to negotiate, you have gaming activities by tribes that probably enters into the class III territory. If we go out there and try to enforce against that, shut it down or whatever, if and when we get to court, the court says, "Well, it looks like these folks should be able to get a class III compact. They have not." Then this litigation comes to a standstill.

That means that you get less clarity in the regulation and the operation of gaming. If we could restore that balance, if you could perhaps give the Secretary clear authority to impose Secretarial procedures where tribes cannot negotiate a compact, that would put us back where I think Congress intended to go in the first place.

When I had the privilege of appearing before the Committee during my confirmation, I was asked, "Do I intend to consult with tribes." I do intend to do that. I think we have been doing that. We certainly intend to continue to consult with tribes as we spend their money and partner with them in the regulation of their industry.

One of the things we are working on at the present time is setting up a more formal statement of how that consultation will be conducted. I came to this job from the Department of the Interior. The Bureau of Indian Affairs, of course, has a lengthy formal consultation process. In my view, we cannot afford to do anything quite that complex. I think that is too cumbersome when commissioners only have a 3-year term to do their job. By the time you

get acquainted and then go out and start a long process like that, your term is up.

We want to come up with a more flexible, more nimble approach, but we want it to be meaningful. We are resuming this circuit riding of consultation sessions that we started when I served on the Commission as an Associate Commissioner. We are going to be heading out to Minneapolis next week, the Great Plains and Midwest Indian Gaming Trade Show will occur there.

We will follow that with a consultation session whereby we will invite all of the tribes to come to hear what we have to say and hear what they have to say. Then we will sit down with individual tribes with all the tribes that want to sign up or visit with us and hear not only about local concerns, but about their views on these big picture issues we are talking about right now.

As we do this, of course, a couple of the key subjects we want to talk about are the changes that the past Commission made in the definitions regulations relating to aids for class II gaming, as well as facsimiles that constitute class III gaming, as well as our budget and our funding.

In July we will be going out to the Northwest. The Northwest Gaming Association will be holding its meeting in Tacoma. We are going to piggyback on that, as we are doing in Minneapolis. A couple of weeks ago Commissioner Choney and I went to Oklahoma. It was short notice, but 150 tribal leaders and representatives of Indian gaming in Oklahoma showed up. We had a long, very productive discussion. We probably spent more time there talking about where you draw the line between class II and class III, and how you classify games, than we will in some of the other venues. That was a very productive session.

We are on the consultation trail. We have had meetings. We have provided budget information. We want to continue to do that.

Finally, before I conclude here, I want to acknowledge the dedication and hard work of the current team that we have at the National Indian Gaming Commission. In the face of these changes in leadership and shortfalls, and the rapid growth that the industry has experienced, our staff has been extremely professional and has worked extremely hard. They have bent over backward to try to be user friendly rather than use a traffic-cop approach when they run into a problem in Indian country.

I am proud to be leading that team right now. I am also proud to say that we three new Commissioners are getting along great. We think that we each bring an unique prospective that is considered by one another as we do our job. We hope to move onward and upward.

With that, I would be happy to respond to any questions you might have. I know that Vice Chairman Westrin and Commissioner Choney would also be happy to respond to any questions. I would ask that my statement be included in the record in its entirety.

Thank you.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Hogen appears in appendix.]

The CHAIRMAN. Thank you. I am glad you are improving the relationship with tribes through consultation. As you know, we had some feedback early on from tribes that felt the Gaming Commis-

sion was somewhat punitive. When you say you are hearing what they have to say, that is great, because if you do not, we are going to hear what they have to say. I appreciate your doing that.

Let me ask you a few questions particularly about California. I keep hearing about the explosive growth in California of gaming tribes. How many California tribes now are into gaming presently? What is the projection of the number of tribes that will be starting? Do you have a number?

Mr. HOGEN. In our office we know, and our field office in Sacramento could tell me in a heartbeat. There are about 60 tribes that are actively engaged in gaming right now. There are a number of them that are negotiating compacts. It is in that ballpark, I believe.

The CHAIRMAN. Some of the California tribes use the so-called "model compact" that Governor Davis negotiated. Are there variations of that in the duties that the Commission has to perform?

Mr. HOGEN. It is pretty much a standard cookie cutter compact, so to speak, for all the California operations. One tribe, Coyote Valley, is holding out and in litigation with respect to whether they have to play by those same rules. I think all of the tribes that currently are operational pretty much have the same identical compact.

The CHAIRMAN. I see. You mentioned the fee assessments are about 59 cents per thousand dollars. Do you have any evidence that that fee level, that assessment level, has caused any hardship to tribal operations?

Mr. HOGEN. As far as I know, there are a number of tribes that are late in paying their fees, or have not paid their fees. But ordinarily that is an oversight. It is not because they did not have the money to do that.

The first $1.5 million generated by every operation is not subject to the fee. If you have a really small operation, they get our service but they do not have to pay any fee. In the scheme of things, I do not think that is overly burdensome.

But in the same breath I want to say that Indian gaming's regulation is probably less efficient than some other gaming regulation in that we necessarily have these three levels. You have the tribes that do basically all the work on the floor, on the ground. The States partner in that. Then we provide oversight.

A reason for that is, there is a perception by some, that if the tribe regulates its own gaming, it is the fox watching the hen house. I think tribes should be trusted to do that. But to give them credibility, we can come up here and say, "We have been out there. We looked at it. We know it is squeaky clean." We think that strengthens what they do.

But they also have the luxury of looking just at one or two operations very intensely. They are not looking at the number of facilities that the Nevada Gaming Commission would have. It is going to be a little expensive, but we think it has been worth that investment so far.

The CHAIRMAN. You also get $2 million in reimbursement costs. You mentioned the fingerprinting and background checks. First of all, could those activities be outsourced?

Mr. HOGEN. Well, with respect to the fingerprint activity, that is probably a critical role for us to play in that the FBI is quite selective with whom they do business.

The CHAIRMAN. How about doing background checks and things of that nature?

Mr. HOGEN. Well, we get reimbursed. If Bally's Gaming comes to us and says, "We want to do a management contract——"

The CHAIRMAN. If you are reimbursed for that, does that need to be part of your budget needs?

Mr. HOGEN. We put that in a separate category. It pays for itself. You are right about that. We do not need to get more money to do that because it is pay-as-you-go. It is the other stuff that we need the money for.

The CHAIRMAN. For a number of years, the tribes and the Committee have not received information that we think needs to be provided to the Committee and the tribes. We have mentioned this a couple of times in the past when you have been in here.

You did mention your trying to improve your consultation with tribes. Do you have a policy of consultation?

Mr. HOGEN. We have been doing it tribe-by-tribe, but Vice Chairman Westrin has taken upon himself the task to propose for us a consultation process. I learned when I was at the Department of the Interior the lesson of BITAM. Secretary Norton came out with the plan. The tribes said, "We are not talking about that. You did not talk with us first."

This is one of the things that we are going to talk with the tribes about when we go to Minneapolis and when we go to Tacoma to get their input before we put it in bold type and say, "Here it is."

The CHAIRMAN. The Departments should all learn from BITAM.

In some parts of the country, particularly Oklahoma, I think you mentioned there is a lot of litigation regarding the use of technological aids for class II gaming and the application of the Johnson Act. In your opinion, are the class II definitions in need of change or modernizing? Did the action taken by your predecessors sufficiently clarify the definition?

Mr. HOGEN. I think it did bring considerable clarity to that. In two recent Court of Appeals decisions—*Santee Sioux* v. *National Indian Gaming Commission* decision of the Eighth Circuit on New Year's Eve of last year, and the recent decision of the *Seneca Cayuga* case—found that devices that used spools of pull tabs, although they had electronic card readers and video displays, were class II.

In those decisions, they addressed the new regulations of the Commission. In other words, they said:

> This brings some clarity to this. The Commission is in the business of regulating gaming. They are entitled to some deference.

This gives us a brighter line.

Yes; I think the regulation has considerably helped clarify the picture. What we need to continue to remind ourselves is that given the advance of technology, this is a dynamic area. I do not think we can ever sit back and say that we do not ever have to change that again.

The CHAIRMAN. Thank you. We are still dealing with the *Seminole* decision. Basically it stripped the tribes of any leverage they

had in getting the States to negotiate. Without amending IGRA, are there any other ways that you think we could resolve the impasses that we have between tribes and States? Obviously, if we tried to amend IGRA, the States may oppose any changes that would take away their ability to do what they have already won in Court.

Mr. HOGEN. Secretary Norton has been working with the Santee Sioux Tribe in Nebraska and with the Seminole Tribe in Florida with respect to trying to come up with a compact. That is a long tedious process, but progress is being made. I know that based on the conversations we have recently had. I was over there when that process was ongoing.

If and when that process gets finished and we have a model to work from, then I think that will be addressed in large part. But it will perhaps take longer than an amendment to IGRA might take.

The CHAIRMAN. We probably will not be able to amend IGRA if it looks like a threat to the States. We just would not get the thing through.

I understand that some of the new regulations that you are developing have to do with environmental health and safety regulations. I think I can understand safety, but what kind of regulations are you developing that have to do with environmental health in a casino?

Mr. HOGEN. If a casino were proposed to be built on a fragile river bank and it would crash into the river or pollute the river, we would probably say, "Hey, take another look at this."

The CHAIRMAN. I see.

Mr. HOGEN. We have issued some regulations that are basically advisory. There is some term of art that I cannot think of right now that we call that. But basically what we say is:

> We are not setting the rules of what you have to do for environment. But you do have to look at this. You have to make your own plan. Go by your own tribal code, or whatever.

If and when we find a situation where there is imminent danger, we can take action. We have never had to do this.

The CHAIRMAN. Do you not have the legal authority or experts on your staff to deal with safety regulations, like OSHA does, or like EPA does with environmental health; do you?

Mr. HOGEN. We do not have safety experts, so to speak. With respect to environmental issues, when we review and approve management contracts, that is a major Federal action that triggers NEPA. An environmental assessment may have to be made. We have to look intelligently at that.

The CHAIRMAN. You work with these other agencies when you have to make that assessment or decision?

Mr. HOGEN. We do that. We work with the folks in Bureau of Indian Affairs and the Department of the Interior. Of course, we also want to be sure we understand what they are telling us. We have some of that experience in-house.

The CHAIRMAN. Thank you. I have no further questions.

Senator Inouye or other members may have questions. If they do, they will probably submit them in writing. I would appreciate it if you could get answers back to the committee.

Mr. HOGEN. I would be very happy to do that. Thank you for this opportunity.

The CHAIRMAN. While our panel is coming to the table, we will stand in recess for just a couple of minutes.

[Recess.]

The CHAIRMAN. The committee will come back to order.

Our next panel will be Ernest L. Stevens, Jr., chairman, National Indian Gaming Association, Washington, DC. He is accompanied by Mark Van Norman, executive director, National Indian Gaming Association, Washington, DC, and Norm DeRosier, Viejas Gaming Commission.

If your colleagues are going to speak, please have them identify their names for the record. As with the other witness, if you would like to turn your complete written testimony in, that will be fine. You can abbreviate it, if you would like to.

STATEMENT OF ERNEST L. STEVENS, JR., CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION, WASHINGTON, DC, ACCOMPANIED BY MARK VAN NORMAN, EXECUTIVE DIRECTOR, NATIONAL INDIAN GAMING ASSOCIATION, WASHINGTON, DC; AND NORM DEROSIER, VIEJAS GAMING COMMISSION

Mr. STEVENS. Thank you, Mr. Chairman.

Good morning, Senator. Thank you for allowing me to be here today. I will summarize my statement. I would ask that my statement be included in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Stevens appears in appendix.]

Mr. STEVENS. With me today are Mark Van Norman. He is a member of the Cheyenne River Sioux Indian Tribe. He is NIGA's executive director. Also here is Norm DeRosier, a gaming commissioner from the Viejas band of Kumeyaay Indians.

I am an Oneida from Wisconsin. I serve as the chairman of the National Indian Gaming Association. I want to say, Senator, that I am honored to be here to share this information with you on the regulation of Indian gaming, and to discuss the role of funding at NIGC.

As you know, Senator, tribes have survived a history of genocide, oppression, and dispossession. In the early 1970's we were number one in everything that was bad—unemployment, poverty, dropout rates, and substandard health care. At that time, a number of tribes began to turn to gaming as a way out. Tribal governments use gaming like States use lotteries, to build infrastructure and provide essential services for their citizens. We believe that is working.

In just 30 years, Indian gaming has helped tribes to begin to rebuild communities that were all but forgotten. Where once there was poverty and unemployment, Indian gaming provides more than 300,000 American jobs. Where once tribes suffered disease and lack of health care, Indian gaming helps to build clinics, and provides health care to the sick and to the elderly.

Where once tribes faced epidemic suicide and dropout rates, Indian gaming builds schools, funds scholarship programs, and provides hope for the entire generation of our Indian youth. Indian

gaming is all of this and a lot more. Our tribal governments are stronger and our people are stronger.

Indian country still has a long way to go. Too many of our people continue to live in disease and poverty, but Indian gaming offers hope for a better future for our tribal communities.

The great irony now is that Indian tribes are helping non-Indian communities as well. We are very proud of that, sir. We provide jobs for non-Indians nationwide. In fact, you may not know this, but over 75 percent of the 300,000 Indian gaming jobs go to non–Indians.

The CHAIRMAN. 75 percent?

Mr. STEVENS. 75 percent of over 300,000 jobs go to non-Indians. We have to work together. In spite of our history, we move forward without any issues. We have tremendous working arrangements with the municipalities. We have a common bridge because most of the people that live and work in the communities around us are working and are interacting in our facilities.

So we walk together hand-in-hand. Again, I will not go into long detail about how these initiatives in Indian Country have assisted the welfare-to-work initiatives that have been so common nationwide, but assisting them with well-paid jobs with good benefits such as health care and a lot of times even child care.

We are real proud of how we walk together with our neighbors in our surrounding municipalities. We get a lot of isolated stories out there in different regions because there is so much going on. But the majority of us have great stories to tell in Indian country.

Tribes also add to the Federal, State, and local revenues. Let me also add the "T" word up front. Indians pay taxes. People who work at Indian casinos and those who do business with Indian casinos, and those who get paid by and win in any casinos, pay Federal income taxes. They pay taxes just like the folks who work at the State lotteries.

As employers, tribes pay taxes to fund Social Security and participate as government's in the Federal unemployment system. Economists estimate that Indian gaming provides Federal, State, and local governments with more than $6 billion in increased income sales and other taxes and revenues. That is $6 billion in Federal, State, and local revenue.

We realize that the benefits of Indian gaming would not be possible without good regulation. Successful operations require solid regulation. Tribal governments understand and abide by this principle, and gaming has been the best opportunity in 200 years to bring us out of poverty. Without question, tribes are committed to regulation.

Working in cooperation with tribal, State, and Federal Governments all play in a role in regulation of Indian gaming. This system is costly. It is comprehensive. It is working. We are very proud of it, Senator.

Is our regulatory system different from other gaming operations? You bet it is. No Federal commission oversees the State lotteries, horse and dog track wagers, jai alai, or commercial river boat gaming industries. But Federal oversight of Indian gaming is extensive. Anyone who commits a crime against Indian gaming facility has

committed a Federal offense. They have, and they will continue to go to jail.

If you want to visualize the structure of Indian gaming regulations, it is like a wedding cake. The bottom layer, or tribal regulation, is the primary and the largest with the most resources and the most manpower. The second layer is State regulators which come in through the tribal–State compact process. They provide help with background checks, investigation, and oversight. Of course, the top layer is NIGC and other Federal agencies that work in Indian gaming. In addition to the NIGC is the FBI, the Department of Justice, Treasury, the Interior Department, and everybody's favorite, the IRS.

Any way you slice the cake, you are going to get a regulator. Sometimes that can be cumbersome, but we would rather be cumbersome and thorough than have any of these issues. That is why we get so much back-up out there that says, "Indian gaming is strongly regulated." That is because we have so many checks and balances in this system. We are very proud of that.

In total, tribes invest over $212 million annually for the regulation of Indian gaming. That includes $164 million for tribal gaming regulation. Over $40 million is for reimbursement of State regulatory agencies for their support, and $8 million is to fund the National Indian Gaming Commission.

In addition, the Commission collects another million dollars for processing fingerprints and background checks for a $9-million budget. Under IGRA, Congress intended for three sovereigns to work in cooperation on the regulation of Indian gaming. Each regulatory body has a distinct and supportive role for the three different classes of Indian gaming. The idea was to avoid duplication, but provide comprehensive oversight.

Through IGRA, Congress made it clear that tribal regulatory agencies are the primary regulators of Indian gaming. Indian country takes that role very seriously, Senator. As the primary regulators, tribal regulatory agencies have the largest budget for Indian gaming regulation. Tribes spend over $164 million annually on self regulation. Our system includes over 2,800 tribal gaming commissioners and regulatory personnel.

In addition to employing top-notch personnel, tribes use state-of-the-art regulatory surveillance and security equipment to support the regulatory operations. We are very excited in this day and time when we have facial recognition. We have cameras that can look underground and tell you whether a penny is heads up or tails. We really have some outstanding technology out there. We are proud of that. We are upgrading it every day. Everything that becomes available, Indian tribes are working together to establish the best.

State regulatory agencies assist tribal agencies with background checks, licensing inspections, and review of class III Indian gaming operations. Tribes reimburse States over $40 million annually for those regulatory services.

At the Federal level, the NIGC shares the responsibility for regulation with other government agencies. The NIGC defers to State gaming agencies on background checks, licensing decisions, and compact enforcement for class III gaming regulation. NIGC works in partnership with tribal gaming regulatory agencies on class II

gaming regulation, and provides background oversight for class III gaming regulation.

NIGC also acts as a facilitator to help build strong relationship between the three sovereigns to further strengthen Indian gaming regulation. In fact, a couple of months ago, NIGC hosted a meeting to discuss the formation of a national Indian gaming intelligence network to share information and to provide technical assistance to tribal regulators nationwide.

Participants included the chairman of Attorney General Ashcroft's Native American Issues Subcommittee, officials from the FBI, Treasury's Financial Crimes Enforcement net worth, North Dakota's attorney general, the NIGC, and tribal gaming regulators throughout the country.

As I stated above, the systems of checks and balances in a cooperative regulation has proven effective. Much of the credit for the success in regulation should go to tribal governments and the tribal leaders who recognize the need for solid regulation, and who took the initiative to provide the funding.

Against the backdrop of comprehensive regulation, the FBI and the U.S. Justice Department have testified repeatedly that there has been no substantial infiltration of organized crime on Indian gaming. In fact, the last time the chief of the Department of Justice's Organized Crime Division testified before this committee, he stated that, and I quote:

> Indian gaming has proven to be a useful economic development tool for a number of tribes who have utilized gaming revenues to support a variety of essential services.

While there has been isolated occasions when a crime has occurred at Indian gaming facilities, the Department of Justice found that coordination between tribal, State, and Federal regulators and law enforcement ensure that offenders are caught, prosecuted, and punished. Indian gaming has a good track record because tribes hire the most highly qualified people from tribal, State, and Federal law enforcement regulatory agencies.

Again, tribes spend $212 million on regulation each year. That is a lot of money that could go to fund sorely needed programs. But tribes realize that regulation is the cost of a successful operation and it is needed to protect our resources.

I would like to take a moment to recognize our tribal regulator that makes gaming work. Mr. DeRosier has 9 years of service in State law enforcement prior to his 11 years of service in tribal regulation. He also serves as the chairman of the National Tribal Gaming Commission and Regulatory Association that worked actively throughout Indian country.

Finally, that brings me to the issue of funding for the NIGC. NIGC and our member tribes hold the NIGC and its Commissioners in high regard. The current Commissioners have outstanding credentials and complement each other. I just want to make it clear, Senator, we do not always agree on everything, but we know that we have a mutual job to do. It is just as I stated. The tribal leaders trust us to protect this operation. All of this country count on us. If you could select the best three people to do that job, and if I had my choice, I would select the ones that have been selected to do this job. We do not always agree, but you have three out-

standing professionals in this capacity. They testified just prior to my coming up here.

The NIGC serves a sound purpose and for the most part has provided tribal governments with solid background oversight to ensure the continued integrity of Indian gaming. For the past five years, NIGC was funded at a level of $8 million each year based on fees paid by tribal governments.

Last year President Bush included a $2-million request for a one-time appropriation for NIGC, with the direction to NIGC to work with tribes on future increases. NIGC supported this Federal appropriation for fiscal year 2003. We want to thank the chairman and the vice chairman of this committee for supporting the President's request as well.

Regrettably, the President's request was ignored, and instead Congress authorized an immediate increase in the NIGC fee cap from $8 million to $12 million in fiscal year 2004—a $4-million increase that tribal governments will pay for. We believe that was the wrong way to do business. The action by-passed this committee. It violated the legislative process, and ignored the government-to-government consultation process.

While Congress did direct NIGC to consult on the implementation of their budget increase, it will come after the fact. We believe consultation should come before any policy changes. It just makes sense to us. We agree that the NIGC must receive adequate funding to do its job. However, as a Federal partner in the system, NIGC must strive to support and complement, but not duplicate, tribal and State regulatory activities.

As for the NIGC's direction to consult on the increase to $12 million for fiscal year 2004, I urge the Commission to take five steps:

First, formally adopt the policy of government-to-government consultation in accord with the recent Presidential Executive Orders;

Second, propose a schedule of consultation meetings with Indian country immediately. We believe that they are beginning to adhere to some of these concerns as stated in Chairman Hogen's presentation, but we are not satisfied up to this point;

Third, provide a detailed proposed budget to NIGC, our member tribes, and this committee;

Fourth, use a portion of these funds to increase self regulation for class III tribes, and;

Fifth, we ask that the Commission resume quarterly consultation with tribal regulators which will include providing tribes with training and technical assistance. Use of this Commission's increased funding in this way will prevent duplication and will focus on the Commission's resources on its core mission, which is to provide technical assistance to tribal gaming commissions.

Finally, before I close, Senator, I would like to comment on Chairman Hogen's proposed IGRA amendments. First, he has asked to complete elimination of a fee cap. As I just stated, the cap has already been raised $4 million. That is an increase of 50 percent. Do you know of any other Government agency that get an increase of 50 percent in 1 year?

Nevertheless, we are not asking Congress to roll it back. This is not the time to start talking about a fee increase. The Commission

got what it wanted last year. It should now consult with the tribes on what it plans to do with this increase that it is already getting. It should provide a detailed report to Congress. Then next year, if the NIGC wants to ask for a further increase, it should be required to justify it to the tribes and to Congress. That is what accountability is all about from our perspective.

Second, the chairman has asked for an amendment to require any person associated or seeking to become associated with the tribal gaming operation, to first obtain a license with the NIGC. This proposal would grind activity in tribal operations to a halt. Tribes already conduct investigation and background checks on their employees and contractors. NIGC should not impose a new barrier to economic activity in Indian country.

NIGC has moved too slow in reviewing management contracts. Adding this responsibility would prove too burdensome for both the Commission and tribal gaming operations. Instead, the Commission should recommend guidelines for tribal regulators and operation managers to look to when considering new employees or contractors.

Third, the chairman has asked for an amendment to clarify the Commission's authority over class III gaming. IGRA expressly established the tribal State compact process to set regulatory framework for class III gaming. IGRA requires NIGC to approve class III ordinances as long as they meet the minimum statutory requirements. Accordingly, NIGC should instead clarify through regulation that it will defer to tribal State compacts to govern class III gaming with a few narrow exceptions.

Finally, I want to mention a note on the Supreme Court's decision in *Seminole Tribes* v. *Florida.* I applaud the Commission for its intent to seek an amendment to correct this decision. Today I want to state for the record that any bill to amend IGRA should include an amendment to provide a correction to the *Seminole* case. The case was decided in 1996 and still haunts a number of tribes.

The *Seminole* decision frustrated Congress' intent by effectively giving States veto power over the compacting process. The Interior Department promulgated regulations for alternative procedures for class III compacting. Now may be the appropriate time for Congress to legislatively affirm those regulations. I hope that the committee will consider including such a provision in any IGRA amendment that is introduced this session.

Senator if I may, I would like to briefly summarize my three points today:

First, Indian gaming is working. It is rebuilding tribal economies, benefiting non-Indian communities, and providing hope for future generations of Indian people.

Second, Indian gaming is fully regulated. We should all take note of the hard work, tireless hours, and hundreds of millions of dollars that tribal governments and their employees spend on regulating Indian gaming operations. The ethocentric view that Indian gaming is only regulated by 70 employees and $8 million that fund the NIGC is just plain wrong and should be put to rest. Indian tribes are responsible, accountable, and are working in partnership with Federal and State governments.

Finally, I would ask that NIGC also be held accountable. I urge NIGC to adopt and adhere to a formal policy of government-to-government consultation and increased communication between tribes and the NIGC. Such a practice will only serve to further strengthen the regulation of Indian gaming.

Again, Senator, we feel we have made progress on that, but I cannot tell you that we are satisfied up to this point. I think we need to continue to strengthen that intent.

Mr. Chairman, I want to thank you for providing me this opportunity to testify.

I want to ask Mr. Van Norman if he could just briefly tell you about the two charts we brought this morning.

Mr. VAN NORMAN. Mr. Chairman, my name is Mark Van Norman. I am the executive director of NIGA.

The first chart demonstrates the different budget investments annually in Indian gaming. It shows that tribes are the primary regulators. We have $164 million each year that tribes invest for their own regulations. They reimburse States $40 million, and the NIGC has a budget of $8 million. Clearly we need coordination and we need to leverage the tribal resources so that we are not duplicating efforts at the NIGC level.

I also want to show you an example of our advancing technology. This comes from the Viejas Tribe where Mr. DeRosier is the Gaming Commission. They are now employing electronic fingerprint technology. When folks come in, instead of putting ink on their fingers, they put it across the computer screen. It is immediately sent over to the National Indian Gaming Commission. The FBI can turn this around and give you a criminal history within 24 hours.

The CHAIRMAN. These are for potential employees?

Mr. VAN NORMAN. These are for potential employees.

The CHAIRMAN. Is that the same system that the big casinos in Atlantic City or Las Vegas would use?

Mr. VAN NORMAN. I believe it is. The situation that we are in is that it speeds the background checks so that they can be done in 24 hours. Tribes can go ahead and issue a license with the knowledge of the criminal history. This is new technology. We may be ahead of some of the casinos in Nevada and New Jersey.

The CHAIRMAN. You heard the NIGC speak about background checks. Do you think this supplements what they are doing, or actually is a better system because it is faster?

Mr. VAN NORMAN. This system has worked in coordination with NIGC. They forward the fingerprints to the FBI for the criminal background check. We think it would be important for the NIGC to use part of their new budget increase to invest in this technology so that it is available at their regional offices.

Mr. STEVENS. Just to give you a lighthearted example of the intensity of gaming commissioners, in my previous capacity as a gaming consultant, I had to do a background check in some place in California. Previous to that, I served as a tribal councilman for the Oneida Nation in Wisconsin. I was also a member of the Native American Rights Fund Board and the National Congress of American Indians.

We staged a very respectful and rehearsed demonstration, hoping to educate the Supreme Court about tribal issues. That demonstra-

tion, I believe, was called Civil Disobedience. We were incarcerated briefly for being on the Supreme Court's steps. It was all rehearsed. We got $50 and were bailed out of jail. It was a lighthearted thing except that the guys that asked me to do, I thought they were going with me. It was just Chief Blue and me from Catawba that went.

But the tribal regulators did not want to hear anything about lightheartedness. They scrutinized me heavily to think that I was arrested at the Supreme Court steps.

The CHAIRMAN. Was there some kind of a record of that kept? There was nothing put on any police record if it was rehearsed and planned; was there?

Mr. STEVENS. I was convicted of a misdemeanor in the District of Columbia.

I am not ashamed of that. It just shows the intensity of our regulators out there in Indian country to bring that forward and scrutinizing that heavily. They are very thorough and they are very complete. These checks and balances complement one another. We are very proud of the Indian regulators out there.

The CHAIRMAN. Let me ask you a few questions about gaming in general.

I am sure you read the two-part Time Magazine articles?

Mr. STEVENS. Yes, sir.

The CHAIRMAN. They were very in-depth but probably stilted to one side of the issue. I think it has driven some concerns by some of my colleagues about Indian gaming. I have mentioned that to you before.

I have never heard you say on the record your view of those articles. Would you like to do that?

Mr. STEVENS. I am reluctant to, Senator. I sent you the letter asking that we could engage in this protection of Indian gaming. We want to sit before you today to strengthen what we have out there. We do not want to sit before you or anybody else in response to this type of publications and to try to give the benefit of the doubt. We responded to all those issues.

The CHAIRMAN. Did you respond to Time Magazine?

Mr. STEVENS. Yes; they gave me about that much [indicating] to their two articles. We felt we were successful in doing so. We responded to many magazines. We responded through ads.

The tribal leaders came to Washington, DC and talked about this. Basically what they said was that even good publications sometimes have bad reporting. You and I both have had to deal with publications and news sources that report in an unfortunate and sometimes an unethical manner. I just think that what we have been told by tribal leaders is that we respond. The issues centered around Time Magazine were either mistruths or half reporting without getting the whole story.

The CHAIRMAN. Did anybody when they were writing those articles, talk to anyone in NIGA before they were written?

Mr. STEVENS. No; as a matter of fact, not only did they not talk with NIGA, they were very selective and almost non-existent in talking with any tribal leaders throughout all of Indian country. It was very carefully rehearsed and very carefully written in a very

negative way. They were very careful about finding any truth in Indian County. As a result, of course, they did not.

Mr. VAN NORMAN. Mr. Chairman, could I add something?

The CHAIRMAN. Yes, sir.

Mr. VAN NORMAN. We have an appendix to Chairman Stevens' testimony that we would like to have included in the record.

The CHAIRMAN. Without objection, so ordered.

Mr. VAN NORMAN. It includes a more recent article from the Atlanta Journal Constitution from April 27. We felt that was a little more reflective because that article was based on Census numbers. The Census is something that you can rely on.

The Census showed that for tribes with gaming, average per capita income increased by about 50 percent. For tribes without gaming, average per capita income increased only by about 16 percent.

But even with the 50-percent increase in per capita income among the gaming tribes, we only went up to $13,500 average per capita income in 2000. That compares to $21,500 average per capita income nationally. We are still 60 percent below the average per capita income looking across Indian country.

The CHAIRMAN. Along that line, in California the tribes contribute to a development fund because some tribes are doing well and some not doing so well. Do you believe that the wealthier gaming tribes have any obligation to help or contribute to those less fortunate tribes?

I have visited a number of tribes that have gaming operations and it seems to me that the ones that are doing really well are the ones that are in close proximity to a metropolitan area, and easy to get to by people who enjoy gaming. But the ones that are on reservations that are way out, like Pine Ridge or Lame Deer, there are very few people who want to go that far for an evening of gaming.

The casino is generally very small and the only people in them are a few of the tribal members and maybe a truck driver or two that happens to stop on the way by. Some of them, in fact, have actually gone to receivership, as you know. It is not the answer for all tribes. How do you feel about sharing the wealth, as they do in California? Maybe that is the wrong word for it, but having a fund to contribute to less wealthy tribes?

Mr. STEVENS. As you know, Senator, being a Native American yourself, we have a long history of looking out for one another. I think those examples exist in Indian country. In South Dakota we really have to be able to get those tribes a better location, some more games, and support for their industry out there. There is no question that we need to do more to support them.

I was just at Four Bears Casino in Fort Berthold Indian Reservation. They are pretty far out. They are doing some real good business initiatives out there. They are really doing good to not just employ their own people, but people from the surrounding communities.

I talked with a lady there from Canada. She just loves the place. I think once the people understand that once people understand this, they will be in a better place and understand what we have to do in Indian country. These are governments working to enhance

government services and build for their future versus a few rich investors running the business for their own personal income.

Another example is down in Milwaukee at the Potawatomi Bingo Casino. They put millions of dollars into that economy there. I have personally toured the quadrants of the inner city where there is a strong need and where the Potawatomi Casino pumps millions of dollars into there and into other charities. In addition to all that, every holiday they put in over $700,000 to 16 programs. It is called "The Miracle on Canal Street." In addition to that, they send a regular lump sum payment to the Bad River and Red Cliff Indian communities who have pretty much a tourism industry in Northern Wisconsin.

I just wanted to highlight that example. Nationwide, our figure is somewhere between $68 million to $70 million that Indian tribes give to charities, Indian and non–Indian alike. That is our latest figure.

The CHAIRMAN. I would certainly encourage you to continue to pull together any statistics like that. I think it gives Indian tribes a clear defense against some of the accusations that I think are unfair accusations. I was not very happy with that Time Magazine article either. It was rather one-sided.

Mr. STEVENS. President Tex Hall, Chairman Ron Allen, Chairman Anthony Pico, and I personally went to the Boston Globe, sat with them, and tried to provide them with the best education we could. Business Weekly just wrote a very narrow article recently. The unfortunate part about that is that Time avoided us and avoided the truth. These people talked with us for 1 hour and still wrote a story about isolated incidents and refused our references to give them the story.

The CHAIRMAN. Do you have any kind of a public relations plan, for lack of a better word, or a contract with anyone to try to get the truth out or put a better face on Indian gaming?

Mr. STEVENS. Absolutely. I was actually trying not to talk about Time Magazine today. I was just trying mostly to talk about that initiative. It is a national public relations initiative. It is cochaired by Mark Brown from Mohegan and Darren Marques from San Manuel. We have been in operation for 5 months. We currently have a plan that gets out there and tells the real story, a proactive story. We also do have a public relations director. When that Time article first hit, we papered the Hill with about everything we could get to tell people the true story.

In our legislative summit this winter, legislators like yourself and others came and were a recipient of that clarification. Again, the tribal leaders refused to operate that way. They told us that this is a public relations initiative that we are going through right now. We raised somewhere between $400,000 to $500,000 to do ads and different types of things like that, to tell the proactive true story about Indian gaming.

They have stepped up to the plate, but they do not want to step up in response to Time. They want to step up to enhance and talk about the good things that are happening throughout Indian country.

The CHAIRMAN. Let me shift the questions to your relationship with NIGC. You mentioned that some of the consultation comes after the fact rather than before.

Mr. STEVENS. It was strictly regarding the budget request.

The CHAIRMAN. Did I understand you to say that you think that the budget request should be disseminated to tribes before?

Mr. STEVENS. Absolutely. That is the strong point we are trying to make. We want those budget increases to come to the tribe.

The CHAIRMAN. The budget requests are already a matter of record when they request them through this committee or through the Appropriations Committee.

Mr. STEVENS. The main thing is that they have to pay for it. That is the reason that I stand on that strong point that it has to come through the tribes.

Mr. VAN NORMAN. There was an unusual process last year. If you recall, the President came out with his appropriation request in January as normal. We relied on the Administration's request and talked to our member tribes about it. They supported the $2 million appropriation requested.

Then there was a delay in the passage of that bill from its normal passage in September up until January. In a 1-month period between the end of December and January, frankly, the Appropriations staff changed gears. There was no real public acknowledgment of that until the bill became available, which was only a couple of days prior to passage.

The CHAIRMAN. I have to tell you that last year was a really unusual year, as you probably know. It was the first time in 28 years that we did not finish our appropriations process. We had to do it the following year with some new members that were not even here when we framed up things the year before. You probably know that. We ended up passing a omnibus package of, I think, 10 of the 13 bills that we did get passed when we should have the year before.

Everything was a little unusual. Very frankly, when you put that much paperwork together, no one—no single staff or no Senator—knows everything that is in there. Some things go through that should not. It is as simple as that. We dropped the ball in getting the job done in the Senate, and in the House, too. Hopefully that will not happen again.

Mr. VAN NORMAN. We want to thank you because we thought we had a clear statement from the authorizing committee over to the appropriators. We hope that this year the authorizing committee dialog will be heated by the appropriators.

Mr. STEVENS. We are not asking for a rollback on this thing. We want to move forward and help get our jobs done. We respect NIGC's role in this. We are not asking for a rollback. We are just asking for future increases and consultations with the tribes.

The CHAIRMAN. Senator Inouye and I are on both committees, as you probably know. I know he will do his best, and I will certainly will, too.

Let me ask about the consultation. Do you have some kind of a draft policy that you would like to give to us, or to the NIGC to start the discussion about consultation before the fact?

Mr. STEVENS. I think that we could provide it. I do not know that Phil would be excited about that.

The CHAIRMAN. Well, you provide it to us and we will try to excite Phil. [Laughter.]

Mr. STEVENS. I think that we would love to do that. Again, with respect to Chairman Hogen, we would continue to assert that. If it would be more helpful in black and white, we would love to do that.

The CHAIRMAN. If you would at least provide it to us, I would appreciate that.

Mr. STEVENS. We will make sure we do that.

The CHAIRMAN. I think I have no further questions. If we do, I will send them to you in writing, if you would get back to us in writing. Other Senators may do the same.

The CHAIRMAN. Thank you for appearing today.

With that, this hearing is adjourned.

[Whereupon, at 11:14 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Mr. Chairman and Vice Chairman, thank you for scheduling today's hearing to evaluate the role and funding of the National Indian Gaming Commission [NIGC], the Federal agency responsible for oversight of Indian gaming. It is critically important to check-in and continue congressional oversight on issues associated with the regulation of Indian gaming.

Senator Inouye and I, as the original authors of the Indian gaming law envisioned that Indian gaming would grow exponentially, given the right political climate and economic opportunities. We instituted the National Indian Gaming Commission to be the official oversight agency, responsible for implementing and monitoring different regulatory aspects of the industry as well as enforcing against criminal activities.

More than 14 years later, Indian gaming is a $13-billion industry and growing fast. The largest casino in the world is a tribal casino and many others are fast becoming world class casinos. By no means am I critical of that success. Indian gaming has afforded economic opportunity and success where the Federal Government has failed to meet its responsibilities to aid tribal communities for such fundamental services such as education and health care.

Considering the steady growth, we also need to continually evaluate the Commission's ability to respond to that growth. It's been acknowledged in prior hearings before this committee that the NIGC has been limited in fully meeting its responsibilities by the lack of adequate resources to match the growth of the industry. The limitations on the agency have also been highlighted by several investigative reports, including those in recent Time Magazine profiles, which have characterized the National Indian Gaming Commission as "the impotent enforcer" with bare-bones resources and staff to fulfill its statutory responsibilities.

Those of us most familiar with Indian gaming and the Indian gaming law recognize the bias of those reports. However, there is an underlying message in such reports that should compel our response and encourage all of us to provide a more informed status of the Indian gaming industry.

The ability of the NIGC to fulfill its statutory role is very important, since the industry itself has changed dramatically since 1988. The NIGC is currently responsible for monitoring 300 gaming facilities with a current budget of $8 million and employing 77 staff. By way of comparison, the New Jersey Casino Control Commission spends $59 million and hires a staff of 720 to monitor 12 casinos in Atlantic City. This is an important point considering that Indian gaming is now believed to generate more revenue than Las Vegas and Atlantic City combined.

If we are to defend the integrity of Indian gaming then we must defend it by ensuring the strongest possible regulation and highest standards, equal to the regulation of non-Indian gaming. An immediate point of concern from the NIGC's testimony today is the fact that the NIGC has only four auditors on hand to deal with what the NIGC describes as "the only mechanism" to determine "with any certainty the extent to which specific operations are at risk of theft or loss or may be engag-

ing in practices that jeopardize the integrity of the games conducted." The NIGC will also report today on its limitations in preventing any major criminal elements or individuals from unduly profiting from Indian gaming.

Another point of discussion today is the funding for the Commission itself, which is 100 percent from fees assessed on gaming facilities. While the original Indian gaming law did set a limit of fees assessed on certain tribal facilities to support the operations of the NIGC, the Act has since been amended twice in recognition of the limitations facing the NIGC to carryout its responsibilities to match the growth of the industry. The latest change raises the agency's fee assessment ceiling to $12 million for fiscal year 2004, which according to the NIGC will provide significant help, but the agency anticipates that further resources will still be necessary for future years.

My friends in Indian country know that I am a strong supporter of Indian gaming, and of tribal self-governance to increase self-sufficiency for tribal communities. I don't think anyone here would question the benefit of gaming revenues to support tribal economies and services. The issue at hand is whether we are sufficiently supporting the agency or hampering it by imposing restrictive limitations.

The NIGC will testify today about the need to "modernize IGRA" to conform with the industry boom. I think there is merit to this discussion. I emphasize to the National Indian Gaming Association that the purpose of such discussion is not to compromise tribal regulation or sovereignty, but to strengthen it.

I look forward to additional hearings by this committee to consider other regulatory issues association with Indian gaming.

TESTIMONY OF
PHILIP N. HOGEN
CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION
BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS
MAY 14, 2003

Mr. Chairman, Mr. Vice Chairman, and members of the Committee, thank you for this opportunity to report to you on the work of the National Indian Gaming Commission.

I am Philip Hogen, an Oglala Sioux from South Dakota. Since my appearance before this Committee last September, in connection with my nomination by President Bush to Chair the National Indian Gaming Commission, my nomination was confirmed by the full Senate, and I assumed that position late last year.

I would like to take a moment to introduce our associate commissioners. Seated with me are Commissioners Nelson Westrin and Cloyce "Chuck" Choney. Nelson comes to the Commission from his position as Executive Director of the Michigan Gaming Control Board. Chuck is a retired FBI agent whose career included significant work in Indian country. Chuck is a member of the Comanche Indian Tribe of Oklahoma.

My predecessor focused on financial resources in his testimony to this Committee, and, although I will address that issue in some detail, today I would also like to ask the Committee to consider the extent to which the Indian Gaming Regulatory Act may need to be rethought to improve the federal regulatory presence in Indian gaming.

It has been a year since the Committee has heard from the National Indian Gaming Commission at an oversight hearing, and while there have been some changes, much of what you have heard before is still true.

Let me first talk about the changes. The previous Commission reported to you that we were experiencing a budget shortfall and, to ensure the NIGC could continue to operate, that the agency had implemented a hiring freeze and restricted travel. That hiring freeze, while significantly reducing our operational capability, has been an effective device for conserving funds. As a result, we are now able to fully fund necessary travel for our remaining staff. In addition, the fiscal year 2003 omnibus appropriations bill has

authorized us to collect up to $12 million in fees for fiscal year 2004. As matters now stand, as long as we approach the hiring process cautiously, over the next year and a half, all of this adds up to a somewhat improved picture from the one that was painted for you last year.

In assessing our financial resources in light of the salary savings we have realized and the higher cap on assessments for fiscal year 2004, it is our current plan to begin filling some of our existing vacancies. We will, though, delay adding new staff positions until we can ensure that we will have access to more than $8 million beyond fiscal year 2004. Parenthetically, I should say that, although we are authorized to collect up to $12 million in fiscal year 2004, I do not anticipate that we will in fact operate at a level much above $10 million next year.

While we are certainly better off financially this year than we have been in the recent past, by any objective measure the Commission's impact on the industry remains limited.

We have 19 field investigator positions, three of which are vacant, and seven auditor positions, of which three are vacant. In terms of federal regulatory presence in Indian gaming operations, this field staff accomplished the following during the past fiscal year (2002):

Routine site visits (includes combined-purpose visits):		329
Visits to conduct training:		75
Visits for the purpose of addressing a specific problem area:		
	Tulsa office:	148
	All other offices:	82

These site visits are not evenly distributed throughout the agency. Some gaming operations are within the local commuting area of the regional offices and can be visited without significant resource expenditure, others may require a day or more of costly travel each way. Operations experiencing problems received more attention than other operations. Thus, our Tulsa office is able to reach many gaming operations in two hours or less and can get to most gaming operations in its region in under four hours. In addition Oklahoma is the state where we have experienced the highest volume of contentious compliance issues. Currently there are over 300 Indian gaming operations subject to our oversight. The real story of these numbers is that, while a few gaming locations were visited multiple times, there were 150 gaming operations that were not visited at all during this period, and 87 that were visited only once.

Auditors are the big guns in the fight to protect the integrity of the cash flow in gaming. We take advantage of the capabilities of our auditors in three principal ways. First, our auditors review the annual independent audits, or financial statements, and CPA compliance reports that each gaming operation is required to submit to the Commission. Second, where we have an indication that irregularities such as theft or loss may be occurring at a tribal casino, our auditors often in concert with our field investigators, will conduct a fraud or investigative audit. Finally, to the extent permitted by our resources, we conduct internal control compliance audits. The annual independent audits are primarily designed to validate the financial statements of the gaming operations. Investigative or fraud audits involve detailed examination of all financial transactions

relevant to the irregularity at issue.

Internal control audits are a detailed, labor intense analysis of the controls on the flow of cash and recordation of gaming related transactions in the gaming operations. We review our findings from these audits with the tribes and assist them in developing a plan for corrective action. These audits are really the only mechanism we have for determining with any certainty the extent to which specific operations are at risk of theft or loss or may be engaging in practices that jeopardize the integrity of the games conducted. For that reason the audits are tremendously valuable to us as regulators and to the tribes. While, ideally, each gaming operation would undergo such an audit every five years or so, during fiscal year 2002 we were able to conduct five. With our current number of auditors, it will take us well over thirty years to get around to auditing the internal controls of each tribal gaming operation.

Time on the ground in Indian country is important, but it is not the whole story. In FY 2002 we processed more than 30,000 sets of fingerprints to the FBI for the tribes and we reviewed almost 24,000 employee background investigations. Over the last two years, our handling of these background investigations has been significantly improved by the participation of our field offices. Our regional offices are also busy hosting training sessions for tribal gaming employees and regulators, and NIGC representatives have continued to participate in training functions sponsored by outside organizations. Other routine activities of the agency continued throughout the year, as NIGC staff conducted a systematic review of the tribes' annual independent gaming audits, reviewed tribal gaming ordinances, processed management contracts, responded to requests under the Freedom of Information Act and were otherwise engaged in carrying out our specific responsibilities under IGRA and our general duties as a federal agency.

In 1999, the Commission had embarked upon a program of quarterly consultations with tribes. Over a two-day period tribal leaders in different locations throughout the country were given a block of time to sit down with the Commission and discuss issues those leaders thought important. We also arranged the schedule for these consultations so that tribes in the region could take advantage of training provided by NIGC staff and outside experts, including representatives of the Department of the Interior and the Internal Revenue Service. In the fall of 2001, these comprehensive consultation and training meetings were among the first casualties of the tight budget. I participated in the first of these consultations when I was Vice Chair, and because of their immense value to us and to the gaming tribes we have taken advantage of the temporary improvement in our financial situation to restart the process. In fact since the three of us have come on board we have been engaged almost continuously in meetings and discussions with tribal leaders and gaming regulators, in and out of Washington. Last month, Commissioner Choney and I met with tribal leaders in Oklahoma to explain our priorities for legislation, rulemaking and enforcement, and to listen to what they had to say. Later this month, the entire Commission will participate in consultative meetings with Midwestern tribes, and we are planning similar sessions in the Pacific Northwest in July. We are also committed to the development of written policy guidelines for the agency that will ensure a meaningful and practical government-to-government consultative process.

Since 1997 the NIGC has been supported entirely by assessments on tribal gaming revenue. These assessments are currently capped at $8 million. Owing to the steady growth of the industry's revenues the rate at which fees have been assessed has been declining steadily and cannot fairly be considered burdensome. For example, the preliminary fee rate for 2003 is .059%, or 59 cents per $1000, on Tier II revenues, the rate

for 2002 was .065% or 65 cents per $1000 on Tier II revenues (the first $1.5 million dollars, the Tier I revenues, are assessed at 0%).

The fixed fee cap, though, has proven inadequate because of the impact of inflation on our costs. Even if the $12 million fee cap becomes a fact after FY 2004, it will work for a few years, then a successor Chair will find him or herself in the same situation as my predecessors and I. It is the Administration's intention, therefore, to submit a legislative proposal to tie our fee collections to the size of the industry, and we hope that the proposal will receive favorable consideration from this Committee. From our perspective, rather than continue to impose a cap, it would make more sense to let the Commission's fee collection authority float so that we can grow or contract with the industry. For example, authorizing us to collect fees at a maximum rate of one-tenth of a percent (.001) would yield up to $12 million this year. At that rate, which amounts to one dollar per $1000 of gaming revenue, a tribe with a $10 million a year operation would pay a fee to the Commission of less than $10,000.

I have attached a projection of the Commission's use of increased revenue. This is obviously forward looking and is subject to change dictated by experience, but it gives you an idea of what the NIGC would look like with a $10 million budget. An initial step will be to open small offices in Southern California and the Great Plains, with a view to increasing our presence in areas where there are a number of gaming tribes. I should note that it is our intention to use some of the additional resources, as they become available, to fill in the Washington support staff. Without retreating from our commitment to maintain a visible presence in Indian country, I have concerns that we are too thinly staffed in positions that are essential to meeting our basic responsibilities as a federal agency and in positions that are necessary to support the field operations.

The bottom line on the resource issue is, of course, that we will work with the fee structure that Congress authorizes for us. While we are aware of the debate in the media and elsewhere about our role, the Congress' determination as to the funding of the NIGC is the definitive statement as to the level of federal regulation that the Congress expects us to provide.

I would like now, to move away from funding issues and address the statutory structure under which we operate.

When Congress passed the Indian Gaming Regulatory Act, it articulated concerns about organized crime and other corrupting influences, ensuring tribes were the primary beneficiaries of their gaming operations and gaming being conducted fairly and honestly. Congress created the National Indian Gaming Commission as an independent regulatory authority to deal with those concerns and to establish federal standards for gaming on Indian lands. In 1988, when the Indian Gaming Regulatory Act was passed, Indian gaming was Indian bingo. It was being played in about 100 operations and generating about $100 million in revenue. Today, Indian gaming occurs at over 300 sites and it is predominately casino gaming, producing revenues exceeding those of Las Vegas and Atlantic City combined. The basic legal structure for federal oversight of this new industry, however, has not changed since the bingo days.

The NIGC is seeing and hearing widespread questioning of our legal authority to regulate the class III gaming that accounts for most of the revenue in the industry. This dispute arises because of the way IGRA is written. No court has yet addressed this issue, and I am confident that our lawyers are prepared to meet the legal challenges as they

arise; however, the very existence of these questions is hindering our operations.

The Indian Gaming Regulatory Act gave the Commission responsibility for ensuring that management contractors would deal fairly with Indian tribes and for keeping unsuitable individuals from participating in these contracts. Since 1988, though, developers, consultants, equipment lessors and others who determine the odds and payout percentages, and who may have access to uncounted cash, have been operating under legal arrangements that are not management contracts. These people have been able to get into Indian gaming and siphon off significant gaming revenues, out of the reach of the NIGC. IGRA gives us neither the tools for preventing this, by overseeing these agreements or licensing the participants, nor a mechanism for penalizing the individuals who may be victimizing a tribe or the gaming public.

The December 2002 TIME magazine article on Indian gaming incorrectly reported that the NIGC had "yet to discover a single major case of corruption." This is not correct. We have investigated a number of incidents involving theft, misappropriation, conflicts of interest and other violations of the criminal laws, by casino employees, tribal governmental officials and contractors. The problem for the NIGC is that when we identify problems of this nature our options are to turn the matter over to law enforcement agencies, which may or may not be interested, and/or notify the tribal government, which may or may not choose to act. The NIGC has no authority to deal directly with these problems, because we cannot fine an individual wrongdoer or require disgorgement of money unjustly obtained at tribal expense.

The U.S. Supreme Court's 1996 Seminole[1] decision, recognizing state immunity to suit by tribes seeking compacts, has also been a source of regulatory problems. IGRA contemplated a situation in which tribes would be entitled to engage in class III gaming in states where such gaming was otherwise permitted, and provided a mechanism for reaching an authoritative determination as to the permissible scope of Indian gaming under state law. The Seminole decision has allowed states to avoid IGRA's requirement for good faith compact negotiations, and, as a result, uncompacted class III gaming is occurring in a number of states. While I will acknowledge that IGRA gives the Commission the legal authority to put a stop to such activity, these are difficult cases. They are resource intensive, requiring hundreds of attorney hours and often thousands of scarce dollars in litigation expenses and they tend to have an impact on only one tribe at a time in what may be a competitive market. There is also a fairness issue that weighs against bringing these cases in states where class III gaming, of some kind, would clearly be compactable. In addition, perhaps because of this fairness issue, the courts appear reluctant to support action against class III games in such situations. A collateral consequence of illegal class III gaming is that it tends to attract unsuitable individuals who could not get licensed or do business in jurisdictions like Nevada or New Jersey. For that reason there is more at stake when it comes to gray area gaming than the jurisprudential debate about the legal status of a particular machine or game. The Secretary of the Interior has put a process in place for prescribing class III gaming procedures where a state has refused to engage in good faith compact negotiations, but the validity of that process is being challenged. The Commission's advice, here, is that this is not a healthy situation for Indian gaming, and the Congress should consider restoring IGRA's original balance between tribes and states.

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[1] Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996).

Testimony of Chairman Hogen
May 14, 2003

As mentioned above, this Commission is serious about its commitment to consult with the tribes about Indian gaming. Pursuant to the advice of the Conference Committee in connection with the omnibus appropriations bill, we will be talking to the tribes about our fee cap and we will be talking about our definition regulations, but we will also be discussing some of our concerns about the substantive provisions of the Indian Gaming Regulatory Act. It is our plan not only to consult with the tribes, but also to work with the Administration and to work with this Committee to modernize IGRA, so that we can get the tools to do the important mission we have been given.

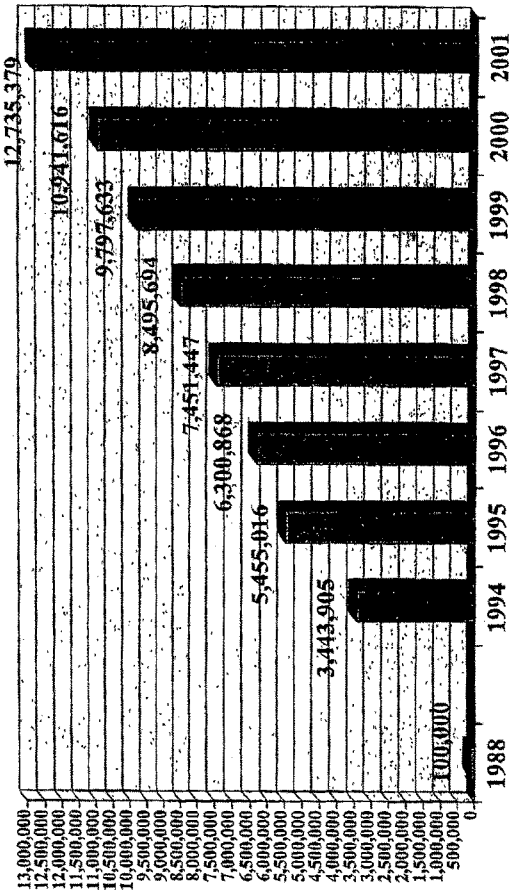
My testimony today has been focused on those legal and financial resources we think might enhance the federal regulatory presence. One resource I have not mentioned, but should, is the human resource. Throughout the public debate about the proper role of the Commission, and in the face of often daunting legal and budgetary challenges, the men and women of the National Indian Gaming Commission have remained committed to carrying out the agency's mission. They are professionals who understand the positive effects that gaming dollars have had in Indian country and the importance of achieving the goals expressed by the Congressional declaration of policy in the Indian Gaming Regulatory Act. These dedicated people have continued to work hard and to take their responsibilities seriously. They have never let themselves get distracted by the obstacles; instead, they have kept an eye on costs and continued to find innovative ways to stay engaged and to make a difference in Indian gaming on a restricted budget. The tribes and the American people have gotten a very high level of high quality effort for the money they have put into the NIGC.

Thank you for your time and attention. We would be happy to answer any questions that the Committee may have.

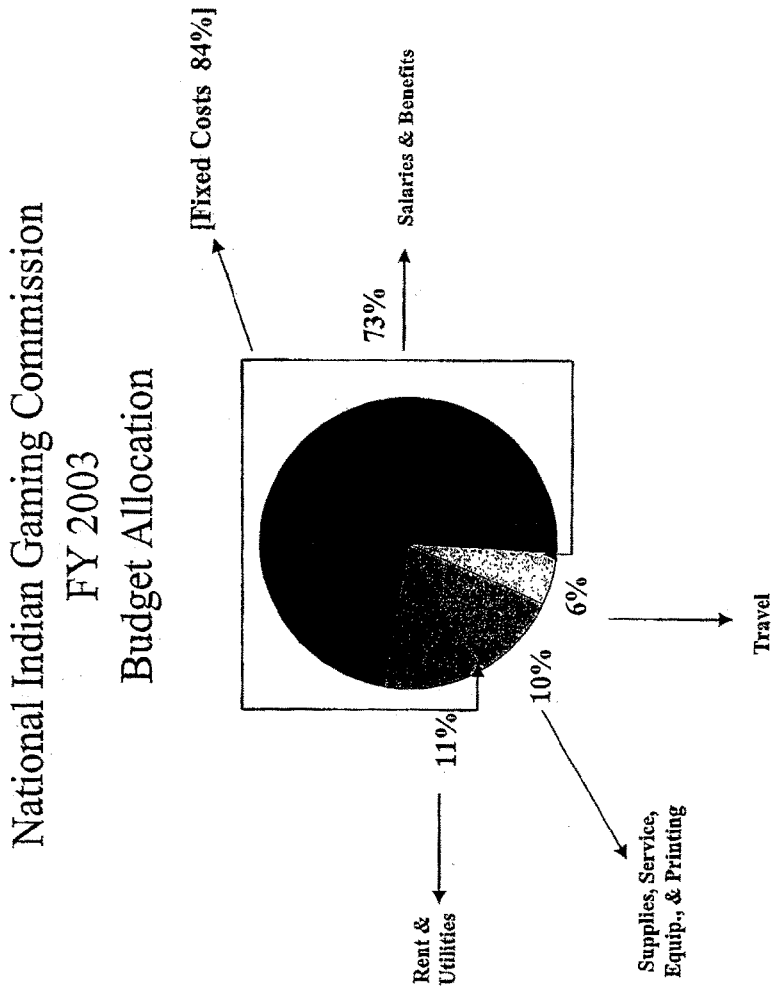
Attachments:

A. Bar graph: Growth of the Indian Gaming Industry
B. Pie chart: National Indian Gaming Commission FY 2003 Budget Allocation
C. NIGC Organizational Chart
D. Regional Statistics
E. Projected Use of Increase in Available Revenue

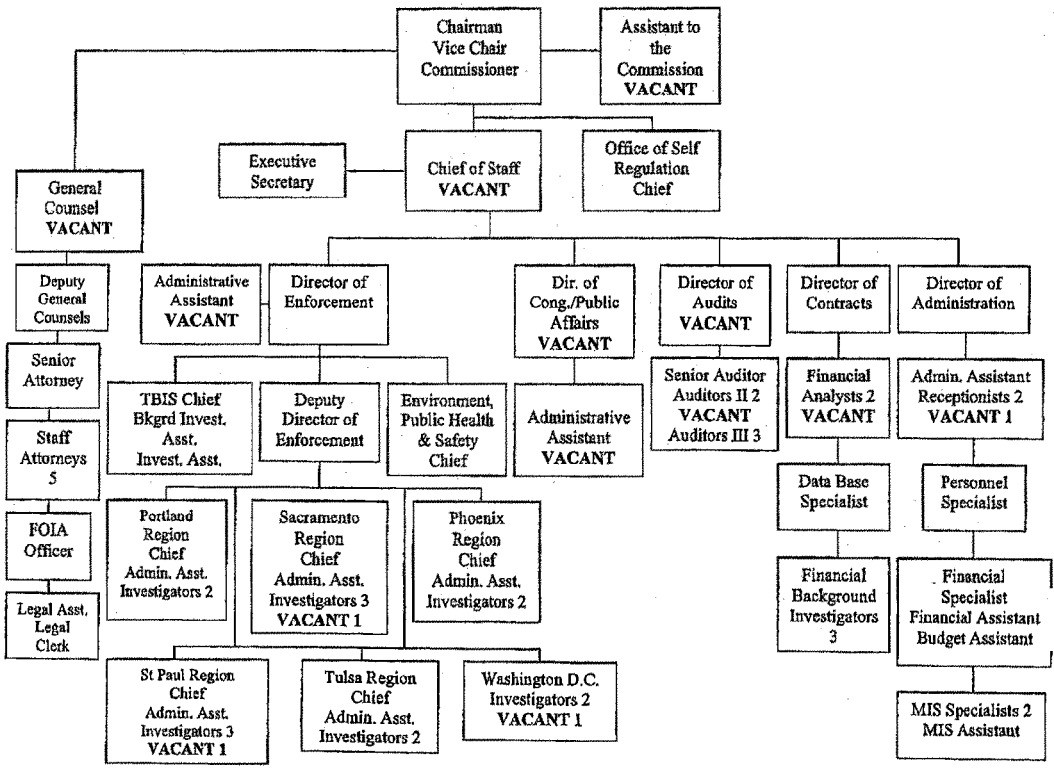
Growth of the Indian Gaming Industry
(Revenue in Thousands)



Source: National Indian Gaming Commission


National Indian Gaming Commission
FY 2003
Budget Allocation
[Fixed Costs 84%]
73%
Salaries & Benefits
6%
Travel
10%
Supplies, Service, Equip., & Printing
11%
Rent & Utilities

NIGC ORGANIZATIONAL CHART



Regional Statistics

Offices	No of Gaming Operations	Gaming Revenues (2001)	Investigators Assigned	Auditors	Admin. Asst.
Portland Region I	47	$1 billion	3	1 plus Sr. Auditor	1
Sacramento Region II	47	$2.9 billion	4 (1 vacant)	1 (vacant)	1
Phoenix Region III	36	$1.6 billion	3	1	1
St. Paul Region IV	105	$3.2 billion	4 (1 vacant)	1 (vacant)	1
Tulsa Region V	79	$400 million	3	1	1
DC	20	$3.6 billion	2 (1 vacant)	0	0

Projected Use of Increase in Available Revenue*

Item		Annual Additional Cost	
Southern California Field Office(Rent and other overhead)		250,000	
Great Plains Field Office(Rent and other overhead)		200,000	
Travel for 8 new field employees @ 25K		200,000	
	Total		**650,000**
Field Investigators (4 @ GS 11-14)		280,000	
Auditors (4 @ GS 12-14)		280,000	
Attorneys (5 @ GS 12-15)		414,000	
Paralegals (2 @ GS9-11)		90,000	
OGC Secretaries (4 @ GS 5-7)		135,000	
Region Office Assistants (2 @ GS 5-7)		67,000	
Environmental Technician (GS 12-13)		70,000	
Staff Accountant (GS 12-13)		59,000	
Media Relations Assistant (GS 7-9)		41,000	
Administration Secretary (GS 7-9)		41,000	
Voucher Examiner (Travel) (GS 7-9)		41,000	
Purchasing Agent (GS 9-11)		49,000	
Deputy Director of Administration (GS 11-13)		59,000	
Information Technology Assistant (GS 9-10)		45,000	
Records and Information Manager (GS 9-12)		49,000	
	Salary	1,720,000	
	25% Benefits	430,000	
	Salary & Benefits	2,150,000	
	Total		**2,800,000**

*Subject to change

Fiscal Year 2003
Fund Code: GMX01
5/14/03

National Indian Gaming Commission

BOC	Description	Monthly Breakdown												Projected FY2003 Program Total
		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	
11 & 12	Full-Time Permanent, Other Than Full-Time Permanent & Civilian Personnel Benefits		*3 Pay Periods					April-Sept are Projected numbers	*3 Pay Periods					
	Subtotal	430,095.43	834,424.94	434,839.36	444,279.67	433,869.71	437,176.63	432,574.00	648,861.00	432,574.00	432,574.00	432,574.00	432,574.00	5,626,435.64
21	Non-Foreign Travel													
	Subtotal	26,500.00	27,384.08	46,739.97	54,128.10	44,145.78	35,043.19	41,600.00	41,600.00	41,600.00	41,600.00	41,600.00	41,600.00	493,542.02
23	Rental Payments to GSA													
	Space Rental Payments to GSA:	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	64,362.00	772,344.00
23	Communications, Utilities and Misc. Charges													
	Cell Phones	1,667.91	1,536.42	1,660.00	2,150.00	2,050.00	2,100.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	26,464.33
	GSA Communication FTS	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	48,000.00
	GSA Communication Non-FTS	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	24,000.00
	Subtotal	7,667.91	7,536.42	7,660.00	8,150.00	8,050.00	8,100.00	8,500.00	8,500.00	8,500.00	8,500.00	8,500.00	8,500.00	98,464.33
24	Printing and Reproduction													
	Subtotal	0.00	234.12	0.00	0.00	291.25	225.69	1,750.00	1,750.00	1,750.00	1,750.00	1,750.00	1,750.00	11,251.06
25	Other Services													
	Consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,000.00	0.00	0.00	0.00	0.00	10,000.00
	ENR Management Associates	0.00	0.00	1,600.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50,000.00
	Office of Personnel Management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00
	Diplomat Parking	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	2,667.00	32,000.00
	Lexis Nexus	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	7,200.00
	Central Billing	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	23,700.00	284,400.00
	MMS Personnel Services	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	9,000.00	108,000.00
	Federal Express	1,600.00	1,062.00	1,148.00	1,690.00	1,670.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	30,000.00
	Metro Pool Program	1,885.00	2,085.00	2,085.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	30,000.00
	West Publishing Company	0.00	0.00	2,502.78	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,000.00
	Nick Farley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,000.00
	Thompson Consulting Service	0.00	0.00	5,003.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,100.00
	IT Enhancements/Financial Component	0.00	0.00	7,500.00	0.00	0.00	7,500.00	0.00	0.00	7,500.00	0.00	0.00	7,500.00	30,000.00
	Subtotal	39,552.00	39,114.00	56,305.83	40,157.00	40,137.00	48,467.00	40,967.00	46,967.00	48,467.00	40,967.00	40,967.00	48,467.00	685,700.00
26	Supplies and Materials													
	Subtotal	6,797.00	6,214.00	9,622.74	16,732.47	8,402.33	35,341.41	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	172,099.95
31	Equipment													
	Subtotal	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	8,400.00
	Total	575,874.34	779,989.56	619,329.90	628,510.24	599,976.07	629,415.62	605,453.00	826,740.00	612,953.00	605,453.00	605,453.00	612,953.00	7,868,148.00
													Antic. Background Reimbursement	400,000.00
													Antic. Fingerprint Reimbursement	600,000.00
													Anticipated expenditures FY03:	6,868,148.00

National Indian Gaming Association

224 Second Street SE • Washington DC 20003
(202) 546-7711 • FAX (202) 546-1755 • www.indiangaming.org

TESTIMONY OF ERNEST L. STEVENS, JR.
CHAIRMAN OF THE
NATIONAL INDIAN GAMING ASSOCIATION

MAY 14, 2003

BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON THE ROLE AND FUNDING OF THE
NATIONAL INDIAN GAMING COMMISSION

I. INTRODUCTION

Chairman Campbell, Vice Chairman Inouye, and Members of the Committee, my name is Ernest L. Stevens, Jr. I am a member of the Oneida Tribe of Wisconsin and serve as Chairman of the National Indian Gaming Association ("NIGA"). Thank you for inviting me to testify this morning on behalf of NIGA about the National Indian Gaming Commission's ("NIGC") regulatory role and funding.

NIGA is a non-profit association of 184 Indian Tribes. NIGA's mission is to protect and preserve tribal sovereignty and the ability of tribal governments to attain economic self-sufficiency through gaming and other methods of economic development. NIGA continuously strives to provide necessary factual information about Indian gaming to the public, Congress, and the Executive Branch.

This morning, I will briefly touch on the results of Indian gaming and the Indian Gaming Regulatory Act or IGRA. I'll discuss the background and framework of the IGRA. I'll then examine the regulatory roles of Tribal, State, and Federal governments in Indian gaming. And finally I'll provide NIGA's views on funding for the National Indian Gaming Commission.

II. INDIAN GAMING IS WORKING

The Indian Gaming Regulatory Act (IGRA) is based on the fundamental constitutional principle that Indian Tribes are governments.[1] Just as 37 of the 50 State governments use lotteries to generate revenue, Congress and the U.S. Supreme Court recognized that Indian Tribes retain the sovereign authority to use gaming to generate governmental revenue to build infrastructure, and fund programs to provide services to their citizens.

When Congress enacted IGRA, it stated that the purposes of the Act were to provide a statutory basis for Indian gaming to promote "tribal economic development, self-sufficiency, and strong tribal governments" and to establish a regulatory system for Indian gaming, including an independent Federal regulatory authority. See 25 U.S.C. § 2702. For the most part, IGRA is serving those purposes well.[2]

Indian gaming has not solved all of the problems created by over 200 years of genocide and dispossession. It has, however, empowered Tribes to make big strides in

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[1] The U.S. Constitution, hundreds of treaties and Congressional Acts, and U.S. Supreme Court decisions all acknowledge that Indian Tribes are governments. The Commerce Clause specifically states that "Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with *the Indian tribes*." U.S. Const., Art. I, §8, cl. 3.

[2] However, the Supreme Court in Seminole Tribe v. Florida disrupted the delicate balance in the tribal-state compacting process that Congress sought to implement through IGRA. For added discussion on this issue, see page 15 below.

rebuilding Indian communities. Over the past thirty years, the progress achieved by Tribes with the help of gaming has been truly remarkable.[3]

B. Indian Gaming Benefits Indian Country

Indian gaming benefits tribal communities by helping tribal governments provide the most basic needs for their citizens. Indian gaming helps provide jobs, health care, education, and basic infrastructure for Indian country.

Indian Tribes engaged in Indian gaming have created 300,000 American jobs nationwide.[4] Many of these jobs go to Indian people who have never had an opportunity to work. For example, in North and South Dakota, 70 to 75% of the jobs created by Indian gaming are held by Indians.

Indian gaming generated $12.7 billion in gross tribal government revenue nationwide in 2001. After paying for financing, employee salaries, infrastructure and other expenses, industry standards indicate that on average a net revenue stream of 25 to 35% is realized from gross revenue. Using this analysis, Indian gaming generates $4.5 billion for tribal governments. With these funds Tribes have built schools, hospitals, police and fire stations, roads, water and sewer systems, and have funded education (K-12 and college scholarships), health care, and many other general tribal welfare programs. Today, tribal schools, health clinics, police and fire stations, housing, and cultural centers built with Indian gaming revenue stand as monuments of tribal initiative.

In just 30 years – Indian gaming has helped Tribes begin to rebuild communities that were all but forgotten. Where once there was poverty and unemployment – Indian gaming provides more than 300,000 American jobs. Where once Tribes suffered disease and the lack of health care, Indian gaming helps build clinics and provides health care to the sick and elderly. Where once Tribes faced epidemic suicide and drop out rates, Indian gaming builds schools, funds scholarship programs and provides hope for an entire generation of Indian youth. Indian gaming is this and a lot more. Our tribal governments are stronger and our people are stronger.

Tribal governments are also using government revenue generated by gaming to diversify tribal economies. The Mohegan Tribe has invested in aquaculture, a traditional activity. The Cabazon Band has built a tire recycling facility that processes 2 million tires per year and a "green" electric utility plant that runs on methane gas created from landfill waste. These are only a few examples of the benefits of Indian gaming to tribal communities. There are many more – and I could go on – but I encourage each Member

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[3] To illustrate, in 1990 the median income for American Indians was $19,900 and the median income nationwide was $37,300. In 2000, the median income for American Indians was $31,800 compared and the median income nationwide was $42,100. At the same time, the poverty rate for American Indians fell from 33% in 1990 to 29% in 2000. Nationally, the poverty rate in 2000 was 12%.

[4] California Nations Indian Gaming Association Report, Tribal Sovereignty Works, at 11 (February 2003) ("The [Indian gaming] industry contributed more than 490,000 gaming and non-gaming jobs and a payroll of $12.4 billion.").

of Congress to visit Indian country in their State or nearby State to witness first hand how Indian gaming is rebuilding these once forgotten communities.

Indian country still has a long way to go – too many of our people continue to live with disease and poverty – but Indian gaming offers hope for a better future for tribal communities.

C. Indian Gaming Benefits Other Non-Gaming Tribes and Non-Indian Communities

Tribal governments are also building relationships with non-gaming Tribes, State governments, and local government and community neighbors. For example, the Forest County Potawatomi Tribe funds the Milwaukee Indian School for all Indian students and provides assistance to the remote Red Cliff and Mole Lake Bands of Chippewa. The San Manuel Band outside San Diego financed a new wing for the local hospital. Agua Caliente purchased fire trucks for the City of Palm Springs. The Mohegan Tribe in Connecticut is developing a new water delivery system that will benefit several surrounding communities as well as the Tribe.

The great irony now is that Indian Tribes are helping non-Indian communities. A 2001 Harvard University study indicates that Indian gaming has a destination effect on surrounding business that boosts economic activity for others in the vicinity.[5] I've often seen visual evidence of this effect when I drive to rural locations like the Tunica-Biloxi Tribe's casino, which is several hours drive from New Orleans. For miles before you get to the casino, there is little development but as you approach, you see an oasis of business and economic activity flourishing in the area. This economic development is generated by Indian gaming in rural areas where other forms of economic development have failed to take hold as well as suburban areas that were in the throes of lay-offs.

Indian gaming operations provide jobs for non-Indians nationwide. Of the 300,000 jobs created by Indian gaming, about three-fourths are held by non-Indians. Indian gaming helps State and local communities recover lost jobs where companies are forced to leave. For example, when Electric Boat Manufacturing closed down in Groton, Connecticut, the area lost 12,000 jobs. Fortunately, around this same time, the Mashantucket Pequot Tribe created 14,000 new jobs through its Foxwoods Resort. Another example is the air force based that closed outside of Rome, New York. The area lost 2,500 jobs, but thankfully, the Oneida Nation created 3,000 new jobs in the area with its Turning Stone Casino.

Indian gaming also creates substantial revenue streams for Federal, State and local units of government. In 2003 alone, Indian gaming will generate approximately $6 billion in added revenue to Federal, State, and local governments. Contrary to a popular misconception, Indians pay taxes. People who work at casinos, those who do business with casinos, and those who get paid by casinos pay taxes, just like the folks who work at

[5] Harvard Project on American Indian Economic Development, Public Policy Analysis of Indian Gaming in Massachusetts, 10 (May 13, 2002).

state lotteries. As employers, Tribes also pay employment taxes to fund social security and also participate as governments in the federal unemployment system. Indian gaming generates revenue for the United States federal government in the form of income taxes – this includes taxes paid by tribal citizens for per capita payments received from tribal governments. At the State level, Indian gaming generates revenue through payroll and income taxes, reduced welfare and unemployment payments, and revenue sharing and other agreements.

III. INDIAN GAMING IS WELL REGULATED

Tribes realize that the benefits of gaming wouldn't be possible without good regulation. Solid regulation is the cost of a successful operation. Tribal governments understand and abide by this principle. For many Tribes gaming has been the best opportunity in 200 years to attain economic self-sufficiency. Tribes are unwilling to sacrifice this opportunity because of something as necessary as sufficient regulation. Working in cooperation – Tribal, State, and Federal governments all play a role in the regulation of Indian gaming. While the system is costly – it is comprehensive, it's professional, and it's working to maintain the integrity of Indian gaming.

While no federal commission oversees the operations of State lotteries, horse or dog track wagering, jai alai, or the commercial and riverboat gaming industries, the federal oversight of Indian gaming is extensive. The NIGC is the central regulator on the federal level. In addition, Tribes work with the BIA within the Interior Department, the Financial Crimes Enforcement Network (Fin CEN) and the Internal Revenue Service (IRS) within the Department of the Treasury, and the Federal Bureau of Investigation (FBI) within the Department of Justice.

Unlike other forms of gaming, crimes committed in Indian country are subject to federal penalties. Under the United States Criminal Code, anyone who embezzles or steals money or property from an Indian gaming facility or any other Indian establishment is guilty of a federal felony, punishable by up to 5 years in prison. This law applies to management, employees, and patrons. See 18 U.S.C. § 1163 (5 year penalty for any theft from an Indian facility); 18 U.S.C. §§ 1166-1167 (Federal offense to violate laws applicable to Indian gaming facilities). Tribes also comply with the Money Laundering Suppression Act, which applies the Bank Secrecy Act's protective provisions to Indian gaming operations. Under the Act, tribal operations report currency transactions in excess of $10,000 to Fin CEN. 31 U.S.C. §§ 5311 et seq.

Federal involvement in Indian gaming regulation continues to grow. Under the USA – Patriot Act, enacted in response to the terrorist attacks of September 11, 2001, Congress strengthened money-laundering prevention laws to curb the possible funding of terrorist activities. Under the Act, gaming establishments, including Indian gaming facilities, must develop systems to report suspected terrorists and suspicious activities involving cash or credit transactions. As a result, tribal gaming operations are developing internal controls to assure ongoing compliance with these new requirements.

In total, Indian tribes invest over $212 million annually for the regulation of Indian gaming. That includes over $164 million for tribal gaming regulation, over $40 million to reimburse the state regulatory agencies for their support, and $8 million to fund the Nation Indian Gaming Commission.

Under IGRA – Congress intended for the three sovereigns to work in cooperation on the regulation of Indian gaming. Each regulatory body has a distinct and supporting role for the three different classes of Indian gaming. The idea was to avoid duplication – but provide comprehensive oversight. Through IGRA – Congress made clear that tribal regulatory agencies are the primary regulators of Indian gaming. As the NIGC explains:

> Tribes are the primary, day-to-day regulators of [Indian gaming] operations. . . . A vast majority of Tribes have implemented independent tribal gaming commissions, which in most cases the Commission believes to be the most effective way of ensuring the proper regulation of gaming operations...."

Tribes have exclusive authority over class I gaming, share class II regulatory responsibility with the NIGC, and share class III regulatory responsibility with the States.

A. The Role of Tribal Regulatory Agencies

As the primary regulators, tribal regulatory agencies have the largest budget for Indian gaming regulation. Tribes spend over $164 million annually on self-regulation. Tribal regulatory systems include over 2800 tribal gaming commissioners and regulatory personnel. These regulators are well-qualified, and have backgrounds as federal, tribal, and state law enforcement officials, commercial gaming regulators from New Jersey and Neveda.[6] This is more regulators than Nevada, New Jersey, and Riverboat gaming combined. In addition to employing well-qualified personnel, Tribes use state-of-the-art regulatory, surveillance, and security equipment to support their regulatory operations. Our operations are the newest – and use the most up to date technology.

IGRA requires tribal governments to enact tribal gaming regulatory ordinances that meet Federal statutory requirements, including the following:

- Generally, Indian Tribes must have the sole proprietary interest and responsibility for the conduct of gaming;

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[6] Patrick Lambert, the Executive Director of the Eastern Band of Cherokee's Tribal Gaming Commission, who is a tribal member, attorney, a Faculty Member of the National Judicial College, Reno, Nevada, and served on the NIGC's Minimum Internal Standards Advisory Committee to comment on Indian gaming regulation. Director Lambert explains:

> Indian gaming has presented an unprecedented opportunity in the history of our Tribe to really become self-sufficient. It is our job as the regulatory agency to protect this opportunity for the Tribe. A job that we take very seriously due to the implications it holds for our Tribe's future.

- Net revenue must be used for tribal government purposes, economic development, general tribal welfare, charity, and payments to local governments;
- Annual independent audits must be conducted and provided to NIGC;
- Independent audits must be conducted for all contracts for supplies and services in excess of $25,000 (except legal and accounting contracts);
- Provisions for protection of the environment, public health, and safety; and
- Systems for background checks and licensing of primary management and key tribal gaming employees, with background checks reported to NIGC.

The Chairman of the NIGC ensures that tribal gaming regulatory ordinances meet the statutory requisites through a Federal review and approval process.

Typically, tribal ordinances establish tribal gaming regulatory agencies to carry out these duties. Accordingly, as the primary regulators of Indian gaming, tribal gaming regulatory agencies carry out the following types of functions:

- Conduct background investigations on primary management officials and key tribal gaming employees in accordance with IGRA and NIGC regulations and forward them for NIGC or state review;
- Issue, deny, review, suspend, or revoke tribal gaming licenses for management officials and key tribal gaming employees, in cooperation with state regulatory agencies and the NIGC, 25 C.F.R. Parts 556 and 558;
- Conduct background investigations of vendors;
- Issue, deny, review, suspend, or revoke tribal gaming licenses for vendors, often in cooperation with state regulatory agencies;
- Issue, deny, suspend, or revoke licenses for each Indian gaming facility under the jurisdiction of the Indian Tribe and ensure that each Indian gaming facility is built, maintained, and operated in a manner that protects the environment, public health, and safety, 25 C.F.R. § 522.4;
- Promulgate tribal gaming regulations in accordance with tribal and Federal law and Tribal-State compact requirements for class III gaming;
- Establish minimum standards for the operation of the Indian gaming facility, including rules for cage and vault, credit, table games, gaming devices, and surveillance and security standards;
- Continuously monitor Indian gaming operations to ensure compliance with tribal and Federal law and Tribal-State compact requirements for class III gaming;
- Oversee audits of the Indian gaming facility, including audits of contract and supply contracts;
- Conduct investigations of any alleged misconduct, take appropriate enforcement action, and make appropriate referrals to tribal, state, and federal law enforcement agencies;
- Conduct hearings, take testimony, take disciplinary actions, levy fines, and issue closure orders and resolve patron disputes;
- Work cooperatively with state regulatory agencies, the NIGC, and tribal, state, and Federal law enforcement agencies; and

- Report to the governing body of the Indian Tribe.

Tribal gaming regulatory agencies are well staffed, with highly qualified employees who work in close cooperation with their Federal and state counterparts.

For example, the Mohegan Tribal Gaming Commission ("MTGC") is a strong, effective regulatory agency directed by John Meskill, former Executive Director of the State of Connecticut Division of Special Revenue. MTGC, as the primary regulator of the Mohegan Sun Casino, is one of the largest regulatory agencies in the Nation. MTGC has a staff of 61, including 46 inspectors, 7 investigators, a staff auditor (CPA), and 2 administration staff. MTGC's annual budget is $3.3 million. Management officials, key tribal gaming employees, and all vendors, gaming and non-gaming, must be licensed to do business with Mohegan Sun. In accordance with Mohegan's Tribal-State compact, the State Division of Special Revenue licenses vendors for MTGC. Gaming vendors, such as card, dice, table game, and slot machine manufacturers and bonus prize providers, are investigated by the State Police and licensed by the State's Division of Special Revenue. For FY 2003, the Mohegan Tribe will reimburse the State $1.228 million for costs incurred by State regulators and $2.275 million for State police background investigations and law enforcement services on site.

Chairman Rudy Wambsgans, Tunica-Biloxi Tribe Gaming Commission, is a member of the Tribe and a 20-year veteran of the U.S. Military, with service in the Navy, National Guard, and Coast Guard and law enforcement training from the FBI Academy and the University of Nevada. Chairman Wambsgans explains:

> It is our goal to provide the most qualified staff and service to Paragon Casino and Resort. We accomplish this by thoroughly investigating the background of these individuals and companies and monitoring and auditing the casino operation. We view our role as providing public service to the Tribe and our guests.

In addition to appointed qualified gaming commissioners, hiring experienced regulatory staff, and investing heavily in tribal regulatory budgets, Indian Tribes use state-of-the-art regulatory, surveillance, and security equipment to support their regulatory operations. We asked for a comment on this issue from Brad Roache, Corporate Director of Security and Surveillance, for the Mille Lacs Band of Ojibwe. Roache is a Minneapolis Police Force veteran, with 24 years service on the SWAT Team and emergency response, homicide, robbery, and repeat offender units. Director Roache explains:

> Security and surveillance have a very important role in the Mille Lacs Band's casinos. It's not just a matter of constantly monitoring what goes on to protect the casinos' assets, we also have to be in compliance with strict tribal, state and federal gaming regulations. The technology that we use is state-of-the-art and very impressive. Similarly, Indian Tribes have

invested millions of dollars in camera, surveillance and security equipment. Tribes are on the cutting edge of this new technology as well.

To give you another example, the Viejas Band of Kumeyaay recently installed new electronic finger-printing machines. With these new machines, tribal gaming regulatory agencies can electronically send fingerprint cards to NIGC, where they are then forwarded to the FBI for criminal history processing. This cuts the turnaround time, from several months to 24 hours. The benefit is obvious. Instead of issuing temporary licenses, with the possibility of revocation upon return of FBI's background check information, permanent licenses can be issued after a thorough review of FBI criminal history information. This new technology has the potential to almost completely eliminate the possibility of licensing unsuitable persons, even on a temporary basis.

Accordingly, Congress acknowledge the staffing, experience, high technology and major investment that goes into tribal gaming regulatory agencies as it reviews the tribal-state-federal partnership in Indian gaming regulation.

B. The Role of State Regulators

The State governments' role in Indian gaming regulation differs on a state-by-state basis. State and Tribal governments work out specific regulatory frameworks for Class III gaming through the Tribal-State Compact process. Through this process, a number of states have negotiated for strong regulatory roles. State regulatory agencies assist tribal agencies with background checks, licensing, inspections, and review of Class III Indian gaming operations. Again, Tribes reimburse States over $40 million annually for these regulatory services.

For example, North Dakota has 5 Indian casinos and these Tribes spend over $6 million annually for Indian gaming regulation and employ 242 full-time regulators and staff. The North Dakota State Attorney General's Office regulates 900 organizations that conduct some form of charitable gaming. So, under the Tribal-State compacts, the Attorney General's Office was delegated authority to work with Indian Tribes to regulate Indian gaming. Through the State Bureau of Criminal Investigation (under the Attorney General), the State performs background checks for the Tribes for management officials, key tribal gaming employees, and vendors. The State provides reciprocity for the vendor licensing decisions of other states, such as New Jersey and Nevada. The State conducts compliance audits and inspections of the Indian gaming facilities to ensure compliance with compact, ensure that games are fair and honest and assists in investigations and prosecutes any violators found at Indian casinos. North Dakota Tribes reimburse the Attorney General's offices for these expenses.

In Arizona, the Tribes spend approximately $20 million for tribal regulation and reimburse the Arizona Department of Gaming ("ADOG") about $5 million annually for its regulatory services. ADOG assists tribal gaming regulatory agencies with background checks and licensing of management officials and key tribal gaming employees. ADOG also inspects Indian gaming facilities to review cash and credit transactions, the integrity

of games, and vendor payments. In preparation for this hearing, we requested Joseph Eve and Co., which audits numerous tribal gaming operations to prepare the attached cash flow and licensing charts to reflect the relationship between the tribal, state, and federal regulators. These flow charts show that state gaming regulatory agencies are involved in every step of the regulatory process for Class III gaming.

C. The Role of the NIGC

At the federal level, the NIGC shares the responsibility for regulation with other government agencies. The NIGC defers to state gaming agencies on background checks, licensing decisions, and compact enforcement for Class III gaming. The NIGC works in partnership with tribal gaming regulatory agencies on Class II gaming regulation and provides background oversight for Class III gaming regulation. In sum, the NIGC performs the following oversight functions:

- Reviews and approves tribal gaming regulatory ordinances;
- Reviews tribal background checks and licensing decisions;
- Reviews and approves tribal gaming management contracts;
- Reviews independent audits of Indian gaming operations, including audits of contracts for goods and services in excess of $25,000;
- Ensures that tribal ordinances provisions to protect the environment, public health, and safety are fully implemented;
- Continuously monitors Class II gaming, in cooperation with tribal gaming regulatory agencies.

In 1999, the NIGC issued Minimum Internal Control Standard Regulations for Class II and Class III gaming ("MICS") to guide cash and credit transactions, cage and vault operations, minimum rules for the conduct of games, operation of gaming devices, accounting standards, and security and surveillance. These regulations were derived from minimum standards developed by Nevada, New Jersey, and other jurisdictions.

Recently, the NIGC revised the MICS regulations to take into account new developments in the gaming industry. NIGC explained:

> Internal controls are the primary procedures used to protect the integrity of casino funds and games, and are a vitally important part of properly regulating gaming. Inherent in gaming operations are problems of customer and employee access to cash. . . . Internal control standards are therefore commonplace in the industry and the Commission recognizes that many Tribes has sophisticated internal control standards in place prior to the Commission's original promulgation of the MICS.

67 Fed. Reg. 43391 (June 27, 2002). While the MICS promulgated by the NIGC mirror some of the legislative proposals developed by this Committee, many Indian Tribes have questioned whether it is appropriate for NIGC to issues the MICS as mandatory rules, especially with regard to Class III gaming. IGRA contemplates that Tribal-State

compacts will provide the ground rules for regulation, as appropriate on a Tribe-by-Tribe and State-by-State basis. Nevertheless, as the Commission notes, Indian Tribes have enacted Minimum Internal Control Standards pursuant to tribal ordinances, because Tribes understand the importance of internal controls.

Joe Carlini, the Executive Director of the Agua Caliente Gaming Commission, served as the Assistant Chief Inspector with the State of New Jersey Casino Control Commission, was with the Philadelphia Police Department for 17 years and graduated from the Philadelphia Police Academy. In regard to minimum internal control standards, Director Carlini explains:

> The biggest problem facing most casino operations is the protection of assets from both external and internal sources. In Indian gaming, the response to these threats is continually evolving and is proactive, not reactive. The protection of assets and the integrity of Indian gaming is accomplished through the implementation of the comprehensive and effective internal controls and policies and procedures that exceed most conventional industry standards to detect and neutralize fraud and theft.

In short, tribal gaming regulatory agencies have implemented Minimum Internal Control Standards, and across the country, are working to revise tribal regulations to incorporate the NIGC's revisions and policy recommendations appropriately into tribal law.

Finally, NIGA also acts as a facilitator to help build strong relationships between the three sovereigns to further strengthen Indian gaming regulation. In March of 2003, we hosted a seminar titled "Partnerships in Indian Gaming Regulation." Participants included the Chairman of Attorney General Ashcroft's on Native American Issues Subcommittee, officials from the FBI, Treasury's Financial Crimes Enforcement Network, North Dakota's Attorney General, the NIGC, and tribal gaming regulators from around the country. We met to discuss the formation of a National Indian Gaming Intelligence Network to share information and to provide technical assistance to tribal regulators nationwide.

D. Proof that the System is Working

As I stated above, this system of checks and balances in cooperative regulation has proven effective. A lot of the credit for the success in regulation should go to the Tribal governments and tribal leaders who recognized the need for solid regulation – and who took the initiative to provide the funding.

Against this backdrop of comprehensive regulation, the FBI and the United States Justice Department have testified repeatedly that there has been no substantial infiltration of organized crime on Indian gaming. The Department of Justice Office of Inspector General conducted the most recent investigation on Indian gaming at the request of Congressman Frank Wolf. Officials from the Criminal Division, the Office of Tribal Justice and the FBI were all involved in the investigation. In a July of 2001 letter report,

all parties cited a lack of evidence that concluded the lack of involvement of organized crime. The chief of the organized crime section in the Department of Justice testified in July of 2001 to this committee – this Committee – saying that, and I quote, "Indian gaming has proven to be a useful economic development tool for a number of tribes who have utilized gaming revenues to support a variety of essential services."

While there have been isolated occasions when a crime has occurred at an Indian gaming facilities, the Department of Justice found that coordination between tribal, state and federal regulators and law enforcement ensure that offenders are caught, prosecuted and punished. Indian gaming has a good track record because tribes hire the most highly qualified people from tribal, state and federal law enforcement and regulatory agencies.

$212 million dollars on regulation each year is a lot of money that could go to fund sorely needed programs – but Tribes realize that regulation is the cost of a successful operation. Tribal leaders deserve recognition for their diligence in ensuring the integrity of tribal gaming operations.

VI. NATIONAL INDIAN GAMING COMMISSION FUNDING

Finally, that brings me to the issue of funding for the NIGC. NIGA and our Member Tribes hold the NIGC and its Commissioners in high regard. Chairman Phil Hogen served for 10 years as a U.S. Attorney and served as the Vice Chairman of the NIGC in the 1990s, before his appointment by President Bush in December 2002. Chuck Choney is a former FBI agent, with years of Indian Country law enforcement experience, and Nelson Westrin, is a former assistant state attorney general and Director of the Michigan Gaming Commission. Clearly, these gentlemen are very well qualified. Since their appointment in December of 2002, all three of the Commissioners have made the rounds and their presence known in Indian country. The NIGC serves a sound purpose – and for the most part has provided Tribal governments with solid background oversight to ensure the continued integrity of Indian gaming.

A. The FY 2003 Appropriations Process

For the past five years, the NIGC was funded at a level of $8 million each year – based on fees paid from Tribal governments. Past Chairman Montie Deer testified early in the 107th Congress that the NIGC was in need of increased funding. They were way over budget. However, he never provided specific documentation on the Commission's spending, or what it planned to do with increased funds.

Last year, President Bush included a $2 Million dollar request for a one-time appropriation for the NIGC – with a direction to the NIGC to work with Tribes on future increases. NIGA supported this one-time federal appropriation for FY 2003. We note that the Chairman and Vice Chairman of this Committee supported the appropriation as well.

Regrettably, somewhere during the appropriations process, a proposal to bypass the President's request for FY 2003, and authorize an immediate increase in the NIGC fee cap from 8 to $12 million dollars for FY 2004 was approved. We believe that was the wrong way to do business. It violated the legislative process, and it ignored the consultation process. Before any permanent increase was considered, the tribal governments that must fund the increase should have been consulted.

As a practical matter, NIGC will not get any funds to fill staff vacancies until October of 2004. While Congress did include a direction to the NIGC to consult with tribal governments concerning the increase in funding for FY 2004, we believe that government-to-government consultation between the acting federal agency and affected Tribes should precede policy changes. After the fact consultation does not meet the government's obligation to consult with tribal governments on actions that will affect their interests.

While we agree that NIGC must receive adequate funding to do its job, we also believe that the full spectrum of tribal-state-and-federal regulation of Indian gaming must be taken into account when the NIGC's budget is being developed. After all, as the Federal partner in this system, the NIGC must strive to support and complement, but not duplicate, tribal and state regulatory activities.

Norm DeRosier, Commissioner for the Viejas Gaming Commission, a former state law enforcement official and a board member of the National Tribal Gaming Commission and Regulators Association (NTGCR), puts it this way: "While I support the need for the acquisition of additional resources for the NIGC, I firmly believe that there is a delicate balance to be established whereby an uncontrollable bureaucracy is not created which wastes money and duplicates the regulatory efforts of the Tribal regulatory officials." The appropriate way for NIGC to strike this balance is through government-to-government consultation with affected Tribes and accountability to this Committee, the Congress, and the Tribes. The implementation of requiring detailed, written proposals that support new budget requests would be beneficial as would comprehensive reports to explain the implementation of prior year budgets.

As we all move forward together to ensure the integrity of Indian gaming, we believe that NIGC should stay close to its core mission of protecting Indian gaming through coordination with tribal and state regulators. NIGC should develop plans to speed the deployment of new electronic fingerprinting technology employed by the Viejas Band, concentrate on background checks, support tribal licensing determinations with timely reviews, and exercise its existing authority to review the independent audits of Indian gaming facilities. NIGC should focus on these core responsibilities and not branch out into new substantive areas where their authority is less than clear. This will help avoid duplication of efforts.

B. Congressional Direction to Consult with Indian Tribes

As for the NIGC's direction to consult on its increase for FY 2004, I make the following recommendations:

Formally Adopt Tribal Consultation Policy and Schedule. I urge the Commission to first formally adopt a policy of government-to-government consultation in accord with recent Presidential Executive Orders. In addition, I hope that the Commission will propose a schedule of consultation meetings with Indian country soon to discuss the implementation of the FY 2004 fee increase.

Provide Tribes with an Annual Detailed Budget. Prior to the first of these meetings, I hope that Chairman Hogen will provide NIGA, our Member Tribes, and the Senate Committee on Indian Affairs with a detailed proposed budget. A transparent budget showing where the money has gone in the past and where it's proposed to go in the future is the only way to begin productive consultation. The implementation of requiring annual detailed, written proposals that support new budget requests would be beneficial as would comprehensive reports to explain the implementation of prior year budgets.

Refine Operations Under Existing Authority. NIGC should use a portion of its increased funding to deploy new electronic fingerprinting technology at each of its regional offices, and make these machines available to prospective tribal employees. This will greatly expedite the turn around time for background checks. The NIGC should also support tribal licensing determinations with timely reviews, and exercise its existing authority to review the independent audits of Indian gaming facilities.

Expand on Self-Regulation. I hope that the NIGC will consider using a portion of those funds to provide increased Self-regulation for Class III Tribes – The current regulations only permit self-regulation of Class II gaming. The Commission should expand these regulations to extend to class III gaming.

Resume Quarterly Consultations with Tribal Regulators. I hope the NIGC will resume quarterly consultations with Tribal regulators, which include providing tribes with training and technical assistance. In the past year or two, the NIGC's Regional offices brought these consultations in-house, but it's NIGA's hope that the Commission will resume the quarterly consultations. While this may be time-consuming for the Commission, it is extremely important to Tribes. This is an important core-mission.

Other Concerns. We understand that NIGC may want to establish new regional offices in both southern California and the Great Plains, and we urge NIGC to thoroughly consult with affected Tribes prior to the opening of those offices to ensure that resources are used to their best effect. Some other items of concern include the discontinuance of the NIGC biennial report, NIGC pay scales, and the need for a policy to promote hiring experienced tribal gaming regulators.

C. NIGC Proposal to Amend IGRA

Finally, I would like to comment on recent statements by the Commission regarding their vision for the next three years. The proposal includes a number of recommended amendments to the Indian Gaming Regulatory Act.

Floating Fee Cap. The NIGC has expressed its intent to seek an amendment to IGRA that would amend the fee structure for the Commission. As stated above, for the past five years, the NIGC was funded at a level of $8 million each year – based on fees paid from Tribal governments. The recent amendment on the FY 2003 Appropriations bill increases the Commission's fee collection capabilities to $12 million – a 50% increase. I would like to restate my comment from that the NIGC be required to justify its budget annually to Congress and we believe that sound regulatory partnerships are fostered by accountability at the NIGC. Accordingly, we ask that the Commission submit a detailed budget for FY 2004 to Congress before proceeding with a legislative proposal to eliminate the statutory fee cap on its regulatory assessments of Indian Tribes. Again, the budget should recognize that Indian Tribes invest over $212 million for Federal, state and tribal regulatory systems annually and the tribal gaming regulatory agencies are the primary regulators. Clearly, with the NIGC receiving a 50% increase in FY 2004, there is no need for a further follow up amendment at this time.

Vendor Licensing Proposal. The NIGC has recently recommended that IGRA be amended to grant it authority to license vendors, consultants, and "any person associated or seeking to become associated with a tribal gaming operation". The NIGC should acknowledge that Indian Tribes are already undertaking such licensing and must respect tribal regulatory systems. Accordingly, I recommend that any vendor licensing initiative be conducted on a voluntary basis to assist Tribes where requested. It should not be used to put in place a new barrier to economic activity in Indian country. The NIGC has proved too slow in reviewing management contracts, and adding the responsibility of vendors, consultants, and others that work or wish to work with tribal gaming operations may prove too burdensome for both the Commission and tribal gaming operations.

NIGC Authority Over Class III Gaming. The Commission has also stated that it would like to amend IGRA to "clarify" its authority over class III gaming operations. The IGRA established the Tribal-State Compact Process to establish the regulatory framework for Class III gaming. The NIGC was tasked with the responsibility to review and approve tribal gaming ordinances, which the Chairman "shall" approve so long as they meet minimum statutory requirements. The reason for the narrow review of class III ordinances was to require the Commission to defer to the tribal-state compacting process. Accordingly, the NIGC should not seek additional authority, but should instead clarify – through regulation – that it will defer to tribal-state compacts to govern class III gaming and work with Indian Tribes on the basis of mutual consent, to promote positive standards in tribal gaming ordinances consistent with IGRA.

Affirm the Interior Department Alternative Compacting Regulations. Finally, we applaud the NIGC for its intention to seek an amendment that will correct the Supreme Court's decision in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996). I want to state for the record that any legislation to amend IGRA should include an amendment to provide a correction to the Seminole case. That case was decided in 1996, and continues to haunt many Tribes.

Congress, through IGRA, required State governments to negotiate class III gaming compacts with Tribes in good faith, and Tribes were permitted to sue States in federal court for failure to meet that obligation. The Supreme Court's decision in Seminole Tribe v. Florida frustrated Congress's intention by permitting States to raise a sovereign immunity defense to such suits. This in effect gives States a veto power over the compacting process – an outcome clearly not intended by Congress. The Interior Department has promulgated regulations for alternative procedures for Class III gaming in lieu of a compact where States fail to negotiate in good faith and where they raise sovereign immunity as a defense.

NIGA and its Member Tribes firmly believe that these regulations on this issue fully reflect the intent of Congress in enacting the IGRA and should be affirmed in federal legislation. Senator McCain stated at the time of the passage of the Act:

> I would like to serve notice that I, Senator Inouye, Senator Evans, and other members of the Senate Select Committee on Indian Affairs will be watching very carefully what happens in Indian Country. If the states take advantage of this relationship, the so-called compacts, then I would be one of the first to appear before my colleagues and work to repeal this legislation because we must ensure that the Indians are given a level playing field that are the same as the states in which they reside and will not be prevented from doing so because of the self-interest of the states in which they reside.

Senator John McCain, Cong. Rec. (Sept. 15, 1988). Now is the appropriate time for Congress to legislatively affirm those regulations, and I hope that the Committee will consider including such a provision in any IGRA amendment introduced this Session. Congress never intended the States to have a veto power over the compacting process.

CONCLUSION

In conclusion, I appreciate the recognition that this Committee has given to the commitment of Indian Tribes to regulation. However, I hope that Congress as a whole will take formal note of the hard work, tireless hours, and hundreds of millions of dollars that tribal governments and their employees spend on regulating Indian gaming operations. The ethnocentric view that Indian gaming is only being regulated by the 70 employees and $8 million that fund the NIGC is not valid, it ignores the hard work that's being done by thousands of Indian regulatory employees, and it should be put to rest.

Finally, I urge the NGIC to adhere to a sound policy of government-to-government consultation and increased communication between Tribes and the NIGC. Such a practice will only serve to further strengthen the regulation of Indian gaming.

Mr. Chairman and Members of the Committee this concludes my remarks this morning. Once again thank you for providing me this opportunity to testify. I am available for any questions.

B
UNDAY, APRIL 27, 2003
THE ATLANTA JOURNAL-CONSTITUTION
NEWS

Cherokees' casino hits the jackpot

Tribe shares in better jobs, higher pay and huge profit

By ANDREW MOLLISON
amollison@ajc.com

Cherokee, N.C. — Natalie Hill grew up on the Qualla Boundary, a Cherokee Indian reservation in western North Carolina where nearly one in four residents lives in poverty.

But when Hill, now 20, graduated as salutatorian of her class at Cherokee High School, she had a tribal trust fund worth more than $15,000 to tap for college.

The trust funds of the tribe's future graduates are likely to far exceed that as a brighter future dawns for the Eastern Band of Cherokees 10 years after the arrival of casino gambling.

After paying off winning bets, the band's sprawling casino and 15-story hotel managed a net profit of $160 million last year.

Casino profits gave Natalie Hill a $15,000 nest egg for attending college.

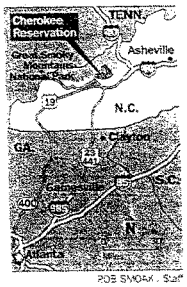
"Fifty percent goes directly to the people as per capita payments," said Leon Jones, who was elected the tribe's principal chief in 1999. The payments, which started with $595 to each member in 1995, grew to $6,380 last year.

"The other 50 percent goes through the tribal government and is spent right back on the people again, for roads, for health, education, social services, debt repayment, savings for diversification into new businesses, all that," he said.

"We're still not rich here," said Jones. "But we're better off than ever."

The Cherokee people aren't alone.

Gambling is credited for economic rebirth by many of the 201 Indian tribes that operate 500 casinos, halls and racetracks from California to Connecticut.



ROB SMOAK / Staff

Called "the new buffalo" both because of its central economic role and a suspicion that it might someday disappear, Indian gaming pumped out $12.7 billion in gross revenue in 2001, the last year for which the National Indian Gaming Commission has official figures.

Profits from gaming "have enabled tribes to build new schools where children previously attended classes in substandard trailers, and have brought jobs and the revenues to diversify suffering reservation economies," said Tex Hall, president of the National Congress of American Indians.

Services spring up

The benefits are visible nearly anywhere you look on the 56,000-acre reservation.

Without casino funds, the t "e would have been unable t afford the new public library, the new kidney dialysis center, or the new wellness center h its gym, swimming pool a f fitness rooms.

"See that young lady in the [motorized] wheelchair?" Vice (ief Carroll Crowe said at this ting's Honor the Elders celebration. "This casino has helped us get that young lady e chair, and go in and fit mps so she can drive that ning right into her house.

Inside, they widened the doorways and they made the bathrooms work."

Gaming revenue also helped the tribe update the family facilities on the island park in the Oconaluftee River, the broadest of the 30 miles of trout streams that bubble and leap down the slopes of the rocky reservation.

Any member who builds a new house on the reservation can get an interest-free loan for the down payment, help in obtaining a mortgage and up to $15,000 in free site preparation, such as grading, a paved driveway and water and sewer hookups — or, in remote areas, a well and a septic field.

The tribal council promises that any member who attends an accredited college or technical institute can get help with tuition, books and supplies.

Moreover, the generous package of medical, dental and vision insurance offered to all full-time employees of the casino and the tribe has eased the financial strains on its underfunded hospital.

More than 3 million visitors come each year to the reservation, nestled in the forested foothills leading to Great Smoky Mountains National Park. For most, the draw is the neon-lit casino.

Once inside, most head for the more than 3,400 touch-screen slot machines. Others perch before futuristic table games like digital blackjack, peering at screens to see how a computer chip has dealt the virtual cards. Occasionally, chiming bells, pulsing lights and crackles of artificial lightning announce a jackpot.

The gaming operation began in 1993, when the tribe converted its 10-year-old bingo hall into a small casino. The larger casino replaced it in 1997 and a hotel opened in June.

The casino, managed for the tribe by Harrah's Entertainment Inc., has grown into a major attraction for residents

➤ Please see CASINO, B3

RICK McKAY/Cox Washington Bureau

After a three-hour drive from their home in Stockbridge, Georgians Joyce Solock and George Greene settle in on for a weekend playing slots. Georgians account for about 20 percent of the visitors to the Cherokee casino in western North Carolina.

Casino: Cherokees get share of gambling profits

➤ Continued from B1

of surrounding states. It is the biggest single destination for Georgia gamblers, who make about 468,000 visits a year, according to a Harrah's survey.

Per capita income up

Despite the gaming tribes' financial success, more than 100 of the 312 U.S. Indian reservations continue to spurn gaming or have been halted in their attempts to acquire it.

And gambling has brought strong criticism from skeptical non-Indians.

Some say all Indians have become wealthy and don't give a big enough share to nearby non-Indian communities. Others suspect that most proceeds are siphoned off by clever outsiders who cheat unsophisticated Native Americans. Still others charge that most profits flow to a few tribal leaders while their followers remain mired in poverty.

Abuses do exist. But the big picture is different, a Cox Newspapers analysis of census data shows. Tribes with casinos, the most lucrative form of gaming, are improving average members' lives much faster than non-gambling tribes.

On the Qualla Boundary, home to about 6,700 of the tribe's 12,500 members, the population jumped 28.2 percent in the 1990s as the casino and hotel created jobs. Annual per capita income rose a hefty 47 percent after inflation, to $12,581.

Clearly, much of that bounty reached the grass-roots residents. The poverty rate of 31.4 percent fell to 23.1 percent. The unemployment rate of 16.8 percent dropped to 8.5 percent.

However, like most reservations with casinos, the Qualla Boundary still trails the national average in many measures of social conditions. Diabetes is rampant. About 3.6 percent of its residences lack complete plumbing, six times the national rate. And the 9 percent without phone service is triple the national rate.

Such statistics don't capture how residents have benefited from new tribal facilities and amenities.

Nor do they reflect that the gambling revenue is weaning the tribe from federal aid. Once the bulk of the tribal government's income, it now accounts for about 15 percent.

"Being less dependent on the federal government is the best part," said Joyce Dugan, who preceded Jones as principal chief. "It's never enough, and grant programs come and go with the whims of Congress or the president."

In fact, the flow of funds is beginning to reverse. The casino withheld $9.1 million in federal and state taxes from its employees' wages last year. Additional federal income taxes were paid by reservation residents whose per capita payments and jobs are related to the casino's success. Tribe members who live off the reservation pay state income taxes as well.

Jones emphasized that the economic impact of gaming extends beyond the reservation's borders, since most supplies, materials and casino employees come from elsewhere.

"We have become the economic engine for all of western North Carolina, the job-growing center of our region," said Jones.

"Plus, you have the washers and dryers, the suits, the cars that our people can afford now," Jones said. "Nobody sells them on the Qualla Boundary, so that helps the

surrounding counties as well."

Nothing else worked

Cherokee people have lived on this land for uncounted generations. "When the United States government was formed, our government recognized them," said historian Lynne Harlan.

The reservation's modern history starts 175 years ago with Indians who avoided the Trail of Tears, when the U.S. Army expelled to the West all the Cherokee families it could find in seven Southeastern states.

Standing Wolf escaped as his contingent was crossing a river in Tennessee, walked back to the western tip of North Carolina and became prominent in the tribe now known as the Eastern Band of Cherokee. He named his next son Come Back Wolf.

The reservation was purchased, acre by acre, with hard-saved money by Cherokee families, who then placed the land in trust with the federal government so that it could never be taken away.

Last year, Jerry Wolfe, a great-great-great-grandson of Standing Wolf, received one of the $6,380 per capita shares from the tribe.

Wolfe recalled that this was a great deal bigger than "my first dividend on the Qualla Boundary," which he received as a fifth-grader in December 1932. That 50 cents was his share of the profits from the beans, squash and corn grown the previous summer by the Cherokee Boys Farm Club, which the boys and their teachers formed after they were told that Indians couldn't join the Future Farmers of America.

"All of us elders here benefit, and a lot of the young families," Wolfe said. "People know they'll be able to buy the children winter clothes, and they tell me that 70 percent of our high school graduates go on to college."

A casino wasn't the tribe's first choice as moneymaker, Dugan said.

"We tried every avenue of economic development other than gaming, but none of them lasted," she said. Over the past 75 years, that included ventures in logging, forestry, quilt making, trinket assembly and low-cost tourism. Each flourished for a while, then faded away.

Tribal officials confirmed that there has been a decline in sales at roadside souvenir shops and in admissions to more sophisticated offerings, such as the nationally respected Museum of the Cherokee Indian, as well as the traditional village and "Unto These Hills," an outdoor drama centered around the Trail of Tears.

"The casino crowd, all they know is the road and the casi-

no. Wolfe said. "They don't know about our traditions, and they don't care."

Officials attribute the falloff partly to increased competition from theme parks and a general lull in tourism since the Sept. 11, 2001, terrorist attacks.

Jobs created

Whatever the reason, the tribe's financial fortunes are for the moment firmly tied to its casino.

Last year, the casino complex finished an $88 million expansion project and spent $58 million more on wages and benefits.

Its 1,725 employees included 515 tribal members, among them five department directors, 39 managers and 97 supervisors. Dugan runs a management training program for Harrah's that prepares tribal members to move up in the ranks.

Other tribal members prefer not to work in the smoke-filled (but alcohol-free) casino complex, which includes a 15-story hotel, four restaurants, auditoriums, a 650-car parking garage and 84,000 square feet of gaming space that is open 24 hours every day.

Some found jobs at the new motels, hotels and restaurants that sprang up on or near the reservation to absorb the overflow from the casino's hotel.

Others work with the tribal government or tribally sponsored enterprises, which include trout farming, Cherokee brand bottled water and a self-supporting social service agency for teens and young adults that evolved out of the club that grew beans on the casino's hill.

A handful have already started their own firms, such as an armored car company that parlayed its contract with the casino into work for other businesses as well.

The big question for the younger generation is what comes next, said tribe member Paxton Myers. The 27-year-old Western Carolina University graduate landed a job at the casino after the grant that supported his tribal job ran out.

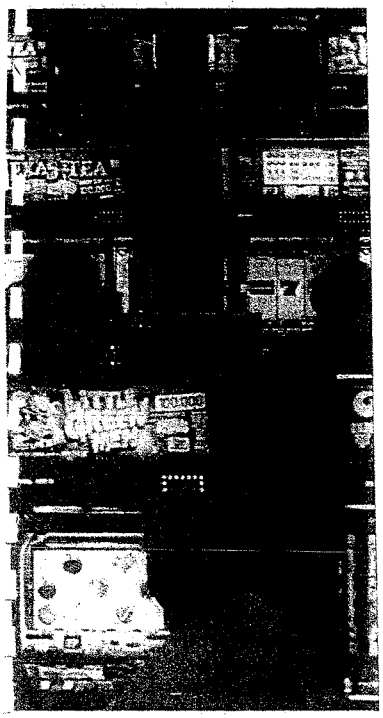
"The casino's a necessary building block for the tribe's future, but it's only for people 21 and older," said Myers, a management trainee in Dugan's program. "I'm glad the tribal council is talking about diversifying into some family-oriented entertainment — a theme park, a golf course, a water park, what have you."

That's the kind of attraction that appeals to Natalie Hill, who spent four summers as a tour guide at the reservation's re-creation of a circa-1750 Cherokee village.

Hill has taken a semester off from college to serve as Miss Cherokee, a cultural ambassador for the tribe at powwows and other multi-tribal events.

When her term ends, she's thinking of going to Haskell Indian Nations University in Lawrence, Kan. That's a goal that's affordable, thanks to her savings — and tribal assistance that the casino's revenue makes possible.

➤ **ON THE WEB:** Eastern Band of Cherokee Indians: **www.cherokee-nc.com**
National Indian Gaming Commission: **www.nigc.gov**



Photos by RICK McKAY / Washington Bureau

More than 3,400 video and digital gaming machines have attracted 15 million visitors since 1997 to Harrah's Cherokee Casino in the foothills of the Great Smoky Mountains.

CASINOS PAY OFF FOR RESERVATIONS . . .

Increase in per capita income

Casino reservations	50.7%
Non-gambling reservations	16.4%
United States	15.6%

Drop in unemployment rate

Casino reservations	17%
Non-gambling reservations	8.8%
United States	28.6%

Note: Changes are from 1990 to 2000

. . . BUT THEY STILL LAG REST OF NATION

In 2000

Per capita income

Casino reservations	$13,309
Non-gambling reservations	$11,525
United States	$21,587

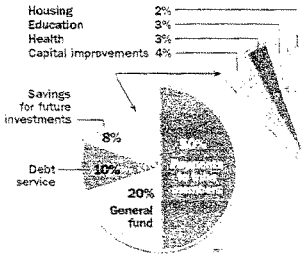
Unemployment rate

Casino reservations	12.2%
Non-gambling reservations	14.5%
United States	4%

Note: Unemployment shown for civilian labor force 16 or older.

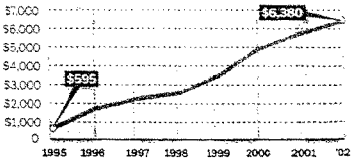
WHERE GAMBLING PROFITS GO

How the Eastern Band of Cherokee allocated $160 million in 2002:



A RISING PAYOUT

Eastern Band of Cherokee payments to each tribal member:



Note: Payments to children are invested in a trust fund. They can access their fund at age 18 only if they have a high school diploma or GED certificate. Others must wait until age 21.

Sources: Eastern Band of Cherokee, National Indian Gaming Commission, General Accounting Office, Congressional Research Service, census data for residents of reservations and trust lands (excluding Alaska and Hawaii in 1990 and 2000.

ROB SMOAK / Staff

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4/27/03 Life without casino isn't easy for Alabama-Coushatta Indians

By ANDREW MOLLISON, Cox News Service

ALABAMA-COUSHATTA RESERVATION — For eight exciting months, the 1,000 members of the Alabama-Coushatta Tribe sampled the gambling bonanza that they had shunned during the 1990s.

Between Nov. 24, 2001, and July 25, 2002, an average of 3,500 gamblers a day played the 349 slot machines in the log-walled gift shop that the Alabama-Coushatta had converted into an entertainment center.

The tribe cleared "over a million dollars a month," said tribal council chairman Kevin Battise. The total profits exceeded the $10 million the tribe obtained last year from its only other major source of revenue, royalties from the dwindling production of its seven remaining oil and gas wells.

The casino had to be closed abruptly last July, after a federal judge ruled that the sovereign tribe had no right to operate a casino without permission from the sovereign state of Texas. The tribe is appealing.

The setback was especially hard on the 460 tribe members, including 114 with diabetes, living on the reservation 16 miles east of the nearest town, Livingston. Like American Indians on most rural reservations without gambling, their life never has been easy.

The economic expansion of the 1990s bypassed the Alabama-Coushattas. Tourists lost interest in its aging attractions: the Indian Village, the train that huffed its way through the Big Thicket National Preserve, the traditional dances, the fast food at the Inn of the Twelve Clans. All the ventures provided seasonal jobs, but lost money for years before the tribal council shut them down.

Unemployment rose to 11.2 percent, more than 7 points

above the national rate, according to the Census Bureau. The real jobless rate among working-age adults was 46 percent, said Battise, who also counts stay-at-home parents and grandparents, people who ignore census forms and people too discouraged to look for work.

Median family income on the reservation was $30,000 in 1999, far below the national median of $50,046. The 23 percent poverty rate was more than 10 points above the U.S. average.

The septic systems in 8 percent of the houses have failed. Twelve percent lack phones, even though local phone service is available for as little as a dollar a month.

But at a meeting of the whole tribe in 1994, the members voted 70 to 30 percent against opening a casino. "People were worrying that it might bring in the Mafia, that there'd be prostitutes and drug dealers all up and down the road," said Sharon Miller, the tribe's public relations director.

For five years they watched as more tribes across the nation opted for casinos, and tribal gambling revenue grew to be twice the size of the federal government's Indian budget.

"We had a chance to see the new housing and roads and jobs on other reservations that did have gaming, but didn't have any of those horrid side effects," Miller said.

By 1999, sentiment within the tribe had reversed. By 70 to 30 percent, the members authorized their council to pursue gaming. The gaming hall opened the Saturday after Thanksgiving in 2001, but was shut down three weeks after the following Fourth of July.

The 287 casino employees, who included 75 tribal members, received three more months of wages and benefits. Then the tribe laid off all but six, who maintain the empty center, pay lingering bills and plan for a possible revival of gaming.

"A few found jobs, and some already had other jobs," said council member Cheryl Downing. "But from what I hear and see, about seven out of 10 people that we laid off still haven't found work."

While the casino was open, the 170-person staff of the tribal government had added another 50 employees, mostly members. They still have their new jobs. But that is almost sure to change, predicted tribal administrator James Richardson.

"Unless alternative revenues come to this tribe, some people within the tribal government are going to lose their jobs," Richardson said. "The bottom line: A beautiful spot within a poor but beautiful county will become poverty-stricken and isolated once again."

So far, the tribal council has set aside $1.8 million of its one-time burst of gaming money to extend its sewer system, $1 million for a youth center and $2 million for houses for the 40 families, including Battise and his wife, who are living in relatives' homes. An assisted living center for older members, who today are dispersed in distant nursing homes where others don't speak their language, has received "conceptual approval," Battise said.

The Alabama-Coushatta have joined the state's other two federally recognized tribes, the Tigua and the Ysleta del Sur Pueblo, in lobbying the state legislature to authorize casinos on their existing reservations. The fate of the proposed legislation is uncertain, mostly because Gov. Rick Perry objects.

The tribe is arguing that it could help ease the state's revenue crisis, which is forcing deep cuts in next year's budget. There are ways for tribes to slip a slice of their gaming profits to state or local governments without violating the federal ban on state taxation of tribal gaming proceeds.

"By no means would that solve the state's budget problems, but it might play a part," Battise said in early April.

Inside the well-scrubbed former casino, emptied of almost everything except a dismantled coin-wrapping machine and rows of empty slot-machine stools, he asked, "After all, how many entities in Austin are offering to pitch in some money this year, instead of asking to get more?"

LufkinDailyNews.com
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4/27/03 Casinos lift Indians closer to other Americans

By ANDREW MOLLISON, Cox News Service

CHEROKEE, N.C. — The Indian reservation known as the Qualla Boundary draws 3 million visitors a year to the forested foothills leading to Great Smoky Mountains National Park.

They're not coming to gaze at the trees, however.

Most head immediately for the neon-bedecked Cherokee Casino's ranks of more than 3,400 touch-screen slot machines. Others perch before futuristic table games like digital blackjack, peering at screens to see how a computer chip has dealt the virtual cards.

Occasionally, chiming bells, a pulsing rainbow of lights and crackles of artificial lightning announce a jackpot. After paying off winning bets, the sprawling casino and 15-story hotel owned by the Eastern Band of Cherokee Indians still managed a net profit of $160 million last year.

"Fifty percent goes directly to the people as per-capita payments," said Leon Jones, who was elected the tribe's principal chief in 1999. "The other 50 percent goes through the tribal government and is spent right back on the people again, for roads, for health, education, social services, debt repayment, savings for diversification into new businesses, all that."

"We're still not rich here," said Jones. "But we're better off than ever."

Gambling is credited for economic rebirth — what some have called "the new buffalo" — by many of the 201 Indian tribes that operate 300 casinos, bingo halls and racetracks from California to Connecticut. Their operations pumped out

$12.7 billion in gross revenue in 2001, the last year for which the National Indian Gaming Commission has official figures.

Profits from gaming "have enabled tribes to build new schools where children previously attended classes in substandard trailers, and have brought jobs and the revenues to diversify suffering reservation economies," said Tex Hall, president of the National Congress of American Indians.

Yet tribes on more than 100 of the 312 U.S. Indian reservations continue to spurn gaming or have been balked in their attempts to acquire it.

And along with gaming tribes' financial success has come strong criticism from skeptical non-Indians.

Some say all Indians have become wealthy and don't give a big enough share to nearby non-Indian communities. Others suspect that most proceeds are siphoned off by clever outsiders who cheat unsophisticated Native Americans. Still others charge that most profits flow to a few tribal leaders while their followers remain mired in poverty.

Abuses do exist. But the big picture is different, a Cox Newspapers analysis of census data shows. Tribes with casinos — the most lucrative form of gaming — are improving average members' lives much faster than non-gambling tribes.

The analysis compared 138 reservations that had casinos by 1996 with 165 reservations that had no gambling at all by then.

Census data from 1990 and 2000 shows that over the decade:

-- Per-capita income rose by more than 50 percent on the casino reservations, but less than 17 percent on the non-gambling reservations.

-- Unemployment rates dropped by 17 percent on the casino reservations, but less than 9 percent on the non-gambling reservations.

The casino reservations' edge in unemployment would have been even greater had it not been for the higher number of adults competing for their newly created jobs. Population increased 18 percent on the casino reservations during the 1990s, but remained unchanged on the non-gambling reservations.

At the decade's end, despite the progress, both sets of reservations still lagged behind the rest of the nation:

-- Per-capita income averaged $13,309 on the casino reservations and $11,525 on the non-gambling reservations, well below the national average of $21,587.

-- Unemployment rates averaged 12.2 percent on the casino reservations and 14.5 percent on the others, but only 4.0 percent nationally.

Tribe shares its casino gains

The numbers come to life on the Qualla Boundary, home to about 6,700 of the members of the Eastern Band of Cherokee Indians.

Cherokee people had lived on the land for uncounted generations. "When the United States government was formed, our government recognized them," said historian Lynne Harlan.

The reservation was purchased, acre by acre, with hard-saved money by Cherokee families, who then placed the land in trust with the federal government so that it could never be taken away.

Its modern history starts 175 years ago with Indians who avoided the Trail of Tears, when the U.S. Army expelled to the West all the Cherokee families it could find in seven southeastern states.

Standing Wolf escaped as his contingent was crossing a river in Tennessee, walked back to the western tip of North Carolina, and became prominent in the tribe now known as the Eastern Band of Cherokee. He named his next son Come Back Wolf.

Jerry Wolfe, a great-great-great-grandson of Standing Wolf, last year was among the more than 12,500 tribal members who received per-capita distributions of $6,380 from the profits of the casino development.

Wolfe recalled that this was a great deal bigger than "my first dividend on the Qualla Boundary," which he received as a fifth-grader in December 1932. That 50 cents was his share of the profits from the beans, squash and corn grown the previous summer by the Cherokee Boys Farm Club, which the boys and their teachers formed after they were told that Indians couldn't join the Future Farmers of America.

The casino funds started to flow after the tribe converted its

10-year-old bingo hall into a small casino in 1993, and opened a larger casino managed by Harrah's Entertainment Inc. in 1997.

Harrah's Cherokee Casino has grown into a major attraction for residents of surrounding states. It is the biggest single destination for Georgia gamblers, who make about 468,000 visits a year, according to a Harrah's survey.

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Clearly, much of that bounty reached the grassroots residents. The poverty rate of 31.4 percent fell to 23.1 percent. The unemployment rate of 16.8 percent dropped to 8.5 percent.

However, like most reservations with casinos, the Qualla Boundary still trails the national average in many measures of social conditions. Diabetes is rampant. About 3.6 percent of its residences lack complete plumbing, six times the national rate. And the 9 percent without phone service is triple the national rate.

Income statistics don't capture how residents have benefited from new tribal facilities and amenities.

Without casino funds, the tribe would have been unable to afford the new public library, the new kidney dialysis center, or the new wellness center and its gym, swimming pool and fitness rooms.

Nor would it have been able to refurbish the family facilities on the island park in the Oconaluftee River, the broadest of the 30 miles of trout streams that bubble and leap down the slopes of the rocky reservation.

Any member who builds a new house on the reservation can get an interest-free loan for the down payment, help in obtaining a mortgage and up to $15,000 in free site preparation, such as grading, a paved driveway and a water and sewer hookup — or in remote areas, a well and a septic field.

The tribal council promises that any member who attends an accredited college or technical institute anywhere in the world can get help with tuition, books and supplies.

Moreover, the generous package of medical, dental and vision insurance offered to all full-time employees of the casino and the tribe has eased the financial strains on its

under-funded hospital.

Vice chief Carroll Crowe said that the gambling revenue is also weaning the tribe from federal aid. Once the bulk of the tribal government's income, it now accounts for about 15 percent.

"Being less dependent on the federal government is the best part," said Joyce Dugan, who preceded Jones as principal chief. "It's never enough, and grant programs come and go with the whims of Congress or the president."

In fact, the flow of funds is beginning to reverse. The casino withheld $9.1 million in federal and state taxes from its employees' wages last year. Additional federal income taxes were paid by reservation residents whose per capita payments and jobs are related to the casino's success. Tribe members who live off the reservation pay state income taxes as well.

Jones emphasized that the economic impact of gaming extends beyond the reservation's borders, since most supplies, materials and casino employees come from elsewhere.

"We have become the economic engine for all of western North Carolina, the job-growing center of our region," said Jones.

"Plus, you have the washers and driers, the suits, the cars, that our people can afford now," Jones said. "Nobody sells them on the Qualla Boundary, so that helps the surrounding counties as well."

Other ventures didn't work

A casino wasn't the tribe's first choice as money-maker, Dugan said.

"We tried every avenue of economic development other than gaming, but none of them lasted," she said. Over the past 75 years, that included ventures in logging, forestry, quilt-making, trinket assembly and low-cost tourism. Each flourished for a while, but then faded away.

Tribal officials confirmed that there has been a decline in sales at roadside souvenir shops and in admissions to more sophisticated offerings, such as the nationally respected Museum of the Cherokee Indian, as well as a replica of a Cherokee village around 1750 and an outdoor drama centered around the Trail of Tears.

"The casino crowd, all they know is the road and the

casino," Wolfe said. "They don't know about our traditions, and they don't care."

Officials attribute the fall-off partly to increased competition from theme parks and a general lull in tourism since the Sept. 11, 2001, terrorist attacks.

Whatever the reason, the tribe's financial fortunes are for the moment firmly tied to its casino.

Last year, the casino complex finished an $88 million expansion project and spent another $58 million on wages and benefits.

Its 1,725 employees included 515 tribal members, among them five department directors, 39 managers and 97 supervisors. Dugan runs a management training program for Harrah's that prepares tribal members to move up in the ranks.

Other tribal members prefer not to work in the smoke-filled (but alcohol-free) casino complex, which includes a 15-story hotel, four restaurants, auditoriums, a 650-car parking garage and 84,000 square feet of gaming space that is open 24 hours every day.

However, some found jobs at the new motels, hotels and restaurants that sprang up on or near the reservation to absorb the overflow from the casino's hotel.

Others found work with the tribal government or tribally sponsored enterprises, which include trout farming, Cherokee brand bottled water, and a self-supporting social service agency for teens and young adults that evolved out of the club that grew beans on the casino's hill.

The big question for the younger generation is what comes next, said tribal member Paxton Myers. The 27-year-old Western Carolina University graduate landed a job at the casino after the grant that supported his tribal job ran out.

"The casino's a necessary building block for the tribe's future, but it's only for people 21 and older," said Myers, a management trainee in Dugan's program. "I'm glad the tribal council is talking about diversifying into some family-oriented entertainment — a theme park, a golf course, a water park, what have you."

Youngsters raised on the reservation may be its next source of venture capital. When the per-capita payments are distributed each June and December, the tribe invests each child's portion in a trust fund.

At the reservation's only elementary school, a teacher marveled: "Every once in a while I realize that these kids are going to be worth $100,000 apiece by the time they graduate from high school."

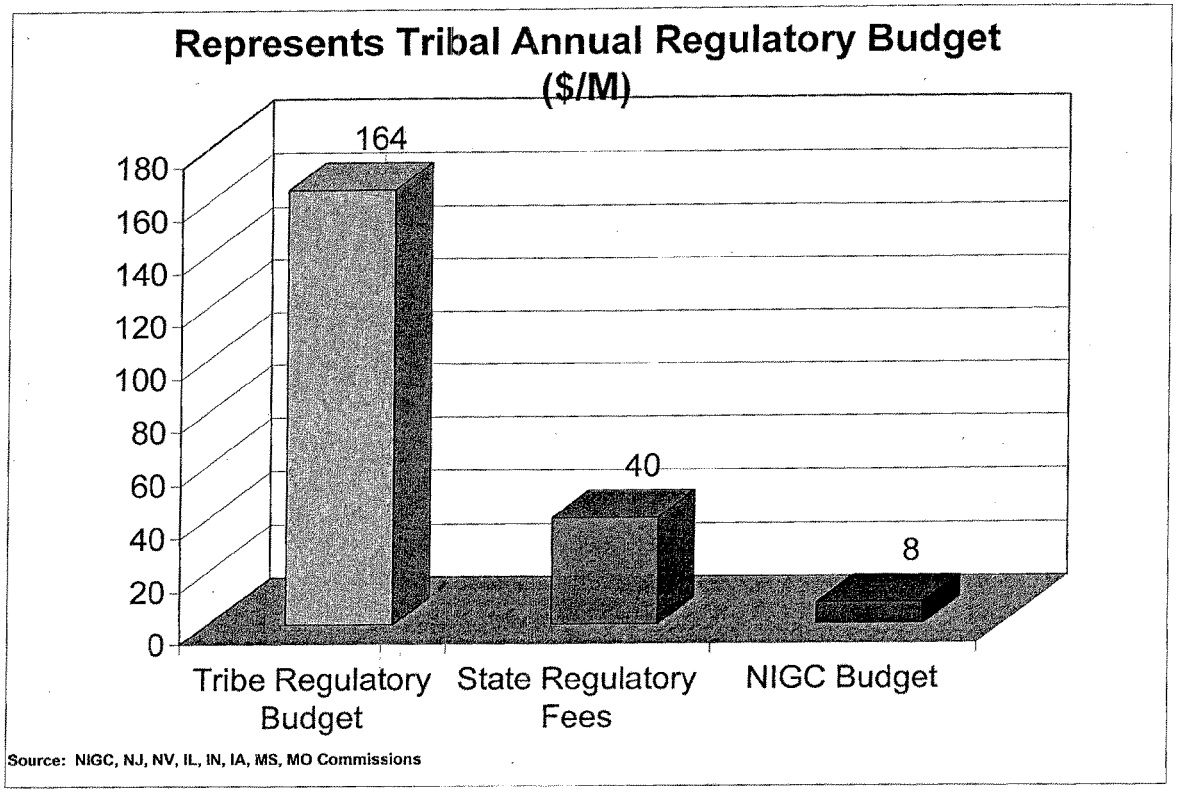
High school graduates can tap their trust fund when they are 18, while those who don't graduate must wait until they are 21. That may be why the dropout rate among 16- through 19-year-olds on the Qualla Boundary, while still a disappointing 20 percent, is 10 points lower than it was in 1990.

This year, Cherokee High School added a class in personal finance to its curriculum.

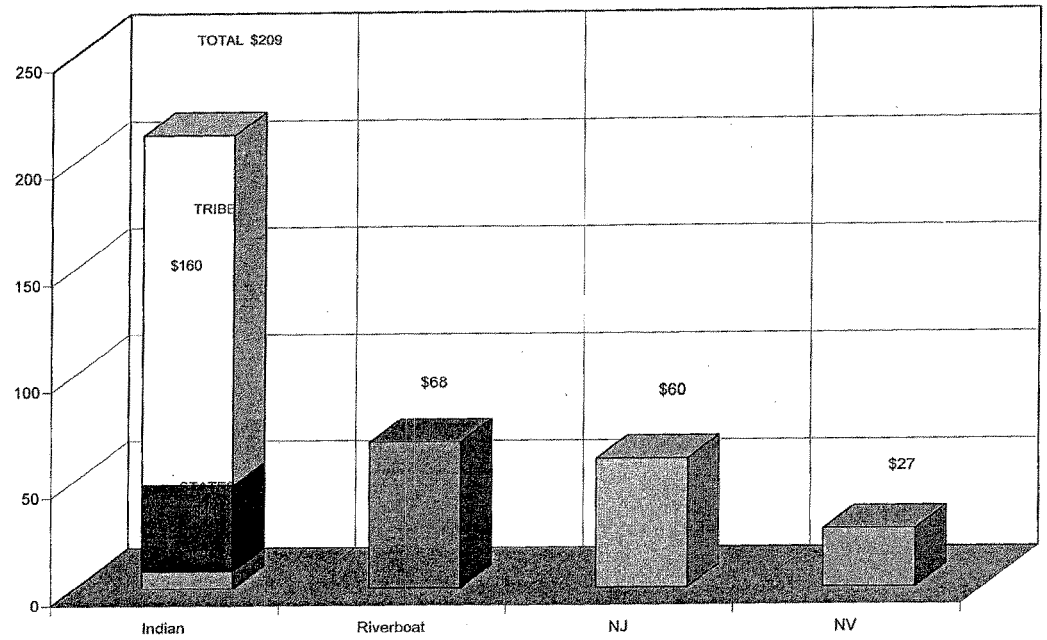
"Some of the kids have just gone and bought them a car," said Natalie Hill, a recent salutatorian at the high school. She has taken a semester off from college to be Miss Cherokee, the tribe's cultural ambassador at powwows and other multi-tribal events.

Asked about gaming, the 20-year-old chooses her words carefully.

"There's good and there's bad," she said. "Personally, I think we were all fine without a casino — those that had a job, a home, a roof over their head. Money doesn't make the world go round."


Represents Tribal Annual Regulatory Budget
($/M)
180
160
140
120
100
80
60
40
20
0
164
40
8
Tribe Regulatory Budget
State Regulatory Fees
NIGC Budget
Source: NIGC, NJ, NV, IL, IN, IA, MS, MO Commissions

Comparison to Commercial Gaming Enterprises



Source: Tribal Governments, NIGC, NJ, NV, IL, IN, IA, MS, MO State Commissions

Regulation of the flow of money through an Arizona Casino

First and foremost, the Tribal casino is self regulated through the establishment of a Tribal Gaming Office (TGO). The TGO functions to ensure the casino is following the provisions of the State Compact, the Tribal Minimum Internal Controls (MICS) and the NIGC Minimum Internal Controls (25 CFR 542). The Tribal MICS must be at least as stringent as the NIGC MICS.

The cash in a Tribal casino is constantly under surveillance and is subject to multiple levels of checks. For example, the cash that is collected through the Drop and Count process is under surveillance throughout the entire process. During the count process, no fewer that two members of the count team are always present. After all members of the count team have signed off as to the amount of cash counted, the cage manager or shift supervisor will recount the cash and then only when the two counts agree, the cash is accepted into the cage accountability for that shift. All cash is counted at each shift change and must balance either to the impressed amount for the cage drawer or the change in cage for the vault must balance to the activity for the shift.

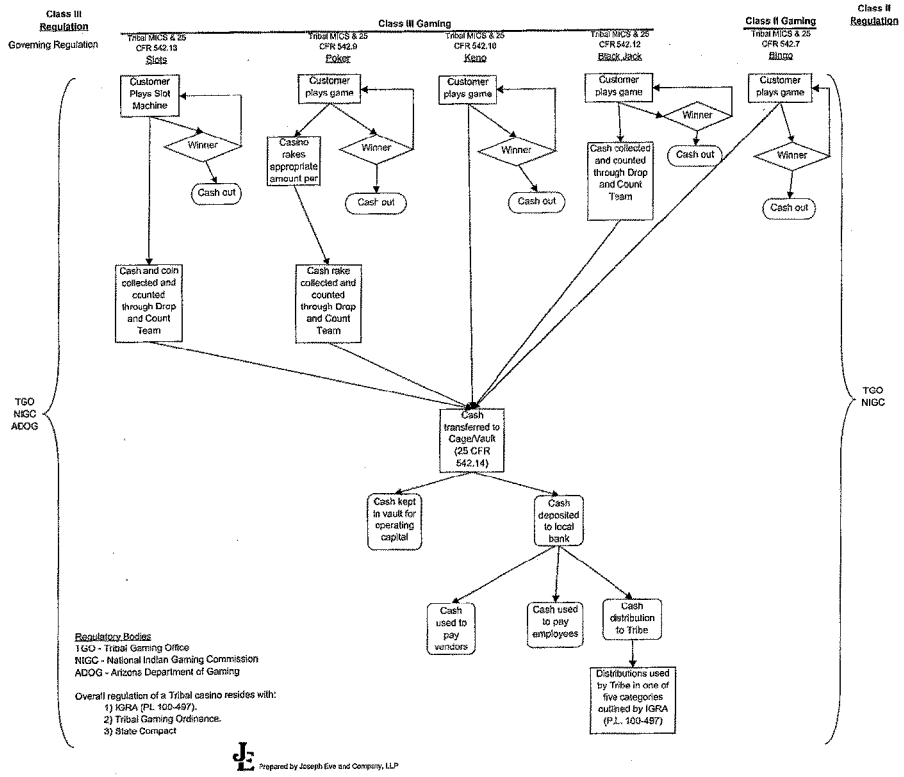
TGO also periodically audits the cash and the cash process. At least quarterly, the internal audit department of TGO (the internal audit department is employed by the Tribe and not by the gaming operation) follows the cash process through the casino and compares actual procedures to the Tribe's MICS. TGO also may employ an independent external auditor to assist them with this function. Many Tribes use a combination of both internal audit departments and external auditors. Furthermore, the TGO also employs Gaming Inspectors to be onsite at the gaming operation during all hours the gaming operation is open. The Inspectors function is to observe cash transactions such as the drop and count and the subsequent transfer from the count to the vault.

The Arizona Department of Gaming (ADOG), in accordance with the State Compact §7(g), conducts an annual "comprehensive Compact compliance review" of the gaming operation. As part of the annual review, ADOG also reviews cash procedures in the casino.

Each Tribal casino operation is subject to an annual audit by a Certified Public Accountant which includes an evaluation of internal controls in all areas of the casino. This evaluation includes following all cash dropped at a given time (generally two to three times a year) through the entire process from the gaming machines through to the postings in the casino's books.

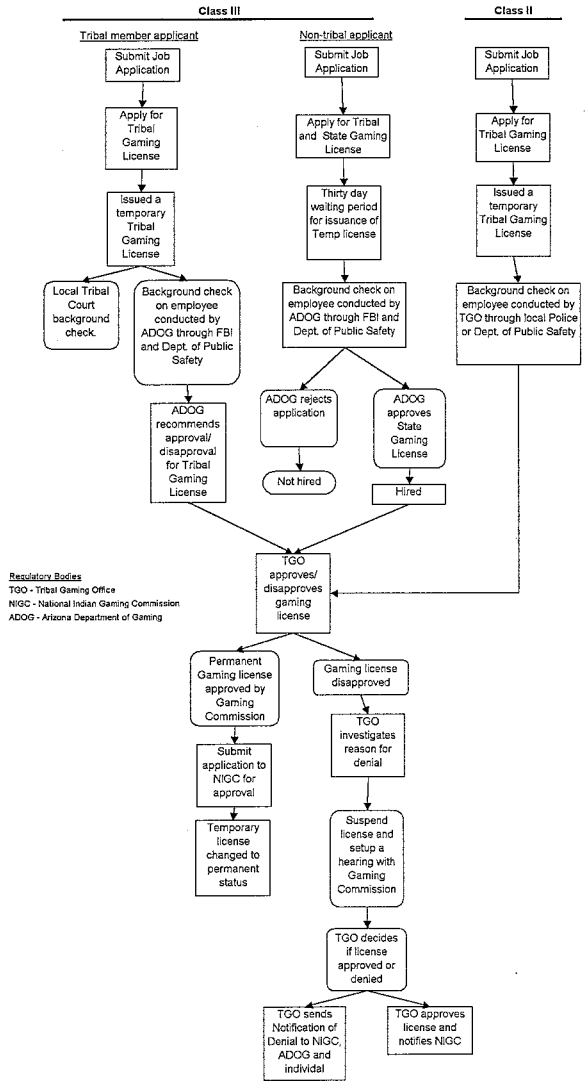
Finally, the NIGC reserves the right to conduct their own compliance audits on the casino's adherence to the NIGC MICS.

Flow of cash through a sample Arizona Tribal casino



Flow of licensing in a sample Arizona Tribal casino

Governing regulations: State Compact, Tribal Gaming Ordinance, Tribal Gaming Regulations



Prepared by Joseph Eve and Company, LLP

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(Continued on Next Page)

Background Investigations and Gaming Licenses
Indian gaming continues to be highly regulated.

By way of example:
The NIGC requires background investigations for Primary Management Officials and Key Employees – 25 CFR §556

The NIGC dictates licensing requirements for Primary Management Officials and Key Employees – 25 CFR §558

- Most Tribes, however, extend these licensing requirements to *all* employees.

- The backgrounding and licensing of gaming operation employees is often also addressed within the Tribal-State Compact.

25 CFR
§556.2 – Applications for a gaming license must contain a privacy notice.
§556.3 – Applications for a gaming license must contain a notice regarding false statements
§556.4 – Dictates what information must be contained on an application
§556.5 – Before a Tribe licenses a primary management official or key employee, they must send an investigative report to the NIGC

- §556.5 – This section has been changed for some Tribes by the NIGC's use of the "pilot project." (Once Tribes have a good track record of completing background investigations and issuing licenses, the NIGC tries to get them into the pilot project; it's less cumbersome for both the NIGC and the Tribe.) In effect, the NIGC is violating its own regulations. We had talked about formalizing the actual process used in issuing gaming licenses, but simply ran out of time. The pilot project is much more flexible for Tribes than the regulations.

25 CFR
§558.1 – Unless the Compact specifies otherwise, the Tribe is the licensing authority.
§558.2 – The licensing authority must conduct a background investigation. Must review "a person's prior activities, criminal record, if any, and reputation, habits and associations" and determine whether the person "poses a threat to the public interest or to the effective regulation of gaming."
§558.3 – The completed application and the determination as to whether the application is suitable for employment must be sent to the NIGC for review. (Under the pilot project, they don't send the application.) "A gaming operation shall not employ a key employee or primary management official who does not have a license after 90 days."
§558.4 – If the NIGC expresses no problem with the applicant, the Tribe may issue a license. If the NIGC does express a problem with the applicant, the Tribe must reconsider the applicant. Even if the NIGC objects, the Tribe can issue a license, so long as they reconsider the applicant.
(Continued on Next Page)

§558.5 – If, after a license is issued, the NIGC receives negative information about a licensee, the Tribe must be notified and the Tribe must suspend the license and hold a hearing to determine whether the license should be permanently revoked.

ECONOMIC STABILIZATION PROGRAM

Title II of Pub. L. 91-379, Aug. 15, 1970, 84 Stat. 799, as amended by Pub. L. 91-558, title II, §201, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 92-8, §2, Mar. 31, 1971, 85 Stat. 13; Pub. L. 92-15, §3, May 18, 1971, 85 Stat. 38; Pub. L. 92-210, §2, Dec. 22, 1971, 85 Stat. 743; Pub. L. 93-28, §§1-3, Apr. 30, 1973, 87 Stat. 27-29; Pub. L. 102-572, title I, §102(a), Oct. 29, 1992, 106 Stat. 4506, known as the "Economic Stabilization Act of 1970", authorized the President, within an established procedural framework, to stabilize prices, rents, wages, salaries, interest rates, dividends and similar transfers, and establish priorities for use and allocation of supplies of petroleum products, including crude oil, and to issue standards to serve as a guide for determining levels of wages, prices, etc., which would allow for adjustments, exceptions and variations to prevent inequities, taking into account changes in productivity, cost of living and other pertinent factors. The Act provided for limitations on the exercise of Presidential authority and allowed delegation of the performance of any of the President's functions to appropriate officers, departments and agencies of the United States or to entities composed of members appointed to represent different sectors of the economy and the general public. The Act provided for disclosure of information, subpena power, administrative procedure, criminal and civil sanctions, injunctions and suits for damages and other relief. The Act specified original jurisdiction for judicial review of cases or controversies arising under the Act or regulations issued thereunder in the district courts of the United States, and directed that appeals of final decisions or permitted interlocutory appeals be brought in the United States Court of Appeals for the Federal Circuit. The Act made specific provision for small business and mass transportation systems, required the President to issue periodic reports to Congress, authorized appropriations, and provided for its expiration on April 30, 1974.

EXEMPTION FROM PRICE RESTRAINTS AND ALLOCATION PROGRAMS OF FIRST SALE OF CRUDE OIL AND NATURAL GAS OF CERTAIN LEASES

Pub. L. 93-153, title IV, §406, Nov. 16, 1973, 87 Stat. 590, provided that the first sale of crude oil and natural gas liquids produced from any lease whose average daily production did not exceed ten barrels per well not be subject to price restraints or any allocation program established pursuant to any Federal law, prior to repeal by Pub. L. 94-163, title IV, §401(b)(4), Dec. 22, 1975, 89 Stat. 946. For effective date of repeal of section 406 of Pub. L. 93-153, see section 401(b)(5) of Pub. L. 94-163.

EX. ORD. NO. 12288. TERMINATION OF WAGE AND PRICE REGULATORY PROGRAM

Ex. Ord. No. 12288, Jan. 29, 1981, 46 F.R. 10135, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and laws of the United States of America, including Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note), and Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to terminate the regulatory burdens of the current wage and price program, it is hereby ordered as follows:

SECTION 1. Executive Order No. 12092, as amended, is revoked.

SEC. 2. The head of each Executive agency and military department, including the Council on Wage and Price Stability and the Office of Federal Procurement Policy, is authorized to take appropriate steps to terminate actions adopted in response to Executive Order No. 12092, as amended.

RONALD REAGAN.

CHAPTER 21—FINANCIAL RECORDKEEPING

Sec.
1951. Congressional findings and declaration of purpose.
1952. Reports on ownership and control.
1953. Recordkeeping and procedures.
(a) Regulations.
(b) Institutions subject to recordkeeping requirements.
(c) Acceptance of automated records.
1954. Injunctions.
1955. Civil penalties.
1956. Criminal penalty.
1957. Additional criminal penalty in certain cases.
1958. Compliance.
1959. Administrative procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3401 of this title; title 15 section 6802; title 31 sections 5318, 9703.

§ 1951. Congressional findings and declaration of purpose

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 1953(b) of this title have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 1952 of this title may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(Pub. L. 91-508, title I, §121, Oct. 26, 1970, 84 Stat. 1116.)

EFFECTIVE DATE

Section 401(a), (b) of Pub. L. 91-508 provided that:

"(a) Except as otherwise provided in this section, titles I, II, and III of this Act and the amendments made thereby [enacting this chapter and sections 1730d and 1829b of this title and section 1051 et seq. of former Title 31, Money and Finance, amending section 78g of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 78g of Title 15 and section 1051 of former Title 31] take effect on the first day of the seventh calendar month which begins after the date of enactment [Oct. 26, 1970].

"(b) The Secretary of the Treasury may by regulation provide that any provision of title I or II or any amendment made thereby [enacting this chapter and sections 1730d and 1829b of this title] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

§ 1952. Reports on ownership and control

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured institutions of any type with respect to their ownership, control, and managements and any changes therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such

reports as he determines in respect of such ownership, control, and managements and changes therein.

(Pub. L. 91-508, title I, § 122, Oct. 26, 1970, 84 Stat. 1116.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1951 of this title.

§ 1953. Recordkeeping and procedures

(a) Regulations

Where the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b) of this section, any records or evidence of any type which the Secretary is authorized under section 1829b of this title to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

(b) Institutions subject to recordkeeping requirements

The authority of the Secretary of the Treasury under subsection (a) of this section extends to any financial institution (as defined in section 5312(a)(2) of title 31), other than any insured bank (as defined in section 1813(h) of this title) and any insured institution (as defined in section 1724(a)[1] of this title), and any partner, officer, director, or employee of any such financial institution.

(c) Acceptance of automated records

The Secretary shall permit an uninsured bank or financial institution to retain or maintain records referred to in subsection (a) of this section in electronic or automated form, subject to terms and conditions established by the Secretary.

(Pub. L. 91-508, title I, § 123, Oct. 26, 1970, 84 Stat. 1116; Pub. L. 100-690, title VI, § 6185(d)(3)(A), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 103-325, title III, § 310, Sept. 23, 1994, 108 Stat. 2221.)

REFERENCES IN TEXT

Section 1724 of this title, referred to in subsec. (b), was repealed by Pub. L. 101-73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-325 added subsec. (c).

1988—Subsec. (b). Pub. L. 100-690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

"(1) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments, except as an incident to the conduct of its own nonfinancial business.

"(2) Transferring funds or credits domestically or internationally.

"(3) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

"(4) Operating a credit card system.

"(5) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1951 of this title.

§ 1954. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

(Pub. L. 91-508, title I, § 124, Oct. 26, 1970, 84 Stat. 1117.)

§ 1955. Civil penalties

(a) For each willful or grossly negligent violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, or any person willfully causing a violation of the regulation, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully or through gross negligence participates in the violation, a civil penalty not exceeding $10,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

(Pub. L. 91-508, title I, § 125, Oct. 26, 1970, 84 Stat. 1117; Pub. L. 100-690, title VI, § 6185(d)(3)(B), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 102-550, title XV, § 1535(c)(1), Oct. 28, 1992, 106 Stat. 4067.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 inserted "or any person willfully causing a violation of the regulation," after "applies,".

1988—Subsec. (a). Pub. L. 100-690 inserted "or grossly negligent" after "willful" and "or through gross negligence" after "willfully" and substituted "$10,000" for "$1,000".

§ 1956. Criminal penalty

Whoever willfully violates any regulation under this chapter shall be fined not more than

[1] See References in Text note below.

$1,000 or imprisoned not more than one year, or both.

(Pub. L. 91-508, title I, § 126, Oct. 26, 1970, 84 Stat. 1118.)

§ 1957. Additional criminal penalty in certain cases

Whoever willfully violates, or willfully causes a violation of any regulation under this chapter, section 1829b of this title, or section 1730d[1] of this title, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(Pub. L. 91-508, title I, § 127, Oct. 26, 1970, 84 Stat. 1118; Pub. L. 102-550, title XV, § 1535(c)(2), Oct. 28, 1992, 106 Stat. 4067.)

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101-73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1992—Pub. L. 102-550 inserted ", or willfully causes a violation of" after "Whoever willfully violates".

§ 1958. Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this chapter and sections 1730d[1] and 1829b of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

(Pub. L. 91-508, title I, § 128, Oct. 26, 1970, 84 Stat. 1118.)

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101-73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

§ 1959. Administrative procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5 shall apply to all proceedings under this chapter, section 1829b of this title, and section 1730d[1] of this title.

(Pub. L. 91-508, title I, § 129, Oct. 26, 1970, 84 Stat. 1118.)

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101-73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

CHAPTER 22—TYING ARRANGEMENTS

Sec.
1971. Definitions.
1972. Certain tying arrangements prohibited; correspondent accounts.
1973. Jurisdiction of courts; duty of United States attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpenas.
1974. Actions by United States; subpenas for witnesses.
1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery.
1976. Injunctive relief for persons against threatened loss or damages; equitable proceedings; preliminary injunctions.
1977. Limitation of actions; suspension of limitations.
1978. Actions under other Federal or State laws unaffected; regulations or orders barred as a defense.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1843, 1850, 3106 of this title; title 15 section 6701.

§ 1971. Definitions

As used in this chapter, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 1841 of this title. For purposes of this chapter only, the term "company", as used in section 1841 of this title, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department. For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.

(Pub. L. 91-607, title I, § 106(a), Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106-102, title I, § 121(c), Nov. 12, 1999, 113 Stat. 1380.)

AMENDMENTS

1999—Pub. L. 106-102 inserted at end "For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2016.

§ 1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such

[1] See References in Text note below.

(2) the Secretary considers necessary to carry out section 5302 of this title.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 994.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5304	31:822. 31:822b.	May 12, 1933, ch. 25, § 44, 48 Stat. 53. Jan. 30, 1934, ch. 6, § 11, 48 Stat. 342.

Before clause (1), the words "prescribe regulations" are substituted for "make and promulgate rules and regulations" in 31:822 and "issue . . . such rules and regulations" in 31:822b for consistency. In clause (1), the words "to carry out" are substituted for "covering any action taken or to be taken by the President under" in 31:822 to eliminate unnecessary words. In clause (2), the words "or proper" in 31:822b and "the purposes of" are omitted as surplus. Reference to 31:821 is omitted as obsolete because silver is no longer coined. Reference to 31:824 is omitted as obsolete because 31:824 is executed and is not part of the revised title.

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 1464, 1786, 1817, 1818, 1829b, 3401, 3413; title 15 sections 78q, 6802; title 18 sections 1952, 1956, 1961; title 22 section 2714.

§ 5311. Declaration of purpose

It is the purpose of this subchapter (except section 5315) to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 995.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5311	31:1051.	Oct. 26, 1970, Pub. L. 91–508, § 202, 84 Stat. 1116.

UNIFORM STATE LICENSING AND REGULATION OF CHECK CASHING, CURRENCY EXCHANGE, AND MONEY TRANSMITTING BUSINESSES

Pub. L. 103–325, title IV, § 407, Sept. 23, 1994, 108 Stat. 2247, provided that:

"(a) UNIFORM LAWS AND ENFORCEMENT.—For purposes of preventing money laundering and protecting the payment system from fraud and abuse, it is the sense of the Congress that the several States should—

"(1) establish uniform laws for licensing and regulating businesses which—

"(A) provide check cashing, currency exchange, or money transmitting or remittance services, or issue or redeem money orders, travelers' checks, and other similar instruments; and

"(B) are not depository institutions (as defined in section 5313(g) of title 31, United States Code); and

"(2) provide sufficient resources to the appropriate State agency to enforce such laws and regulations prescribed pursuant to such laws.

"(b) MODEL STATUTE.—It is the sense of the Congress that the several States should develop, through the auspices of the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or such other forum as the States may determine to be appropriate, a model statute to carry out the goals described in subsection (a) which would include the following:

"(1) LICENSING REQUIREMENTS.—A requirement that any business described in subsection (a)(1) be licensed and regulated by an appropriate State agency in order to engage in any such activity within the State.

"(2) LICENSING STANDARDS.—A requirement that—

"(A) in order for any business described in subsection (a)(1) to be licensed in the State, the appropriate State agency shall review and approve—

"(i) the business record and the capital adequacy of the business seeking the license; and

"(ii) the competence, experience, integrity, and financial ability of any individual who—

"(I) is a director, officer, or supervisory employee of such business; or

"(II) owns or controls such business; and

"(B) any record, on the part of any business seeking the license or any person referred to in subparagraph (A)(ii), of—

"(i) any criminal activity;

"(ii) any fraud or other act of personal dishonesty;

"(iii) any act, omission, or practice which constitutes a breach of a fiduciary duty; or

"(iv) any suspension or removal, by any agency or department of the United States or any State, from participation in the conduct of any federally or State licensed or regulated business,

may be grounds for the denial of any such license by the appropriate State agency.

"(3) REPORTING REQUIREMENTS.—A requirement that any business described in subsection (a)(1)—

"(A) disclose to the appropriate State agency the fees charged to consumers for services described in subsection (a)(1)(A); and

"(B) conspicuously disclose to the public, at each location of such business, the fees charged to consumers for such services.

"(4) PROCEDURES TO ENSURE COMPLIANCE WITH FEDERAL CASH TRANSACTION REPORTING REQUIREMENTS.—A civil or criminal penalty for operating any business referred to in paragraph (1) without establishing and complying with appropriate procedures to ensure compliance with subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions).

"(5) CRIMINAL PENALTIES FOR OPERATION OF BUSINESS WITHOUT A LICENSE.—A criminal penalty for operating any business referred to in paragraph (1) without a license within the State after the end of an appropriate transition period beginning on the date of enactment of such model statute by the State.

"(c) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of—

"(1) the progress made by the several States in developing and enacting a model statute which—

"(A) meets the requirements of subsection (b); and

"(B) furthers the goals of—

"(i) preventing money laundering by businesses which are required to be licensed under any such statute; and

"(ii) protecting the payment system, including the receipt, payment, collection, and clearing of checks, from fraud and abuse by such businesses; and

"(2) the adequacy of—

"(A) the activity of the several States in enforcing the requirements of such statute; and

"(B) the resources made available to the appropriate State agencies for such enforcement activity.

"(d) REPORT REQUIRED.—Not later than the end of the 3-year period beginning on the date of enactment of this Act [Sept. 23, 1994] and not later than the end of each of the first two 1-year periods beginning after the end of such 3-year period, the Secretary of the Treasury

shall submit a report to the Congress containing the findings and recommendations of the Secretary in connection with the study under subsection (c), together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate.

"(e) RECOMMENDATIONS IN CASES OF INADEQUATE REGULATION AND ENFORCEMENT BY STATES.—If the Secretary of the Treasury determines that any State has been unable to—

"(1) enact a statute which meets the requirements described in subsection (b);

"(2) undertake adequate activity to enforce such statute; or

"(3) make adequate resources available to the appropriate State agency for such enforcement activity,

the report submitted pursuant to subsection (d) shall contain recommendations of the Secretary which are designed to facilitate the enactment and enforcement by the State of such a statute.

"(f) FEDERAL FUNDING STUDY.—

"(1) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study to identify possible available sources of Federal funding to cover costs which will be incurred by the States in carrying out the purposes of this section.

"(2) REPORT.—The Secretary of the Treasury shall submit a report to the Congress on the study conducted pursuant to paragraph (1) not later than the end of the 18-month period beginning on the date of enactment of this Act [Sept. 23, 1994]."

ANTI-MONEY LAUNDERING TRAINING TEAM

Pub. L. 102-550, title XV, §1518, Oct. 28, 1992, 106 Stat. 4060, provided that: "The Secretary of the Treasury and the Attorney General shall jointly establish a team of experts to assist and provide training to foreign governments and agencies thereof in developing and expanding their capabilities for investigating and prosecuting violations of money laundering and related laws."

ADVISORY GROUP ON REPORTING REQUIREMENTS

Pub. L. 102-550, title XV, §1564, Oct. 28, 1992, 106 Stat. 4073, provided that:

"(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 1992], the Secretary of the Treasury shall establish a Bank Secrecy Act Advisory Group consisting of representatives of the Department of the Treasury, the Department of Justice, and the Office of National Drug Control Policy and of other interested persons and financial institutions subject to the reporting requirements of subchapter II of chapter 53 of title 31, United States Code, or section 6050I of the Internal Revenue Code of 1986 [26 U.S.C. 6050I].

"(b) PURPOSES.—The Advisory Group shall provide a means by which the Secretary—

"(1) informs private sector representatives, on a regular basis, of the ways in which the reports submitted pursuant to the requirements referred to in subsection (a) have been used;

"(2) informs private sector representatives, on a regular basis, of how information regarding suspicious financial transactions provided voluntarily by financial institutions has been used; and

"(3) receives advice on the manner in which the reporting requirements referred to in subsection (a) should be modified to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes.

"(c) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act [5 App. U.S.C.] shall not apply to the Bank Secrecy Act Advisory Group established pursuant to subsection (a)."

GAO FEASIBILITY STUDY OF FINANCIAL CRIMES ENFORCEMENT NETWORK

Pub. L. 102-550, title XV, §1565, Oct. 28, 1992, 106 Stat. 4074, provided that:

"(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a feasibility study of the Financial Crimes Enforcement Network (popularly referred to as 'Fincen') established by the Secretary of the Treasury in cooperation with other agencies and departments of the United States and appropriate Federal banking agencies.

"(b) SPECIFIC REQUIREMENTS.—In conducting the study required under subsection (a), the Comptroller General shall examine and evaluate—

"(1) the extent to which Federal, State, and local governmental and nongovernmental organizations are voluntarily providing information which is necessary for the system to be useful for law enforcement purposes;

"(2) the extent to which the operational guidelines established for the system provide for the coordinated and efficient entry of information into, and withdrawal of information from, the system;

"(3) the extent to which the operating procedures established for the system provide appropriate standards or guidelines for determining—

"(A) who is to be given access to the information in the system;

"(B) what limits are to be imposed on the use of such information; and

"(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the system; and

"(4) the extent to which the operating procedures established for the system provide for the prompt verification of the accuracy and completeness of information entered into the system and the prompt deletion or correction of inaccurate or incomplete information.

"(c) REPORT TO CONGRESS.—Before the end of the 1-year period, beginning on the date of the enactment of this Act [Oct. 28, 1992], the Comptroller General of the United States shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study conducted pursuant to subsection (a), together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate."

REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS

Pub. L. 101-647, title I, §101, Nov. 29, 1990, 104 Stat. 4789, provided that: "Not later than 180 days after the effective date of this section [Nov. 29, 1990], and every 2 years for 4 years, the Secretary of the Treasury shall report to the Congress the following:

"(1) the number of each type of report filed pursuant to subchapter II of chapter 53 of title 31, United States Code (or regulations promulgated thereunder) in the previous fiscal year;

"(2) the number of reports filed pursuant to section 6050I of the Internal Revenue Code of 1986 [26 U.S.C. 6050I] (regarding transactions involving currency) in the previous fiscal year;

"(3) an estimate of the rate of compliance with the reporting requirements by persons required to file the reports referred to in paragraphs (1) and (2);

"(4) the manner in which the Department of the Treasury and other agencies of the United States collect, organize, analyze and use the reports referred to in paragraphs (1) and (2) to support investigations and prosecutions of (A) violations of the criminal laws of the United States, (B) violations of the laws of foreign countries, and (C) civil enforcement of the laws of the United States including the provisions regarding asset forfeiture;

"(5) a summary of sanctions imposed in the previous fiscal year against persons who failed to comply with the reporting requirements referred to in paragraphs (1) and (2), and other steps taken to ensure maximum compliance;

"(6) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part,

from investigations initiated by analysis of the reports referred to in paragraphs (1) and (2); and

"(7) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by information regarding suspicious financial transactions provided voluntarily by financial institutions."

INTERNATIONAL CURRENCY TRANSACTION REPORTING

Pub. L. 100-690, title IV, § 4701, Nov. 18, 1988, 102 Stat. 4290, stated Congressional findings concerning success of cash transaction and money laundering control statutes in United States and desirability of United States playing a leadership role in development of similar international system, urged United States Government to seek active cooperation of other countries in enforcement of such statutes, urged Secretary of the Treasury to negotiate with finance ministers of foreign countries to establish an international currency control agency to serve as central source of information and database for international drug enforcement agencies to collect and analyze currency transaction reports filed by member countries, and encouraged adoption, by member countries, of uniform cash transaction and money laundering statutes, prior to repeal by Pub. L. 102-583, § 6(e)(1), Nov. 2, 1992, 106 Stat. 4933.

RESTRICTIONS ON LAUNDERING OF UNITED STATES CURRENCY

Pub. L. 100-690, title IV, § 4702, Nov. 18, 1988, 102 Stat. 4291, as amended by Pub. L. 103-447, title I, § 103(b), Nov. 2, 1994, 108 Stat. 4693, provided that:

"(a) FINDINGS.—The Congress finds that international currency transactions, especially in United States currency, that involve the proceeds of narcotics trafficking fuel trade in narcotics in the United States and worldwide and consequently are a threat to the national security of the United States.

"(b) PURPOSE.—The purpose of this section is to provide for international negotiations that would expand access to information on transactions involving large amounts of United States currency wherever those transactions occur worldwide.

"(c) NEGOTIATIONS.—(1) The Secretary of the Treasury (hereinafter in this section referred to as the 'Secretary') shall enter into negotiations with the appropriate financial supervisory agencies and other officials of any foreign country the financial institutions of which do business in United States currency. Highest priority shall be attached to countries whose financial institutions the Secretary determines, in consultation with the Attorney General and the Director of National Drug Control Policy, may be engaging in currency transactions involving the proceeds of international narcotics trafficking, particularly United States currency derived from drug sales in the United States.

"(2) The purposes of negotiations under this subsection are—

"(A) to reach one or more international agreements to ensure that foreign banks and other financial institutions maintain adequate records of large United States currency transactions, and

"(B) to establish a mechanism whereby such records may be made available to United States law enforcement officials.

In carrying out such negotiations, the Secretary should seek to enter into and further cooperative efforts, voluntary information exchanges, the use of letters rogatory, and mutual legal assistance treaties.

"(d) REPORTS.—Not later than 1 year after the date of enactment of this Act [Nov. 18, 1988], the Secretary shall submit an interim report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on progress in the negotiations under subsection (c). Not later than 2 years after such enactment, the Secretary shall submit a final report to such Committees and the President on the outcome of those negotiations and shall identify, in consultation with the Attorney General and the Director of National Drug Control Policy, countries—

"(1) with respect to which the Secretary determines there is evidence that the financial institutions in such countries are engaging in currency transactions involving the proceeds of international narcotics trafficking; and

"(2) which have not reached agreement with United States authorities on a mechanism for exchanging adequate records on international currency transactions in connection with narcotics investigations and proceedings.

"(e) AUTHORITY.—If after receiving the advice of the Secretary and in any case at the time of receipt of the Secretary's report, the Secretary determines that a foreign country—

"(1) has jurisdiction over financial institutions that are substantially engaging in currency transactions that effect [affect] the United States involving the proceeds of international narcotics trafficking;

"(2) such country has not reached agreement on a mechanism for exchanging adequate records on international currency transactions in connection with narcotics investigations and proceedings; and

"(3) such country is not negotiating in good faith to reach such an agreement,

the President shall impose appropriate penalties and sanctions, including temporarily or permanently—

"(1) prohibiting such persons, institutions or other entities in such countries from participating in any United States dollar clearing or wire transfer system; and

"(2) prohibiting such persons, institutions or entities in such countries from maintaining an account with any bank or other financial institution chartered under the laws of the United States or any State.

Any penalties or sanctions so imposed may be delayed or waived upon certification of the President to the Congress that it is in the national interest to do so. Financial institutions in such countries that maintain adequate records shall be exempt from such penalties and sanctions.

"(f) DEFINITIONS.—For the purposes of this section—

"(1) The term 'United States currency' means Federal Reserve Notes and United States coins.

"(2) The term 'adequate records' means records of United States' currency transactions in excess of $10,000 including the identification of the person initiating the transaction, the person's business or occupation, and the account or accounts affected by the transaction, or other records of comparable effect."

INTERNATIONAL INFORMATION EXCHANGE SYSTEM; STUDY OF FOREIGN BRANCHES OF DOMESTIC INSTITUTIONS

Pub. L. 99-570, title I, § 1363, Oct. 27, 1986, 100 Stat. 3207-33, required the Secretary of the Treasury to initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to reduce international flow of money derived from illicit drug operations and other criminal activities and to report to Congress before the end of the 9-month period beginning Oct. 27, 1986. The Secretary of the Treasury was also required to conduct a study of (1) the extent to which foreign branches of domestic institutions are used to facilitate illicit transfers of or to evade reporting requirements on transfers of coins, currency, and other monetary instruments into and out of the United States; (2) the extent to which the law of the United States is applicable to the activities of such foreign branches; and (3) methods for obtaining the cooperation of the country in which any such foreign branch is located for purposes of enforcing the law of the United States with respect to transfers, and reports on transfers, of such monetary instruments into and out of the United States and to report to Congress before the end of the 9-month period beginning Oct. 27, 1986.

5312. Definitions and application

(a) In this subchapter—

(1) "financial agency" means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(2) "financial institution" means—

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) an insured institution (as defined in section 401(a)[1] of the National Housing Act (12 U.S.C. 1724(a)));

(F) a thrift institution;

(G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money;

(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) "monetary instruments" means—

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of section 5316, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) "person", in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(5) "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter—

(1) "domestic financial agency" and "domestic financial institution" apply to an action in the United States of a financial agency or institution.

(2) "foreign financial agency" and "foreign financial institution" apply to an action outside the United States of a financial agency or institution.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 995; Pub. L. 99–570, title I, §1362, Oct. 27, 1986, 100 Stat. 3207–33; Pub. L. 100–690, title VI, §6185(a), (g)(1), Nov. 18, 1988, 102 Stat. 4354, 4357; Pub. L. 103–325, title IV, §§405, 409, Sept. 23, 1994, 108 Stat. 2247, 2252.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5312(a)(1)	31:1052(a), (b), (g), (i).	Oct. 26, 1970, Pub. L. 91–508, §203(a)–(i), (l), 84 Stat. 1118.
5312(a)(2)	31:1052(e).	
5312(a)(3)	31:1052(l).	
5312(a)(4)	31:1052(c).	
5312(a)(5)	31:1052(d).	
5312(b)	31:1052(f), (h).	

In subsection (a)(1), the text of 31:1052(a) is omitted as unnecessary. The text of 31:1052(b) is omitted because of the restatement. The text of 31:1052(i) is omitted as unnecessary because the source provision is restated where necessary in the revised subchapter.

In subsection (a)(2), (3), (4), and (5), the words "the Secretary . . . prescribes" are substituted for "specified by the Secretary by regulation", "as the Secretary may by regulation specify", "specified by the Sec-

[1] See References in Text note below.

retary", and "the Secretary shall by regulation specify" for consistency.

In subsection (a)(2) and (3), the words "for the purposes of the provision of this chapter to which the regulation relates" are omitted as surplus.

In subsection (a)(2), before subclause (A), the words "any person which does business in any one or more of the following capacities" are omitted as surplus. In subclause (F), the words "savings bank, building and loan association, credit union, industrial bank, or other" are omitted as surplus. In subclause (T), the words "agency of the United States Government or of a State or local government" are substituted for "Federal, State, or local government institution" for consistency. In subclause (U), the words "type of" are omitted as surplus. The word "agency" is substituted for "institution" for consistency.

In subsection (a)(3)(B)–(5), the word "prescribe" is substituted for "specify" for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(3)(B), the words "in addition", and "and such types of" are omitted as surplus. The words "similar material" are substituted for "the equivalent thereof" for clarity.

In subsection (a)(4), the words "in addition to its meaning under section 1 of title 1" are substituted for "natural persons, partnerships, . . . associations, corporations, and all entities cognizable as legal personalities" for consistency because 1:1 is applicable to all laws unless otherwise provided. The words "a trustee, a representative of an estate" are substituted for "trusts, estates", and the word "entity" is substituted for "department or agency", for consistency. The words "either for the purpose of this chapter generally or any particular requirement thereunder" are omitted as surplus.

In subsection (a)(5), the words "used in a geographic sense" are omitted because of the restatement. The words "either for the purposes of this chapter generally or any particular requirement thereunder" are omitted as surplus. The words "territory or" are added for consistency.

Subsection (b) is substituted for 31:1052(f) and (h) to eliminate unnecessary words and for consistency.

REFERENCES IN TEXT

Section 401 of the National Housing Act, referred to in subsec. (a)(2)(E), which was classified to section 1724 of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

The Securities Exchange Act of 1934, referred to in subsec. (a)(2)(G), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Indian Gaming Regulatory Act, referred to in subsec. (a)(2)(X)(ii), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§ 2701 et seq.) of Title 25, Indians. Section 4(6) of the Act is classified to section 2703(6) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(2)(X) to (Z). Pub. L. 103–325, § 409, added subpar. (X) and redesignated former subpars. (X) and (Y) as (Y) and (Z), respectively.

Subsec. (a)(3)(C). Pub. L. 103–325, § 405, added subpar. (C).

1988—Subsec. (a)(2)(T) to (Y). Pub. L. 100–690, § 6185(a), added subpars. (T) to (Y) and struck out former subpars. (T) and (U) which read as follows:

"(T) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this clause (2), including the United States Postal Service; or

"(U) another business or agency carrying out a similar, related, or substitute duty or power the Secretary of the Treasury prescribes."

Subsec. (a)(5). Pub. L. 100–690, § 6185(g)(1), inserted a comma after "Puerto Rico" and struck out second comma after "Pacific Islands".

1986—Subsec. (a)(2)(T). Pub. L. 99–570, § 1362(a), which directed that the Postal Service be included within United States agencies by amending subsec. (a)(2)(U) of this section by inserting before the semicolon at the end thereof the following ", including the United States Postal Service", was executed to subsec. (a)(2)(T) of this section as the probable intent of Congress, because subsec. (a)(2)(U) does not contain a semicolon and subsec. (a)(2)(T) relates to United States agencies.

Subsec. (a)(5). Pub. L. 99–570, § 1362(b), inserted "the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands," after "Puerto Rico".

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5340 of this title; title 12 section 1953; title 18 sections 986, 1956, 2339B; title 19 sections 1401, 1607; title 26 section 6050I; title 50 section 438.

§ 5313. Reports on domestic coins and currency transactions

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic financial institution that is not insured, chartered, examined, or registered as a domestic financial institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation of this subchapter or a regulation under this subchapter (except a violation of section 5315 of this title or a regulation prescribed under section 5315), section 411[1] of the National Housing Act (12 U.S.C. 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report—

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.

[1] See References in Text note below.

(2) The Secretary shall prescribe—

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

(d) MANDATORY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and the following categories of entities:

(A) Another depository institution.

(B) A department or agency of the United States, any State, or any political subdivision of any State.

(C) Any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision.

(D) Any business or category of business the reports on which have little or no value for law enforcement purposes.

(2) NOTICE OF EXEMPTION.—The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not less frequently than once each year) a list of all the entities whose transactions with a depository institution are exempt under this subsection from the reporting requirements of subsection (a).

(e) DISCRETIONARY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury may exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

(2) QUALIFIED BUSINESS CUSTOMER DEFINED.—For purposes of this subsection, the term "qualified business customer" means a business which—

(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

(3) CRITERIA FOR EXEMPTION.—The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

(4) GUIDELINES.—

(A) IN GENERAL.—The Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection.

(B) CONTENTS.—The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

(5) ANNUAL REVIEW.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to—

(A) review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

(6) 2-YEAR PHASE-IN PROVISION.—During the 2-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, this subsection shall be applied by the Secretary on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.

(f) PROVISIONS APPLICABLE TO MANDATORY AND DISCRETIONARY EXEMPTIONS.—

(1) LIMITATION ON LIABILITY OF DEPOSITORY INSTITUTIONS.—No depository institution shall be subject to any penalty which may be imposed under this subchapter for the failure of the institution to file a report with respect to a transaction with a customer for whom an exemption has been granted under subsection (d) or (e) unless the institution—

(A) knowingly files false or incomplete information to the Secretary with respect to the transaction or the customer engaging in the transaction; or

(B) has reason to believe at the time the exemption is granted or the transaction is entered into that the customer or the transaction does not meet the criteria established for granting such exemption.

(2) COORDINATION WITH OTHER PROVISIONS.—Any exemption granted by the Secretary of the Treasury under section 5318(a) in accordance with this section, and any transaction which is subject to such exemption, shall be subject to any other provision of law applicable to such exemption, including—

(A) the authority of the Secretary, under section 5318(a)(6), to revoke such exemption at any time; and

(B) any requirement to report, or any authority to require a report on, any possible violation of any law or regulation or any suspected criminal activity.

(g) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term "depository institution"—

(1) has the meaning given to such term in section 19(b)(1)(A) of the Federal Reserve Act; and

(2) includes—

(A) any branch, agency, or commercial lending company (as such terms are defined in section 1(b) of the International Banking Act of 1978);

(B) any corporation chartered under section 25A of the Federal Reserve Act; and

(C) any corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 996; Pub. L. 103–325, title IV, § 402(a), Sept. 23, 1994, 108 Stat. 2243.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5313(a)	31:1081.	Oct. 26, 1970, Pub. L. 91–508, §§ 221–223, 84 Stat. 1122.
	31:1082.	
5313(b)	31:1083(a).	
5313(c)	31:1083(b).	

In subsection (a), the words "coins or" are added, and the words "prescribe" and "prescribes" are substituted for "specify" in 31:1081, and "require", for consistency. The words "other parties thereto or" in 31:1082 are omitted as surplus. The words "to the Secretary" in 31:1081 are omitted as unnecessary and for clarity. The words "in such detail" are omitted as surplus. The words "A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made" are substituted for 31:1082(last sentence) for clarity and to eliminate unnecessary words.

In subsection (b), the words "in his discretion" and "individually or by class" are omitted as surplus. The word "Government" is added for consistency. The words "or a regulation under this subchapter", are added because of the restatement. The words "(except a violation of section 5315 of this title or a regulation prescribed under section 5315)" are added because 31:1141–1143 was not enacted as a part of the Currency and Foreign Transactions Reporting Act that is restated in this subchapter.

In subsection (c)(1), clause (A) is substituted for "with respect to a domestic financial institution . . . with that institution" for clarity. Clause (C) is substituted for "any such person may, at his election and in lieu of filing the report in the manner hereinabove prescribed, file the report with the Secretary" to eliminate unnecessary words.

REFERENCES IN TEXT

Section 411 of the National Housing Act, referred to in subsec. (b), which was classified to section 1730d of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

Section 19(b)(1)(A) and (C) of the Federal Reserve Act, referred to in subsecs. (e)(2)(A) and (g)(1), is classified to section 461(b)(1)(A) and (C) of Title 12.

The date of enactment of the Money Laundering Suppression Act of 1994, referred to in subsec. (e)(6), is the date of enactment of title IV of Pub. L. 103–325, which was approved Sept. 23, 1994.

Section 1(b) of the International Banking Act of 1978, referred to in subsec. (g)(2)(A), is classified to section 3101 of Title 12.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (g)(2)(B), (C), are classified to subchapters I (§§ 601 et seq.) and II (§§ 611 et seq.), respectively, of chapter 6 of Title 12.

AMENDMENTS

1994—Subsecs. (d) to (g). Pub. L. 103–325 added subsecs. (d) to (g).

REPORT REDUCTION GOAL; STREAMLINED CURRENCY TRANSACTION REPORTS

Section 402(b), (c) of Pub. L. 103–325 provided that:

"(b) REPORT REDUCTION GOAL; REPORTS.—

"(1) IN GENERAL.—In implementing the amendment made by subsection (a) [amending this section], the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31, United States Code, by at least 30 percent of the number filed during the year preceding the date of enactment of this Act [Sept. 23, 1994].

"(2) INTERIM REPORT.—The Secretary of the Treasury shall submit a report to the Congress not later than the end of the 180-day period beginning on the date of enactment of this Act on the progress made by the Secretary in implementing the amendment made by subsection (a).

"(3) ANNUAL REPORT.—The Secretary of the Treasury shall submit an annual report to the Congress after the end of each of the first 5 calendar years which begin after the date of enactment of this Act on the extent to which the Secretary has reduced the overall number of currency transaction reports filed with the Secretary pursuant to section 5313(a) of title 31, United States Code, consistent with the purposes of such section and effective law enforcement.

"(c) STREAMLINED CURRENCY TRANSACTION REPORTS.—The Secretary of the Treasury shall take such action as may be appropriate to—

"(1) redesign the format of reports required to be filed under section 5313(a) of title 31, United States Code, by any financial institution (as defined in section 5312(a)(2) of such title) to eliminate the need to report information which has little or no value for law enforcement purposes; and

"(2) reduce the time and effort required to prepare such report for filing by any such financial institution under such section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5319, 5324, 5330 of this title; title 12 section 3420; title 18 sections 981, 982; title 26 section 6103; title 28 section 524.

§ 5314. Records and reports on foreign financial agency transactions

(a) Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. The records and reports shall contain the following information in the way and to the extent the Secretary prescribes:

(1) the identity and address of participants in a transaction or relationship.

(2) the legal capacity in which a participant is acting.

(3) the identity of real parties in interest.

(4) a description of the transaction.

(b) The Secretary may prescribe—

(1) a reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) a foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) the magnitude of transactions subject to a requirement or a regulation under this section;

(4) the kind of transaction subject to or exempt from a requirement or a regulation under this section; and

(5) other matters the Secretary considers necessary to carry out this section or a regulation under this section.

(c) A person shall be required to disclose a record required to be kept under this section or under a regulation under this section only as required by law.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 997.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5314(a)	31:1121(a).	Oct. 26, 1970, Pub. L. 91–508, §§241, 242, 84 Stat. 1124.
5314(b)	31:1122.	
5314(c)	31:1121(b).	

In subsection (a), before clause (1), the words "currency or other", "legitimately", "by regulation", and "directly or indirectly" are omitted as surplus. The words "for any person" are substituted for "on behalf of himself or another" to eliminate unnecessary words. The words "and to the extent" are substituted for "and in such detail" for clarity. In clauses (1) and (2), the words "participants" and "participant" are substituted for "parties" for consistency. In clause (2), the words "to the transaction or relationship" are omitted as surplus. In clause (3), the words "if one or more of the parties are not acting solely as principals" are omitted as surplus. In clause (4), the words "including the amounts of money, credit, or other property involved" are omitted as surplus.

In subsection (b), the words "or a regulation under this section" are added because of the restatement. The words "or does not apply" and "uniform" in clause (2) are omitted as surplus. In clause (5), the words "carry out" are substituted for "the application of" for consistency.

In subsection (c), the words "produce or otherwise . . . the contents of" and "in compliance with a subpena or summons duly authorized and issued or . . . may otherwise be" are omitted as surplus. The words "under a regulation" are added because of the restatement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5319, 5321 of this title.

§ 5315. Reports on foreign currency transactions

(a) Congress finds that—

(1) moving mobile capital can have a significant impact on the proper functioning of the international monetary system;

(2) it is important to have the most feasible current and complete information on the kind and source of capital flows, including transactions by large United States businesses and their foreign affiliates; and

(3) additional authority should be provided to collect information on capital flows under section 5(b) of the Trading With the Enemy Act (50 App. U.S.C. 5(b)) and section 8 of the Bretton Woods Agreement Act (22 U.S.C. 286f).

(b) In this section, "United States person" and "foreign person controlled by a United States person" have the same meanings given those terms in section 7(f)(2)(A) and (C), respectively, of the Securities and Exchange Act of 1934 (15 U.S.C. 78g(f)(2)(A), (C)).

(c) The Secretary of the Treasury shall prescribe regulations consistent with subsection (a) of this section requiring reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The regulations shall require that a report contain information and be submitted at the time and in the way, with reasonable exceptions and classifications, necessary to carry out this section.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 997.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5315(a)	31:1141.	Sept. 21, 1973, Pub. L. 93–110, §§201, 202, 87 Stat. 353.
5315(b), (c).	31:1142.	

In subsection (a)(3), the words "it is desirable to emphasize this objective . . . existing legal" are omitted as unnecessary.

In subsection (c), the words "(hereafter referred to as the 'Secretary')" are omitted because of the restatement. The words "under the authority of this subchapter and any other authority conferred by law" are omitted as surplus. The word "prescribe" is substituted for "supplement" for clarity. The words "the statement of findings under" and "the submission of" are omitted as surplus. The words "Reports required under this subchapter shall cover foreign currency transactions" are omitted because of the restatement. The words "such terms are" and "the policy of" are omitted as surplus.

REFERENCES IN TEXT

Section 5(b) of the Trading With the Enemy Act, referred to in subsec. (a)(3), is also classified to section 95a of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5311, 5313, 5318, 5321, 5322 of this title.

§ 5316. Reports on exporting and importing monetary instruments

(a) Except as provided in subsection (c) of this section, a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly—

(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—

(A) from a place in the United States to or through a place outside the United States; or

(B) to a place in the United States from or through a place outside the United States; or

(2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States.

(b) A report under this section shall be filed at the time and place the Secretary of the Treas-

ury prescribes. The report shall contain the following information to the extent the Secretary prescribes:

(1) the legal capacity in which the person filing the report is acting.

(2) the origin, destination, and route of the monetary instruments.

(3) when the monetary instruments are not legally and beneficially owned by the person transporting the instruments, or if the person transporting the instruments personally is not going to use them, the identity of the person that gave the instruments to the person transporting them, the identity of the person who is to receive them, or both.

(4) the amount and kind of monetary instruments transported.

(5) additional information.

(c) This section or a regulation under this section does not apply to a common carrier of passengers when a passenger possesses a monetary instrument, or to a common carrier of goods if the shipper does not declare the instrument.

(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term "at one time" for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 998; Pub. L. 98–473, title II, § 901(c), Oct. 12, 1984, 98 Stat. 2135; Pub. L. 99–570, title I, § 1358, title III, § 3153, Oct. 27, 1986, 100 Stat. 3207–26, 3207–94.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5316(a)	31:1101(a).	Oct. 26, 1970, Pub. L. 91–508, § 231, 84 Stat. 1122.
5316(b)	31:1101(b).	
5316(c)	31:1101(c).	

In subsection (a), before clause (1), the words "a person or an agent or bailee of the person shall" are substituted for "whoever, whether as principal, agent, or bailee, or by an agent or bailee" for consistency. The words "or reports" are omitted as unnecessary because of 1:1. In clause (2), the words "transported into the United States" are substituted for "at the termination of their transportation to the United States" for consistency and to eliminate unnecessary words.

In subsection (b), before clause (1), the word "required" is omitted as surplus. The word "prescribes" is substituted for "require" for consistency in the revised title and with other titles of the United States Code. The words "to the extent" are substituted for "in such detail" for clarity. In clause (1), the words "with respect to the monetary instruments transported" are omitted as surplus. In clause (3), the words "or if the person transporting the instruments personally is not going to use them" are substituted for "or are transported for any purpose other than the use in his own behalf of the person transporting the same" for clarity.

In subsection (c), the words "or a regulation under this section" are added because of the restatement.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–570, § 1358(b), substituted "transports, is about to transport, or has transported" for "transports or has transported, or attempts to transport or have transported".

Subsec. (a)(2). Pub. L. 99–570, §§ 1358(c), 3153, made identical amendments substituting "$10,000" for "$5,000".

Subsec. (d). Pub. L. 99–570, § 1358(a), added subsec. (d).

1984—Subsec. (a)(1). Pub. L. 98–473 inserted ", or attempts to transport or have transported," after "transports or has transported" and substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

Section 1364(d) of Pub. L. 99–570 provided that: "Any regulation prescribed under the amendments made by section 1358 [amending this section] shall apply with respect to transactions completed after the effective date of such regulation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5312, 5317, 5319, 5321, 5324 of this title; title 12 section 3420; title 18 section 982.

§ 5317. Search and forfeiture of monetary instruments

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government. Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government. A monetary instrument transported by mail or a common carrier, messenger, or bailee is being transported under this subsection from the time the instrument is delivered to the United States Postal Service, common carrier, messenger, or bailee through the time it is delivered to the addressee, intended recipient, or agent of the addressee or intended recipient without being transported further in, or taken out of, the United States.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 998; Pub. L. 98–473, title II, § 901(d), Oct. 12, 1984, 98 Stat. 2135; Pub. L. 99–570, title I, § 1355, Oct. 27, 1986, 100 Stat. 3207–22; Pub. L. 102–550, title XV, § 1525(c)(2), Oct. 28, 1992, 106 Stat. 4065.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5317(a)	31:1105.	Oct. 26, 1970, Pub. L. 91-508, §§232, 235, 84 Stat. 1123.
5317(b)	31:1102.	

In subsection (a), the words "The Secretary shall include a statement of information in support of the warrant" are substituted for 31:1105(a)(last sentence) to eliminate unnecessary words and for consistency. The word "for" is substituted for "authorizing the search of . . . all of the following" to eliminate unnecessary words. The words "or more" are omitted as unnecessary because the singular includes the plural under 1:1. The words "or premises", "letters, parcels, packages, or other", and "vehicles" are omitted as surplus.

In subsection (b), the words "either" and "the possession of" are omitted as surplus. The words "United States Postal Service" are substituted for "postal service" for consistency with title 39. The words "or retained in" are omitted as surplus.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 inserted after first sentence "Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government."

1986—Subsec. (b). Pub. L. 99-570, §1355(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A customs officer may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer has reasonable cause to believe there is a monetary instrument being transported in violation of section 5316 of this title."

Subsec. (c). Pub. L. 99-570, §1355(b), amended first sentence generally. Prior to amendment, first sentence read as follows: "A monetary instrument being transported may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement."

1984—Subsecs. (b), (c). Pub. L. 98-473, §901, added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1364(b) of Pub. L. 99-570 provided that: "The amendments made by sections 1355(b) and 1357(a) [amending this section and section 5321 of this title] shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act [Oct. 27, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5321 of this title.

§ 5318. Compliance, exemptions, and summons authority

(a) GENERAL POWERS OF SECRETARY.—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(5) exempt from the requirements of this subchapter any class of transactions within any State if the Secretary determines that—

(A) under the laws of such State, that class of transactions is subject to requirements substantially similar to those imposed under this subchapter; and

(B) there is adequate provision for the enforcement of such requirements; and

(6) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption under this paragraph or paragraph (5) by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) LIMITATIONS ON SUMMONS POWER.—

(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411[1] of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph

[1] See References in Text note below.

ments of this chapter" in 31:1054(a) are omitted as unnecessary because of section 321 of the revised title. The words "(except under section 5315 of this title and regulations prescribed under section 5315)" are added because 31:1141–1143 was not enacted as a part of the Currency and Foreign Transactions Reporting Act that is restated in this subchapter. In clause (1), the words "duties and powers" are substituted for "responsibilities" for consistency in the revised title and with other titles of the United States Code. The words "bank supervisory agency, or other" are omitted as surplus. In clause (2), the words "by regulation" and "as he may deem" are omitted as surplus. The words "and regulations prescribed under this subchapter" are added because of the restatement. In clause (3), the word "prescribe" is substituted for "make" in 31:1055 for consistency in the revised title and with other titles of the Code. The words "otherwise imposed", 31:1055(1st sentence), and the words "in his discretion" are omitted as surplus.

REFERENCES IN TEXT

Section 21 of the Federal Deposit Insurance Act, referred to in subsec. (b)(1), is classified to section 1829b of Title 12, Banks and Banking.

Section 411 of the National Housing Act, referred to in subsec. (b)(1), which was classified to section 1730d of Title 12, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

Chapter 2 of Public Law 91–508 (12 U.S.C. 1951 et seq.), referred to in subsec. (b)(1), probably means chapter 2 (§§ 121 to 129) of title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§ 1951 et seq.) of Title 12. For complete classification of chapter 2 to the Code, see Tables.

Subsection (a)(5), referred to in subsec. (f), was redesignated subsection (a)(6) by section 410(a)(2) of Pub. L. 103–325.

AMENDMENTS

1994—Subsec. (a)(5). Pub. L. 103–325, § 410(a), added par. (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 103–325, § 410(b), inserted "under this paragraph or paragraph (5)" after "revoke an exemption" in penultimate sentence.

Pub. L. 103–325, § 410(a)(2), redesignated par. (5) as (6).

Subsec. (g). Pub. L. 103–322, § 330017(b)(1), and Pub. L. 103–325, § 413(b)(1), amended directory language of Pub. L. 102–550, § 1517(b), identically. See 1992 Amendment note below.

Subsec. (g)(4). Pub. L. 103–325, § 403(a), added par. (4).

Subsec. (h). Pub. L. 103–322, § 330017(b)(1), and Pub. L. 103–325, § 413(b)(1), amended directory language of Pub. L. 102–550, § 1517(b), identically. See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–550, § 1504(d)(1), substituted "supervising agency and the United States Postal Service" for "supervising agency or the Postal Inspection Service and the Postal Service".

Subsec. (a)(2). Pub. L. 102–550, § 1513, inserted before semicolon "or to guard against money laundering".

Subsecs. (g), (h). Pub. L. 102–550, § 1517(b), as amended by Pub. L. 103–322, § 330017(b)(1), and Pub. L. 103–325, § 413(b)(1), added subsecs. (g) and (h).

1988—Subsec. (a)(1). Pub. L. 100–690, § 6469(c), inserted "or the Postal Inspection Service" after "appropriate supervising agency".

Pub. L. 100–690, § 6185(e), inserted "and the Postal Service" after "appropriate supervising agency".

1986—Pub. L. 99–570, § 1356(c)(2), substituted "Compliance, exemptions, and summons authority" for "Compliance and exemptions" in section catchline.

Subsec. (a). Pub. L. 99–570, § 1356(a)(1)–(5), designated existing provisions as subsec. (a), added subsec. heading, inserted "except as provided in subsection (b)(2)," in par. (1), added pars. (3) and (4), and redesignated former par. (3) as (5).

Subsecs. (b) to (e). Pub. L. 99–570, § 1356(a)(6), added subsecs. (b) to (e).

Subsec. (f). Pub. L. 99–570, § 1356(b), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330017(b)(1) of Pub. L. 103–322 and section 413(b)(1) of Pub. L. 103–325 provided that the identical amendments made by those sections are effective Oct. 28, 1992.

REPORTS

Section 403(b) of Pub. L. 103–325 provided that:

"(1) REPORTS REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress at the times required under paragraph (2) on the number of suspicious transactions reported to the officer or agency designated under section 5318(g)(4)(A) of title 31, United States Code, during the period covered by the report and the disposition of such reports.

"(2) TIME FOR SUBMITTING REPORTS.—The 1st report required under paragraph (1) shall be filed before the end of the 1-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994 [Sept. 23, 1994] and each subsequent report shall be filed within 90 days after the end of each of the 5 calendar years which begin after such date of enactment."

DESIGNATION REQUIRED TO BE MADE EXPEDITIOUSLY

Section 403(c) of Pub. L. 103–325 provided that: "The initial designation of an officer or agency of the United States pursuant to the amendment made by subsection (a) [amending this section] shall be made before the end of the 180-day period beginning on the date of enactment of this Act [Sept. 23, 1994]."

IMPROVEMENT OF IDENTIFICATION OF MONEY LAUNDERING SCHEMES

Section 404 of Pub. L. 103–325 provided that:

"(a) ENHANCED TRAINING, EXAMINATIONS, AND REFERRALS BY BANKING AGENCIES.—Before the end of the 6-month period beginning on the date of enactment of this Act [Sept. 23, 1994], each appropriate Federal banking agency shall, in consultation with the Secretary of the Treasury and other appropriate law enforcement agencies—

"(1) review and enhance training and examination procedures to improve the identification of money laundering schemes involving depository institutions; and

"(2) review and enhance procedures for referring cases to any appropriate law enforcement agency.

"(b) IMPROVED REPORTING OF CRIMINAL SCHEMES BY LAW ENFORCEMENT AGENCIES.—The Secretary of the Treasury and each appropriate law enforcement agency shall provide, on a regular basis, information regarding money laundering schemes and activities involving depository institutions to each appropriate Federal banking agency in order to enhance each agency's ability to examine for and identify money laundering activity.

"(c) REPORT TO CONGRESS.—The Financial Institutions Examination Council shall submit a report on the progress made in carrying out subsection (a) and the usefulness of information received pursuant to subsection (b) to the Congress by the end of the 1-year period beginning on the date of enactment of this Act.

"(d) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5313, 5321, 5322 of this title.

§ 5319. Availability of reports

The Secretary of the Treasury shall make information in a report filed under section 5313, 5314, or 5316 of this title available to an agency,

including any State financial institutions supervisory agency, on request of the head of the agency. The report shall be available for a purpose consistent with those sections or a regulation prescribed under those sections. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes. However, a report and records of reports are exempt from disclosure under section 552 of title 5.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 999; Pub. L. 102–550, title XV, § 1506, Oct. 28, 1992, 106 Stat. 4055.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5319	31:1052(j).	Oct. 26, 1970, Pub. L. 91–508, §§ 203(j), 212, 84 Stat. 1120, 1121.
	31:1061.	

The words "upon such conditions and pursuant to such procedures as he may by regulation prescribe" and "set forth" in 31:1061, and the word "specifically" in 31:1052(j), are omitted as surplus.

AMENDMENTS

1992—Pub. L. 102–550 substituted "to an agency, including any State financial institutions supervisory agency," for "to an agency" in first sentence and inserted after second sentence "The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes."

§ 5320. Injunctions

When the Secretary of the Treasury believes a person has violated, is violating, or will violate this subchapter or a regulation prescribed or order issued under this subchapter, the Secretary may bring a civil action in the appropriate district court of the United States or appropriate United States court of a territory or possession of the United States to enjoin the violation or to enforce compliance with the subchapter, regulation, or order. An injunction or temporary restraining order shall be issued without bond.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 999.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5320	31:1057.	Oct. 26, 1970, Pub. L. 91–508, § 208, 84 Stat. 1120.
	31:1143(b)(words before last comma).	Sept. 21, 1973, Pub. L. 93–110, § 203(b)(words before last comma), 87 Stat. 353.

The words "has violated, is violating, or will violate this subchapter" are substituted for "has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of the provisions of this chapter" in 31:1057 and "failed to submit a report required under any rule or regulation issued under this subchapter or has violated any rule or regulation issued hereunder" in 31:1143(b)(words before last comma) to eliminate unnecessary words. The words "or a regulation prescribed" are added because of the restatement. The words "in his discretion" are omitted as surplus. The word "civil" is added because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The word "possession" is substituted for "other place subject to the jurisdiction" for consistency in the revised title and with other titles of the United States Code. The words "or to enforce compliance with the subchapter, regulation, or order" are substituted for 31:1057(last sentence) and the words "a mandatory injunction commanding such person to comply with such rule or regulation" in 31:1143(b)(words before last comma) to eliminate unnecessary words. The words "and upon a proper showing . . . permanent or" are omitted as surplus.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5321 of this title.

§ 5321. Civil penalties

(a)(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315) is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed $100,000) involved in the transaction (if any) or $25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3) A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than $10,000.

(4) STRUCTURED TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States in connection with the transaction with respect to which such penalty is imposed.

(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates or any person willfully causing any violation of any provision of section 5314.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

(i) in the case of violation of such section involving a transaction, the greater of—

(I) the amount (not to exceed $100,000) of the transaction; or

(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

(II) $25,000.

(6) NEGLIGENCE.—

(A) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

(B) PATTERN OF NEGLIGENT ACTIVITY.—If any financial institution engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than $50,000 on the financial institution.

(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d)[1] of section 5317 of this title or civil penalty under subsection (a)(2) of this section.

(d) CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e) DELEGATION OF ASSESSMENT AUTHORITY TO BANKING AGENCIES.—

(1) IN GENERAL.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) AUTHORITY OF AGENCIES.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

(3) TERMS AND CONDITIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) MAXIMUM DOLLAR AMOUNT.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 999; Pub. L. 98–473, title II, § 901(a), Oct. 12, 1984, 98 Stat. 2135; Pub. L. 99–570, title I, §§ 1356(c)(1), 1357(a)–(f), (h), Oct. 27, 1986, 100 Stat. 3207–24—3207–26; Pub. L. 100–690, title VI, § 6185(g)(2), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 102–550, title XV, §§ 1511(b), 1525(b), 1535(a)(2), 1561(a), Oct. 28, 1992, 106 Stat. 4057, 4065, 4066, 4071; Pub. L. 103–322, title XXXIII, § 330017(a)(1), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103–325, title IV, §§ 406, 411(b), 413(a)(1), Sept. 23, 1994, 108 Stat. 2247, 2253, 2254; Pub. L. 104–208, div. A, title II, § 2223(3), Sept. 30, 1996, 110 Stat. 3009–415.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5321(a)(1)	31:1054(b)(last sentence related to civil penalties).	Oct. 26, 1970, Pub. L. 91–508, §§ 205(b)(last sentence related to civil penalties), 207, 233, 234, 84 Stat. 1120, 1123.
	31:1056(a).	
5321(a)(2)	31:1103.	
5321(a)(3)	31:1143(a), (b)(words after last comma).	Sept. 21, 1973, Pub. L. 93–110, § 203(a), (b)(words after last comma), 87 Stat. 353.
5321(b)	31:1058(b).	
5321(c)	31:1104.	

In subsection (a)(1), the words "or a regulation prescribed under this subchapter" are added because of the restatement. The words "(except section 5315 of this title or a regulation prescribed under section 5315)" are added because 31:1141–1143 was not enacted as a part of the Currency and Foreign Transactions Reporting Act that is restated in this subchapter. The words "is liable to the United States Government for" are substituted for "the Secretary may assess upon" in 31:1056(a) for consistency in the revised title and with other titles of the United States Code. The words "the purposes of both civil and criminal penalties for" in 31:1054(b)(last sentence)(related to civil penalties) are omitted, and the words "or a regulation prescribed under section 5318(2)" are added, because of the restatement. The words "the violation continues" are added for consistency in the revised title and with other titles of the

[1] So in original. Section 5317 does not contain a subsec. (d).

Code. The word "separate" before "office" is omitted as surplus.

In subsection (a)(2), the word "impose" is substituted for "assess" for consistency in the revised title and with other titles of the Code. The word "additional" is substituted for 31:1103(last sentence words before last comma) to eliminate unnecessary words. The words "or a regulation prescribed under section 5316" are added because of the restatement. The words "amount of this", "to be filed", and "actually" are omitted as surplus.

Subsection (a)(3) is substituted for 31:1143(a) and (b)(words after last comma) for clarity and consistency and because of the restatement.

In subsection (b), the words "in the discretion of", "in the name of the United States", and "of any person" are omitted as surplus.

In subsection (c), the words "in his discretion" and "upon such terms and conditions as he deems reasonable and just" are omitted as surplus. The word "civil" is added for clarity.

REFERENCES IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (e)(1), is classified to section 1813 of Title 12, Banks and Banking.

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104-208 struck out par. (7) which read as follows:

"(7) FINANCIAL INSTITUTION IDENTIFICATION VIOLATIONS.—

"(A) PENALTY AUTHORIZED.—The Secretary may impose a civil money penalty on any person who willfully violates any provision of section 5327 or any regulation prescribed under such section.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed $10,000 per day for each day during which a report remains unfiled or a report containing a material omission or misstatement of fact remains uncorrected."

1994—Subsec. (a)(4)(A). Pub. L. 103-325, §411(b), struck out "willfully" before "violates".

Subsec. (a)(5)(A). Pub. L. 103-322, §330017(a)(1) and Pub. L. 103-325, §413(a)(1), amended subpar. (A) identically, inserting "any violation of" after "causing".

Subsec. (e). Pub. L. 103-325, §406, added subsec. (e).

1992—Subsec. (a)(4)(C). Pub. L. 102-550, §1525(b), struck out "under section 5317(d)" after "forfeiture to the United States".

Subsec. (a)(5)(A). Pub. L. 102-550, §1535(a)(2), inserted "or any person willfully causing" after "willfully violates".

Subsec. (a)(6). Pub. L. 102-550, §1561(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "NEGLIGENCE.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter."

Subsec. (a)(7). Pub. L. 102-550, §1511(b), added par. (7).

1988—Subsec. (a)(1). Pub. L. 100-690 inserted "(if any)" after "transaction".

1986—Subsec. (a)(1). Pub. L. 99-570, §§1356(c)(1), 1357(b), substituted "sections 5314 and 5315" for "section 5315" in two places, substituted "5318(a)(2)" for "5318(2)" in two places, and substituted "the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000" for "$10,000".

Subsec. (a)(4). Pub. L. 99-570, §1357(a), added par. (4).

Subsec. (a)(5). Pub. L. 99-570, §1357(c), added par. (5).

Subsec. (a)(6). Pub. L. 99-570, §1357(d), added par. (6).

Subsec. (b). Pub. L. 99-570, §1357(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The Secretary may bring a civil action to recover a civil penalty under subsection (a)(1) or (2) of this section that has not been paid."

Subsec. (c). Pub. L. 99-570, §1357(h), substituted "subsection (c) or (d) of section 5317" for "section 5317(b)".

Subsec. (d). Pub. L. 99-570, §1357(f), added subsec. (d).

1984—Subsec. (a)(1). Pub. L. 98-473 substituted "$10,000" for "$1,000".

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1561(b) of Pub. L. 102-550 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to violations committed after the date of the enactment of this Act [Oct. 28, 1992]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1357(a) of Pub. L. 99-570, applicable with respect to violations committed after the end of the 3-month period beginning Oct. 27, 1986, see section 1364(b) of Pub. L. 99-570, set out as a note under section 5317 of this title.

Section 1364(c) of Pub. L. 99-570 provided that: "The amendments made by section 1357 (other than subsection (a) of such section) [amending sections 5321 and 5322 of this title] shall apply with respect to violations committed after the date of the enactment of this Act [Oct. 27, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5330 of this title; title 12 section 1829b.

§5322. Criminal penalties

(a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324) shall be fined not more than $250,000, or imprisoned for not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1000; Pub. L. 98-473, title II, §901(b), Oct. 12, 1984, 98 Stat. 2135; Pub. L. 99-570, title I, §§1356(c)(1), 1357(g), Oct. 27, 1986, 100 Stat. 3207-24, 3207-26; Pub. L. 102-550, title XV, §1504(d)(2), Oct. 28, 1992, 106 Stat. 4055; Pub. L. 103-325, title IV, §411(c)(1), Sept. 23, 1994, 108 Stat. 2253.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5322(a)	31:1058.	Oct. 26, 1970, Pub. L. 91-508, §§205(b)(last sentence related to criminal penalties), 209, 210, 84 Stat. 1120, 1121.
5322(b)	31:1059.	
5322(c)	31:1054(b)(last sentence related to criminal penalties).	

In subsections (a) and (b), the words "(except section 5315 of this title or a regulation prescribed under section 5315)" are added because 31:1141-1143 was not enacted as part of the Currency and Foreign Transactions Reporting Act that is restated in the subchapter.

In subsection (a), the word "prescribed" is added for consistency.

In subsection (b), the words "or a regulation prescribed under this subchapter" are added because of the restatement. The words "committed" and "the commission of" are omitted as surplus. The words "United States" are substituted for "Federal" for consistency in the revised title and with other titles of the United States Code.

In subsection (c), the words "the purposes of both civil and criminal penalties for" are omitted because of the restatement. The word "separate" before "office" is omitted as surplus.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103-325 inserted "or 5324" after "section 5315" wherever appearing.

1992—Subsec. (a). Pub. L. 102-550 substituted "imprisoned for" for "imprisonment".

1986—Subsec. (b). Pub. L. 99-570, §1357(g), substituted "any illegal activity involving" for "illegal activity involving transactions of" and "10 years" for "5 years".

Subsec. (c). Pub. L. 99-570, §1356(c)(1), substituted "5318(a)(2)" for "5318(2)" in two places.

1984—Subsec. (a). Pub. L. 98-473, which directed the substitution of "$250,000, or imprisonment not more than five years, or both" for "$1,000, or imprisonment not more than one year, or both", was executed by substituting the quoted wording for "$1,000, imprisoned for not more than one year, or both" to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1357(g) of Pub. L. 99-570 applicable with respect to violations committed after Oct. 27, 1986, see section 1364(c) of Pub. L. 99-570, set out as a note under section 5321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5321 of this title; title 12 sections 93, 1464, 1772d, 1786, 1818, 1821, 3105; title 18 sections 986, 1956, 2516.

§5323. Rewards for informants

(a) The Secretary may pay a reward to an individual who provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of this chapter.

(b) The Secretary shall determine the amount of a reward under this section. The Secretary may not award more than 25 per centum of the net amount of the fine, penalty, or forfeiture collected or $150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides information described in subsection (a) in the performance of official duties is not eligible for a reward under this section.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Added Pub. L. 98-473, title II, §901(e), Oct. 12, 1984, 98 Stat. 2135.)

§5324. Structuring transactions to evade reporting requirement prohibited

(a) DOMESTIC COIN AND CURRENCY TRANSACTIONS.—No person shall for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(b) INTERNATIONAL MONETARY INSTRUMENT TRANSACTIONS.—No person shall, for the purpose of evading the reporting requirements of section 5316—

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(c) CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

(Added Pub. L. 99-570, title I, §1354(a), Oct. 27, 1986, 100 Stat. 3207-22; amended Pub. L. 102-550, title XV, §§1517(a), 1525(a), 1535(a)(1), Oct. 28, 1992, 106 Stat. 4059, 4064, 4066; Pub. L. 103-322, title XXXIII, §330017(a)(2), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103-325, title IV, §§411(a), 413(a)(2), Sept. 23, 1994, 108 Stat. 2253, 2254.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, §330017(a)(2) and Pub. L. 103-325, §413(a)(2), amended subsec. (a), introductory provisions, identically, substituting "section 5313(a) or 5325 or any regulation prescribed under any such section" for "section 5313(a), section 5325, or the regulations issued thereunder or section 5325 or regulations prescribed under such section 5325" and striking out "with respect to such transaction" before dash.

Subsec. (a)(1), (2). Pub. L. 103-322, §330017(a)(2)(A) and Pub. L. 103-325, §413(a)(2)(A), amended pars. (1) and (2) identically, substituting "section 5313(a) or 5325 or any regulation prescribed under any such section" for "section 5313(a), section 5325, or the regulations issued thereunder or section 5325 or regulations prescribed under such section 5325".

Subsec. (c). Pub. L. 103-325, §411(a), added subsec. (c).

1992—Pub. L. 102-550, §1525(a)(1), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 102-550, §§1517(a), 1535(a)(1), inserted the following duplicative provisions "or section 5325 or regulations prescribed under such section 5325" and ", section 5325, or the regulations issued thereunder" after "section 5313(a)" wherever appearing.

EFFECTIVE DATE

Section 1304(a) of Pub. L. 99-570 provided that: "The amendment made by section 1354 [enacting this section] shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act [Oct. 27, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5317, 5321, 5322 of this title; title 12 sections 93, 1464, 1772d, 1786, 1818, 1821, 3420; title 18 sections 981, 982, 986, 1956; title 28 section 524.

§ 5325. Identification required to purchase certain monetary instruments

(a) IN GENERAL.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or more unless—

(1) the individual has a transaction account with such financial institution and the financial institution—

(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) REPORT TO SECRETARY UPON REQUEST.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported by such institution to the Secretary of the Treasury at the request of such Secretary.

(c) TRANSACTION ACCOUNT DEFINED.—For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

(Added Pub. L. 100-690, title VI, § 6185(b), Nov. 18, 1988, 102 Stat. 4355.)

REFERENCES IN TEXT

Section 19(b)(1)(C) of the Federal Reserve Act, referred to in subsec. (c), is classified to section 461(b)(1)(C) of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5324 of this title.

§ 5326. Records of certain domestic coin and currency transactions

(a) IN GENERAL.—If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area—

(1) to obtain such information as the Secretary may describe in such order concerning—

(A) any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) AUTHORITY TO ORDER DEPOSITORY INSTITUTIONS TO OBTAIN REPORTS FROM CUSTOMERS.—

(1) IN GENERAL.—The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

(A) to request any financial institution (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution under this subtitle with respect to any prior transaction (between such financial institution and any other person) which involved any portion of the coins or currency (or monetary instruments) which are involved in the reportable transaction with the depository institution; and

(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle with respect to the reportable transaction) a written notice to the Secretary that the financial institution failed to provide any copy of such report.

(2) REPORTABLE TRANSACTION DEFINED.—For purposes of this subsection, the term "reportable transaction" means any transaction involving coins or currency (or such other monetary instruments as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(c) NONDISCLOSURE OF ORDERS.—No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.

(d) MAXIMUM EFFECTIVE PERIOD FOR ORDER.—No order issued under subsection (a) shall be effective for more than 60 days unless renewed pursuant to the requirements of subsection (a).

(Added Pub. L. 100-690, title VI, § 6185(c), Nov. 18, 1988, 102 Stat. 4355; amended Pub. L. 102-550, title XV, §§ 1514, 1562, Oct. 28, 1992, 106 Stat. 4058, 4072.)

REFERENCES IN TEXT

Section 3(c) of the Federal Deposit Insurance Act, referred to in subsec. (b)(1), is classified to section 1813(c) of Title 12, Banks and Banking.

AMENDMENTS

1992—Subsecs. (b) to (d). Pub. L. 102-550 added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

[§ 5327. Repealed. Pub. L. 104-208, div. A, title II, § 2223(1), Sept. 30, 1996, 110 Stat. 3009-415]

Section, added Pub. L. 102-550, title XV, §1511(a), Oct. 28, 1992, 106 Stat. 4056, required Secretary to prescribe regulations requiring depository institutions to identify and report on financial institution customers.

§ 5328. Whistleblower protections

(a) PROHIBITION AGAINST DISCRIMINATION.—No financial institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Secretary of the Treasury, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this subchapter or section 1956, 1957, or 1960 of title 18, or any regulation under any such provision, by the financial institution or any director, officer, or employee of the financial institution.

(b) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

(c) REMEDIES.—If the district court determines that a violation has occurred, the court may order the financial institution which committed the violation to—

(1) reinstate the employee to the employee's former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) LIMITATION.—The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to the Secretary, the Attorney General, or any Federal supervisory agency.

(e) COORDINATION WITH OTHER PROVISIONS OF LAW.—This section shall not apply with respect to any financial institution which is subject to section 33 of the Federal Deposit Insurance Act, section 213 of the Federal Credit Union Act, or section 21A(q) of the Home Owners' Loan Act[1] (as added by section 251(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991).

(Added Pub. L. 102-550, title XV, § 1563(a), Oct. 28, 1992, 106 Stat. 4072.)

REFERENCES IN TEXT

Section 33 of the Federal Deposit Insurance Act, referred to in subsec. (e), is classified to section 1831j of Title 12, Banks and Banking.

Section 213 of the Federal Credit Union Act, referred to in subsec. (e), is classified to section 1790b of Title 12.

Section 21A(q) of the Home Owners' Loan Act, referred to in subsec. (e), probably means section 21A(q) of the Federal Home Loan Bank Act, which is classified to section 1441a(q) of Title 12.

§ 5329. Staff commentaries

The Secretary shall—

(1) publish all written rulings interpreting this subchapter; and

(2) annually issue a staff commentary on the regulations issued under this subchapter.

(Added Pub. L. 103-325, title III, § 311(a), Sept. 23, 1994, 108 Stat. 2221.)

§ 5330. Registration of money transmitting businesses

(a) REGISTRATION WITH SECRETARY OF THE TREASURY REQUIRED.—

(1) IN GENERAL.—Any person who owns or controls a money transmitting business shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury not later than the end of the 180-day period beginning on the later of—

(A) the date of enactment of the Money Laundering Suppression Act of 1994; or

(B) the date on which the business is established.

(2) FORM AND MANNER OF REGISTRATION.—Subject to the requirements of subsection (b), the Secretary of the Treasury shall prescribe, by regulation, the form and manner for registering a money transmitting business pursuant to paragraph (1).

(3) BUSINESSES REMAIN SUBJECT TO STATE LAW.—This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

(4) FALSE AND INCOMPLETE INFORMATION.—The filing of false or materially incomplete information in connection with the registration of a money transmitting business shall be considered as a failure to comply with the requirements of this subchapter.

(b) CONTENTS OF REGISTRATION.—The registration of a money transmitting business under

[1] See References in Text note below.

subsection (a) shall include the following information:

(1) The name and location of the business.

(2) The name and address of each person who—

(A) owns or controls the business;

(B) is a director or officer of the business; or

(C) otherwise participates in the conduct of the affairs of the business.

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act).

(4) An estimate of the volume of business in the coming year (which shall be reported annually to the Secretary).

(5) Such other information as the Secretary of the Treasury may require.

(c) AGENTS OF MONEY TRANSMITTING BUSINESSES.—

(1) MAINTENANCE OF LISTS OF AGENTS OF MONEY TRANSMITTING BUSINESSES.—Pursuant to regulations which the Secretary of the Treasury shall prescribe, each money transmitting business shall—

(A) maintain a list containing the names and addresses of all persons authorized to act as an agent for such business in connection with activities described in subsection (d)(1)(A) and such other information about such agents as the Secretary may require; and

(B) make the list and other information available on request to any appropriate law enforcement agency.

(2) TREATMENT OF AGENT AS MONEY TRANSMITTING BUSINESS.—The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of this section.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MONEY TRANSMITTING BUSINESS.—The term "money transmitting business" means any business other than the United States Postal Service which—

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments;

(B) is required to file reports under section 5313; and

(C) is not a depository institution (as defined in section 5313(g)).

(2) MONEY TRANSMITTING SERVICE.—The term "money transmitting service" includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

(e) CIVIL PENALTY FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—

(1) IN GENERAL.—Any person who fails to comply with any requirement of this section or any regulation prescribed under this section shall be liable to the United States for a civil penalty of $5,000 for each such violation.

(2) CONTINUING VIOLATION.—Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

(3) ASSESSMENTS.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in section 5321 and any such assessment shall be subject to the provisions of such section.

(Added Pub. L. 103-325, title IV, § 408(b), Sept. 23, 1994, 108 Stat. 2250.)

REFERENCES IN TEXT

The date of enactment of the Money Laundering Suppression Act of 1994, referred to in subsec. (a)(1)(A), is the date of enactment of title IV of Pub. L. 103-325, which was approved Sept. 23, 1994.

Section 19(b)(1)(C) of the Federal Reserve Act, referred to in subsec. (d)(3), is classified to section 461(b)(1)(C) of Title 12, Banks and Banking.

FINDINGS AND PURPOSES

Section 408(a) of Pub. L. 103-325 provided that:

"(1) FINDINGS.—The Congress hereby finds the following:

"(A) Money transmitting businesses are subject to the recordkeeping and reporting requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) Money transmitting businesses are largely unregulated businesses and are frequently used in sophisticated schemes to—

"(i) transfer large amounts of money which are the proceeds of unlawful enterprises; and

"(ii) evade the requirements of such subchapter II, the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], and other laws of the United States.

"(C) Information on the identity of money transmitting businesses and the names of the persons who own or control, or are officers or employees of, a money transmitting business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.

"(2) PURPOSE.—It is the purpose of this section [enacting this section and amending section 1960 of Title 18, Crimes and Criminal Procedure] to establish a registration requirement for businesses engaged in providing check cashing, currency exchange, or money transmitting or remittance services, or issuing or redeeming money orders, travelers' checks, and other similar instruments to assist the Secretary of the Treasury, the Attorney General, and other supervisory and law enforcement agencies to effectively enforce the criminal, tax, and regulatory laws and prevent such money transmitting businesses from engaging in illegal activities."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1960.

SUBCHAPTER III—MONEY LAUNDERING AND RELATED FINANCIAL CRIMES

§ 5340. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) DEPARTMENT OF THE TREASURY LAW ENFORCEMENT ORGANIZATIONS.—The term "Department of the Treasury law enforcement organizations" has the meaning given to such term in section 9703(p)(1).

(2) MONEY LAUNDERING AND RELATED FINANCIAL CRIME.—The term "money laundering and related financial crime"—

(A) means the movement of illicit cash or cash equivalent proceeds into, out of, or through the United States, or into, out of, or through United States financial institutions, as defined in section 5312 of title 31, United States Code; or

(B) has the meaning given that term (or the term used for an equivalent offense) under State and local criminal statutes pertaining to the movement of illicit cash or cash equivalent proceeds.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(4) ATTORNEY GENERAL.—The term "Attorney General" means the Attorney General of the United States.

(Added Pub. L. 105-310, § 2(a), Oct. 30, 1998, 112 Stat. 2941.)

PART I—NATIONAL MONEY LAUNDERING AND RELATED FINANCIAL CRIMES STRATEGY

§ 5341. National money laundering and related financial crimes strategy

(a) DEVELOPMENT AND TRANSMITTAL TO CONGRESS.—

(1) DEVELOPMENT.—The President, acting through the Secretary and in consultation with the Attorney General, shall develop a national strategy for combating money laundering and related financial crimes.

(2) TRANSMITTAL TO CONGRESS.—By February 1 of 1999, 2000, 2001, 2002, and 2003, the President shall submit a national strategy developed in accordance with paragraph (1) to the Congress.

(3) SEPARATE PRESENTATION OF CLASSIFIED MATERIAL.—Any part of the strategy that involves information which is properly classified under criteria established by Executive Order shall be submitted to the Congress separately in classified form.

(b) DEVELOPMENT OF STRATEGY.—The national strategy for combating money laundering and related financial crimes shall address any area the President, acting through the Secretary and in consultation with the Attorney General, considers appropriate, including the following:

(1) GOALS, OBJECTIVES, AND PRIORITIES.—Comprehensive, research-based goals, objectives, and priorities for reducing money laundering and related financial crime in the United States.

(2) PREVENTION.—Coordination of regulatory and other efforts to prevent the exploitation of financial systems in the United States for money laundering and related financial crimes, including a requirement that the Secretary shall—

(A) regularly review enforcement efforts under this subchapter and other provisions of law and, when appropriate, modify existing regulations or prescribe new regulations for purposes of preventing such criminal activity; and

(B) coordinate prevention efforts and other enforcement action with the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Federal Trade Commission, other Federal banking agencies, the National Credit Union Administration Board, and such other Federal agencies as the Secretary, in consultation with the Attorney General, determines to be appropriate.

(3) DETECTION AND PROSECUTION INITIATIVES.—A description of operational initiatives to improve detection and prosecution of money laundering and related financial crimes and the seizure and forfeiture of proceeds and instrumentalities derived from such crimes.

(4) ENHANCEMENT OF THE ROLE OF THE PRIVATE FINANCIAL SECTOR IN PREVENTION.—The enhancement of partnerships between the private financial sector and law enforcement agencies with regard to the prevention and detection of money laundering and related financial crimes, including providing incentives to strengthen internal controls and to adopt on an industrywide basis more effective policies.

(5) ENHANCEMENT OF INTERGOVERNMENTAL COOPERATION.—The enhancement of—

(A) cooperative efforts between the Federal Government and State and local officials, including State and local prosecutors and other law enforcement officials; and

(B) cooperative efforts among the several States and between State and local officials, including State and local prosecutors and other law enforcement officials,

for financial crimes control which could be utilized or should be encouraged.

(6) PROJECT AND BUDGET PRIORITIES.—A 3-year projection for program and budget priorities and achievable projects for reductions in financial crimes.

(7) ASSESSMENT OF FUNDING.—A complete assessment of how the proposed budget is intended to implement the strategy and whether the funding levels contained in the proposed budget are sufficient to implement the strategy.

(8) DESIGNATED AREAS.—A description of geographical areas designated as "high-risk money laundering and related financial crime areas" in accordance with, but not limited to, section 5342.

(9) PERSONS CONSULTED.—Persons or officers consulted by the Secretary pursuant to subsection (d).

(10) DATA REGARDING TRENDS IN MONEY LAUNDERING AND RELATED FINANCIAL CRIMES.—The need for additional information necessary for the purpose of developing and analyzing data in order to ascertain financial crime trends.

(11) IMPROVED COMMUNICATIONS SYSTEMS.—A plan for enhancing the compatibility of automated information and facilitating access of the Federal Government and State and local governments to timely, accurate, and complete information.

(c) EFFECTIVENESS REPORT.—At the time each national strategy for combating financial crimes is transmitted by the President to the Congress (other than the first transmission of

SUBCHAPTER III—SPECIAL PROGRAMS RELATING TO ADULT EDUCATION FOR INDIANS

§ 2631. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100–297, title V, § 5330, Apr. 28, 1988, 102 Stat. 410, related to improvement of educational opportunities for adult Indians. See section 7851 of Title 20, Education.

SUBCHAPTER IV—PROGRAM ADMINISTRATION

§§ 2641 to 2643. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2641, Pub. L. 100–297, title V, § 5341, Apr. 28, 1988, 102 Stat. 411; Pub. L. 100–427, § 21, Sept. 9, 1988, 102 Stat. 1612, related to establishment of Office of Indian Education within Department of Education. See section 3423c of Title 20, Education.

Section 2642, Pub. L. 100–297, title V, § 5342, Apr. 28, 1988, 102 Stat. 412; Pub. L. 100–427, § 22, Sept. 9, 1988, 102 Stat. 1613, established National Advisory Council on Indian Education. See section 7871 of Title 20, Education.

Section 2643, Pub. L. 100–297, title V, § 5343, Apr. 28, 1988, 102 Stat. 413, authorized appropriations for administration of Indian education programs. See section 7882 of Title 20, Education.

SUBCHAPTER V—MISCELLANEOUS

§ 2651. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100–297, title V, § 5351, Apr. 28, 1988, 102 Stat. 413; Pub. L. 100–427, § 23, Sept. 9, 1988, 102 Stat. 1613, defined terms for purposes of this chapter. See section 7881 of Title 20, Education.

CHAPTER 29—INDIAN GAMING REGULATION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 81, 712e, 941l, 1708, 1775b, 4303 of this title; title 31 section 5312.

§ 2701. Findings

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

(Pub. L. 100–497, § 2, Oct. 17, 1988, 102 Stat. 2467.)

SHORT TITLE

Section 1 of Pub. L. 100–497 provided: "That this Act [enacting this chapter and sections 1166 to 1168 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Indian Gaming Regulatory Act'."

§ 2702. Declaration of policy

The purpose of this chapter is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

(Pub. L. 100–497, § 3, Oct. 17, 1988, 102 Stat. 2467.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2703. Definitions

For purposes of this chapter—

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term "Indian lands" means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which—

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

(Pub. L. 100-497, § 4, Oct. 17, 1988, 102 Stat. 2467; Pub. L. 102-238, § 2(a), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 102-497, § 16, Oct. 24, 1992, 106 Stat. 3261.)

AMENDMENTS

1992—Par. (7)(E). Pub. L. 102-497 struck out "or Montana" after "Wisconsin".

1991—Par. (7)(E), (F). Pub. L. 102-238 added subpars. (E) and (F).

CLASS II GAMING WITH RESPECT TO INDIAN TRIBES IN WISCONSIN OR MONTANA ENGAGED IN NEGOTIATING TRIBAL-STATE COMPACTS

Pub. L. 101-301, § 6, May 24, 1990, 104 Stat. 209, provided that: "Notwithstanding any other provision of law, the term 'class II gaming' includes, for purposes of applying Public Law 100-497 [25 U.S.C. 2701 et seq.] with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act [May 24, 1990], any gaming described in section 4(7)(B)(ii) of Public Law 100-497 [25 U.S.C. 2703(7)(B)(ii)] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100-497 [25 U.S.C. 2710(d)(3)]."

TRIBAL-STATE COMPACT COVERING INDIAN TRIBES IN MINNESOTA; OPERATION OF CLASS II GAMES; ALLOWANCE OF ADDITIONAL YEAR FOR NEGOTIATIONS

Pub. L. 101-121, title I, § 118, Oct. 23, 1989, 103 Stat. 722, provided that: "Notwithstanding any other provision of law, the term 'Class II gaming' in Public Law 100-497 [25 U.S.C. 2701 et seq.], for any Indian tribe located in the State of Minnesota, includes, during the period commencing on the date of enactment of this Act [Oct. 23, 1989] and continuing for 365 days from that date, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 [25 U.S.C. 2703(7)(B)(ii)] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdication [sic] over the lands on which such gaming was operated, requested the State of Minnesota, no later than 30 days after the date of enactment of Public Law 100-497 [Oct. 17, 1988], to negotiate a tribal-state compact pursuant to section 11(d)(3) of Public Law 100-497 [25 U.S.C. 2710(d)(3)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1775b of this title; title 10 section 2323a; title 26 sections 45A, 168, 3402; title 28 sections 3701, 3704; title 31 section 5312.

§ 2704. National Indian Gaming Commission

(a) Establishment

There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b) Composition; investigation; term of office; removal

(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission—

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management con-

tract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies

Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

(d) Quorum

Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) Vice Chairman

The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) Meetings

The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g) Compensation

(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5.

(3) All members of the Commission shall be reimbursed in accordance with title 5 for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(Pub. L. 100-497, § 5, Oct. 17, 1988, 102 Stat. 2469.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2708 of this title.

§ 2705. Powers of Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

(2) levy and collect civil fines as provided in section 2713(a) of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

(Pub. L. 100-497, § 6, Oct. 17, 1988, 102 Stat. 2470.)

§ 2706. Powers of Commission

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission—

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(Pub. L. 100-497, § 7, Oct. 17, 1988, 102 Stat. 2470.)

CODIFICATION

Subsec. (c) of this section, which required the Commission to submit a report to Congress every two years

on various matters relating to the operation of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 114 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2710 of this title.

§ 2707. Commission staffing

(a) General Counsel

The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

(b) Staff

The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5 governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) Temporary services

The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(Pub. L. 100-497, § 8, Oct. 17, 1988, 102 Stat. 2471.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2703, 2705, 2711, 2712, 2713, 2714, 2719 of this title; title 18 section 1166.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(Pub. L. 100-497, § 9, Oct. 17, 1988, 102 Stat. 2472.)

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

(Pub. L. 100-497, § 10, Oct. 17, 1988, 102 Stat. 2472.)

§ 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any 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 of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section[1]

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such

[1] So in original. Probably should be followed by a comma.

lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe[2] to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date

[2] So in original. Probably should not be capitalized.

on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(c) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

(Pub. L. 100-497, §11, Oct. 17, 1988, 102 Stat. 2472.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1775b, 2703 of this title.

§2711. Management contracts

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

(D) has been determined 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 the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this chapter; or

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

(f) Modification or voiding

The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land

No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority

The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

(i) Investigation fee

The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

(Pub. L. 100-497, § 12, Oct. 17, 1988, 102 Stat. 2479.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2704, 2705, 2710, 2712, 2714 of this title.

§ 2712. Review of existing ordinances and contracts

(a) Notification to submit

As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this chapter, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a) of this section, the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 2710(b) of this title.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c) Approval or modification of management contract

(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, and the management contractor under such contract, meet the requirements of section 2711 of this title, the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a) of this section, or the management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to October 17, 1988, the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

(Pub. L. 100-497, §13, Oct. 17, 1988, 102 Stat. 2481.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2710, 2713, 2714 of this title.

§2713. Civil penalties

(a) Authority; amount; appeal; written complaint

(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fine under subsection (a)(1) of this section, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision

A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5.

(d) Regulatory authority under tribal law

Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

(Pub. L. 100-497, §14, Oct. 17, 1988, 102 Stat. 2482.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2705, 2706, 2714 of this title.

§2714. Judicial review

Decisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5.

(Pub. L. 100-497, §15, Oct. 17, 1988, 102 Stat. 2483.)

§2715. Subpoena and deposition authority

(a) Attendance, testimony, production of papers, etc.

By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers,

and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice

A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witness fees

Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Pub. L. 100-497, § 16, Oct. 17, 1988, 102 Stat. 2483.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2706 of this title.

§ 2716. Investigative powers

(a) Confidential information

Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5.

(b) Provision to law enforcement officials

The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General

The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

(Pub. L. 100-497, § 17, Oct. 17, 1988, 102 Stat. 2484.)

§ 2717. Commission funding

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

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

(ii) no more than 5 percent of amounts in excess of the first $1,500,000,

of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed $8,000,000.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

(Pub. L. 100-497, §18, Oct. 17, 1988, 102 Stat. 2484; Pub. L. 105-83, title I, §123(a)(1)-(2)(B), Nov. 14, 1997, 111 Stat. 1566.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-83, §123(a)(1), substituted "gaming operation that conducts a class II or class III gaming activity" for "class II gaming activity".

Subsec. (a)(2)(A)(i). Pub. L. 105-83, §123(a)(2)(A), substituted "no more than 2.5 percent" for "no less than 0.5 percent nor more than 2.5 percent".

Subsec. (a)(2)(B). Pub. L. 105-83, §123(a)(2)(B), substituted "$8,000,000" for "$1,500,000".

APPLICATION TO SELF-REGULATED TRIBES

Pub. L. 105-83, title I, §123(a)(2)(C), Nov. 14, 1997, 111 Stat. 1566, as amended by Pub. L. 105-277, div. A, §101(e) [title III, §338], Oct. 21, 1998, 112 Stat. 2681-231, 2681-295, provided that: "[N]othing in subsection (a) of this section [amending this section] shall apply to the Mississippi Band of Choctaw."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2706, 2710, 2717a, 2718 of this title.

§2717a. Availability of class II gaming activity fees to carry out duties of Commission

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

(Pub. L. 101-121, title I, Oct. 23, 1989, 103 Stat. 718.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1990, and not as part of the Indian Gaming Regulatory Act which comprises this chapter.

§2718. Authorization of appropriations

(a) Subject to section 2717 of this title, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title.

(b) Notwithstanding section 2717 of this title, there are authorized to be appropriated to fund the operation of the Commission, $2,000,000 for fiscal year 1998, and $2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a) of this section.

(Pub. L. 100-497, §19, Oct. 17, 1988, 102 Stat. 2485; Pub. L. 102-238, §2(b), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 105-83, title I, §123(b), Nov. 14, 1997, 111 Stat. 1566; Pub. L. 105-119, title VI, §627, Nov. 26, 1997, 111 Stat. 2522.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105-119 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Subject to the provisions of section 2717 of this title, there are hereby authorized to be appropriated for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved, for the operation of the Commission."

Pub. L. 105-83, §123(b)(1), substituted "for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved," for "such sums as may be necessary".

Subsec. (b). Pub. L. 105-83, §123(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: "Notwithstanding the provisions of section 2717 of this title, there are hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988, and October 1, 1989. Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992."

1991—Subsec. (b). Pub. L. 102-238 inserted at end "Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2717 of this title.

§2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State and

local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of title 26

(1) The provisions of title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

(Pub. L. 100-497, § 20, Oct. 17, 1988, 102 Stat. 2485.)

§ 2720. Dissemination of information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

(Pub. L. 100-497, § 21, Oct. 17, 1988, 102 Stat. 2486.)

§ 2721. Severability

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

(Pub. L. 100-497, § 22, Oct. 17, 1988, 102 Stat. 2486.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CHAPTER 30—INDIAN LAW ENFORCEMENT REFORM

Sec.
2801. Definitions.
2802. Indian law enforcement responsibilities.
(a) Responsibility of Secretary.
(b) Division of Law Enforcement Services; establishment and responsibilities.
(c) Additional responsibilities of Division.
(d) Branch of Criminal Investigations; establishment, responsibilities, regulations, personnel, etc.
(e) Division of Law Enforcement Services personnel; standards of education, experience, etc.; classification of positions.
2803. Law enforcement authority.
2804. Assistance by other agencies.
(a) Agreement for use of personnel or facilities of Federal, tribal, State, or other government agency.
(b) Agreement to be in accord with agreements between Secretary and Attorney General.
(c) Limitations on use of personnel of non-Federal agency.
(d) Authority of Federal agency head to enter into agreement with Secretary.
(e) Authority of Federal agency head to enter into agreement with Indian tribe.
(f) Status of person as Federal employee.
2805. Regulations.
2806. Jurisdiction.
(a) Investigative jurisdiction over offenses against criminal laws.
(b) Exercise of investigative authority.
(c) Law enforcement commission or other delegation of prior authority not invalidated or diminished.
(d) Authorities in addition to prior authority; civil or criminal jurisdiction, law enforcement, investigative, or judicial authority, of United States, Indian tribes, States, etc., unaffected.

under this section shall be liable to the United States for a civil penalty of $5,000 for each such violation.

"(2) CONTINUING VIOLATION.—Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

"(3) ASSESSMENTS.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in section 5321 and any such assessment shall be subject to the provisions of such section.".

(c) CRIMINAL PENALTY FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—Section 1960(b)(1) of title 18, United States Code, is amended to read as follows:

"(1) the term 'illegal money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

"(A) is intentionally operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law; or

"(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section;".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5329 (as added by section 311) the following new item:

"5330. Registration of money transmitting businesses.".

SEC. 409. UNIFORM FEDERAL REGULATION OF CASINOS.

Section 5312(a)(2) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (X) and (Y) as subparagraphs (Y) and (Z), respectively; and

(2) by inserting after subparagraph (W) the following new subparagraph:

"(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

"(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

"(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);".

SEC. 410. AUTHORITY TO GRANT EXEMPTIONS TO STATES WITH EFFECTIVE REGULATION AND ENFORCEMENT.

(a) IN GENERAL.—Section 5318(a) of title 31, United States Code, is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following new paragraph:

or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, ch. 505, §2, 67 Stat. 588; amended Aug. 24, 1954, ch. 910, §1, 68 Stat. 795; Pub. L. 85-615, §1, Aug. 8, 1958, 72 Stat. 545; Pub. L. 91-523, §§1, 2, Nov. 25, 1970, 84 Stat. 1358.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-523, §1, substituted provisions relating to the jurisdiction of the State of Alaska over offenses by or against Indians in the Indian country, and certain excepted areas, for provisions relating to the jurisdiction of the Territory of Alaska over offenses by or against Indians in the Indian country.

Subsec. (c). Pub. L. 91-523, §2, inserted "as areas over which the several States have exclusive jurisdiction" after "subsection (a) of this section".

1958—Subsec. (a). Pub. L. 85-615 gave Alaska jurisdiction over offenses committed by or against Indians in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 566e, 711e, 713f, 714e, 715d, 1300b-15, 1300f, 1300i-1, 1323, 1747, 1772d, 1918, 2433.

§ 1163. Embezzlement and theft from Indian tribal organizations

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

As used in this section, the term "Indian tribal organization" means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

(Added Aug. 1, 1956, ch. 822, §2, 70 Stat. 792; amended Pub. L. 103-322, title XXXIII, §330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511.)

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§ 1164. Destroying boundary and warning signs

Whoever willfully destroys, defaces, or removes any sign erected by an Indian tribe, or a Government agency (1) to indicate the boundary of an Indian reservation or of any Indian country as defined in section 1151 of this title or (2) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall be fined under this title or imprisoned not more than six months, or both.

(Added Pub. L. 86-634, §1, July 12, 1960, 74 Stat. 469; amended Pub. L. 103-322, title XXXIII, §330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than $250".

§ 1165. Hunting, trapping, or fishing on Indian land

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined under this title or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(Added Pub. L. 86-634, §2, July 12, 1960, 74 Stat. 469; amended Pub. L. 103-322, title XXXIII, §330016(1)(D), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than $200".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1166. Gambling in Indian country

(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the li-

or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, ch. 505, §2, 67 Stat. 588; amended Aug. 24, 1954, ch. 910, §1, 68 Stat. 795; Pub. L. 85–615, §1, Aug. 8, 1958, 72 Stat. 545; Pub. L. 91–523, §§1, 2, Nov. 25, 1970, 84 Stat. 1358.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–523, §1, substituted provisions relating to the jurisdiction of the State of Alaska over offenses by or against Indians in the Indian country, and certain excepted areas, for provisions relating to the jurisdiction of the Territory of Alaska over offenses by or against Indians in the Indian country.

Subsec. (c). Pub. L. 91–523, §2, inserted "as areas over which the several States have exclusive jurisdiction" after "subsection (a) of this section".

1958—Subsec. (a). Pub. L. 85–615 gave Alaska jurisdiction over offenses committed by or against Indians in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 566e, 71le, 713f, 714e, 715d, 1300b–15, 1300f, 1300i–1, 1323, 1747, 1772d, 1918, 2433.

§ 1163. Embezzlement and theft from Indian tribal organizations

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

As used in this section, the term "Indian tribal organization" means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

(Added Aug. 1, 1956, ch. 822, §2, 70 Stat. 792; amended Pub. L. 103–322, title XXXIII, §330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511.)

AMENDMENTS

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Whoever willfully destroys, defaces, or removes any sign erected by an Indian tribe, or a Government agency (1) to indicate the boundary of an Indian reservation or of any Indian country as defined in section 1151 of this title or (2) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall be fined under this title or imprisoned not more than six months, or both.

(Added Pub. L. 86–634, §1, July 12, 1960, 74 Stat. 469; amended Pub. L. 103–322, title XXXIII, §330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $250".

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Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined under this title or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(Added Pub. L. 86–634, §2, July 12, 1960, 74 Stat. 469; amended Pub. L. 103–322, title XXXIII, §330016(1)(D), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1166. Gambling in Indian country

(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the li-

censing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

(b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(c) For the purpose of this section, the term "gambling" does not include—

(1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or

(2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect.

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

(Added Pub. L. 100-497, §23, Oct. 17, 1988, 102 Stat. 2487.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (c), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, which enacted sections 1166 to 1168 of this title and chapter 25 (§2701 et seq.) of Title 25, Indians. Section 11(d)(8) of such Act is classified to section 2710(d)(8) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 25 and Tables.

§1167. Theft from gaming establishments on Indian lands

(a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value of $1,000 or less belonging to an establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title or be imprisoned for not more than one year, or both.

(b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of $1,000 belonging to a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title, or imprisoned for not more than ten years, or both.

(Added Pub. L. 100-497, §23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 103-322, title XXXIII, §330016(1)(S), (U), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, §330016(1)(S), substituted "fined under this title" for "fined not more than $100,000".

Subsec. (b). Pub. L. 103-322, §330016(1)(U), substituted "fined under this title" for "fined not more than $250,000".

§1168. Theft by officers or employees of gaming establishments on Indian lands

(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less shall be fined not more than $250,000 or imprisoned not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more than twenty years, or both.

(Added Pub. L. 100-497, §23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 101-647, title XXXV, §3537, Nov. 29, 1990, 104 Stat. 4925.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647 substituted "or imprisoned" for "and be imprisoned for".

§1169. Reporting of child abuse

(a) Any person who—

(1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a

or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, ch. 505, § 2, 67 Stat. 588; amended Aug. 24, 1954, ch. 910, § 1, 68 Stat. 795; Pub. L. 85–615, § 1, Aug. 8, 1958, 72 Stat. 545; Pub. L. 91–523, §§ 1, 2, Nov. 25, 1970, 84 Stat. 1358.)

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Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

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(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more than twenty years, or both.

(Added Pub. L. 100-497, §23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 101-647, title XXXV, §3537, Nov. 29, 1990, 104 Stat. 4925.)

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(1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a

Federal Register

Thursday,
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Part II

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Casinos and Card Clubs Report Suspicious Transactions; Final Rule and Notice

60722 Federal Register / Vol. 67, No. 187 / Thursday, September 26, 2002 / Rules and Regulations

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Casinos and Card Clubs Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require casinos and card clubs to report suspicious transactions to the Department of the Treasury. Further, the amendments make certain changes to the requirement that casinos and card clubs maintain Bank Secrecy Act compliance programs. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: *Effective Date:* October 28, 2002.

Applicability Date: For suspicious transaction reporting, the applicability date is March 25, 2003. *See* 31 CFR 103.21(g) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia and Shelley Waxman, Senior Regulatory Compliance Program Specialists, Office of Compliance and Regulatory Enforcement, FinCEN, (202) 354–6400; and Judith R. Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions.

The Bank Secrecy Act ("BSA"), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[2] to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." *Id.*, at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h), also added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury "[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs." 31 U.S.C. 5318(h)(1). Those programs may include "the development of internal policies, procedures, and controls"; "the designation of a compliance officer"; "an ongoing employee training program"; and "an independent audit function to test programs." 31 U.S.C. 5318(h)(A–D). In 1994, Treasury adopted a regulation requiring casinos to implement anti-money laundering programs in accordance with 31 U.S.C. 5318(h).[4]

Section 352 of the USA Patriot Act amended section 5318(h) to mandate compliance programs for all financial institutions defined in 31 U.S.C. 5312(a)(2). Section 352 of the USA Patriot Act became effective April 24, 2002. On April 29, 2002, Treasury issued an interim final rule providing that certain financial institutions, including casinos, would be deemed to be in compliance with 31 U.S.C. 5318(h) if they establish and maintain anti-money laundering programs as required by existing FinCEN regulations, or their respective federal regulator or self-regulatory organization.[5] Therefore, a casino or a card club that implements

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the "Annunzio-Wylie Anti-Money Laundering Act"), Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

[4] *See* 59 FR 61660 (December 1, 1994).

[5] *See* 67 FR 21110 and 31 CFR 103.120(d).

and maintains a compliance program as required by 31 CFR 103.64 will be deemed to be in compliance with the requirements of 31 U.S.C. 5318(h)(1).

II. Application of the Bank Secrecy Act to Casinos and Card Clubs

With this rule, the Department of the Treasury extends to casinos and card clubs the suspicious transaction reporting regime to which the nation's banks, thrift institutions, credit unions, broker-dealers, and certain money services businesses, including money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, are already subject. Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996.[6] Money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks were made subject to the suspicious transaction reporting requirement on March 14, 2000.[7] On July 1, 2002, FinCEN published a final rule requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002.[8]

State licensed gambling casinos were generally made subject to the BSA as of May 7, 1985, by regulation issued early that year. *See* 50 FR 5065 (February 6, 1985).[9] Special BSA regulations relating to casinos were issued in 1987, and amended in 1989 and (more significantly) in 1994. *See* 52 FR 11443 (April 8, 1987), 54 FR 1165 (January 12, 1989), and 59 FR 61660 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538 (March 12, 1993)). These actions reflect the continuing determination not only that casinos are vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services, such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

In recognition of the importance of the application of the BSA to the casino gaming industry, section 409 of the Money Laundering Suppression Act codified the application of the BSA to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the BSA itself. The statutory provision found at 31 U.S.C. 5312(a)(2)(X) reads:

(2) Financial institution means—

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) Is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) Is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act).

* * *

Gambling casinos authorized to do business under the Indian Gaming Regulatory Act became subject to the BSA on August 1, 1996, *see* 61 FR 7054 (February 23, 1996), and the class of gaming establishments known as "card clubs" became subject to the BSA on August 1, 1998.[10] *See* 63 FR 1919 (January 13, 1998).

Since May 1985, casinos located in Nevada have been exempt from certain BSA requirements pursuant to a memorandum of agreement between the Treasury Department and the State of Nevada on behalf of Nevada casinos under 31 CFR 103.45(c)(1) (subsequently renumbered as 103.55).[11] By its terms, the memorandum of agreement only exempts Nevada casinos from the BSA requirements applicable to casinos at the time it was signed, including currency transaction reporting and recordkeeping requirements. Therefore, casinos in Nevada must comply with the final rule published in this document.

III. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Program

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the casino's financial services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, relates to the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including casinos, in attempts to launder funds.[12] Indeed, many non-banks have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The National Money Laundering Strategy for 2002 (the "2002

[6] The suspicious transaction reporting rule for banks is found at 31 CFR 103.18. In collaboration with FinCEN, the federal bank supervisors (the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA")) concurrently issued suspicious transaction reporting rules under their own authority. *See* 12 CFR 208.62 (Federal Reserve); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). The bank supervisory agency rules apply to banks, non-depository institution affiliates and subsidiaries of banks and bank holding companies, and bank holding companies.

[7] The suspicious transaction reporting rule for these money services businesses is found at 31 CFR 103.20.

[8] *See* 67 FR 44048. This rule can be found at 31 CFR 103.19.

[9] Casinos whose gross annual gaming revenue do not exceed $1 million were, and continue to be, excluded from Bank Secrecy Act coverage.

[10] Generally card clubs are subject to the same rules as casinos, unless a specific provision of the rules are 31 CFR part 103 applicable to casinos explicitly requires a different treatment for card clubs. As in the case of casinos, card clubs whose gross annual gaming revenue is $1 million or less are excluded from BSA coverage. *See* 31 CFR 103.11(n)(8).

[11] 31 CFR 103.55(c)(1) provides that the Secretary of the Treasury may grant exemptions to casinos in any state "whose regulatory system substantially meets the reporting and recordkeeping requirements of this part."

[12] *See*, *e.g.*, *United States* v. *Vanhorn*, 2002 U.S. App. LEXIS 14277 (8th Cir. July 16, 2002) (defendant converted illegally-derived money into cash at casino, then deposited it as gambling proceeds into investment account); *United States* v. *Bockius*, 228 F.3d 305 (3rd Cir. 2000) (defendant laundered money by wiring funds to casino, losing some of the money gambling, and taking the remainder of the cash); *United States* v. *Napoli*, 179 F.3d (2nd Cir. 1999) (sentencing of defendant convicted of money laundering by depositing funds derived from scheme to defraud cigarette importers into casino account, gambling a portion, then cashing the remainder out).

Strategy")[13] reaffirms Treasury's commitment, expressed in prior National Money Laundering Strategy reports, to extending to casinos the requirement to report suspicious transactions.[14] As explained in the National Money Laundering Strategy for 1999:

> The attention given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But non-bank financial institutions require attention as well. Money launderers will move their operations to institutions in which their chances of successful evasion of enforcement and regulatory efforts is the highest.[15]

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[16] Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[17]

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[18] All of these documents also recognize the importance of extending the counter-money laundering controls to "non-traditional" financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra*, Annex 1 (Recommendation 8).

IV. Notice of Proposed Rulemaking

The final rule contained in this document is based on the notice of proposed rulemaking published May 18, 1998 (the "Notice") (63 FR 27230), and the Request for Additional Comments on the nature of the proposed reporting standard published March 29, 2002 (the "Additional Request for Comments") (67 FR 15138). The Notice proposed to require casinos[19] to report suspicious transactions to the Department of the Treasury. The notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently renumbered as 103.64) relating to casino compliance programs.

Subsequent to issuing the Notice, FinCEN held four public meetings to provide interested parties with the opportunity to present their views with respect to the potential effects of the Notice, as well as to provide FinCEN with additional information and feedback useful in preparing the final rule based on the Notice.[20] FinCEN then made transcripts of these meetings available to requesting parties.

The comment period for the Notice ended on September 15, 1998. FinCEN received a total of eighteen comment letters. Of these, 5 were submitted by casinos, 4 by casino trade associations, 4 by agencies representing state or tribal governments, 2 by casino consulting services, 1 by several members of the New Jersey Congressional delegation, 1 by an agency of the United States Government, and 1 by a law firm. The comment period for the Request for Additional Comments ended on May 28, 2002. FinCEN received a total of fourteen letters. Of these, 4 were submitted by casino trade associations, 3 by agencies representing state or tribal governments, 2 by casinos, 3 by members of the United States Congress, 1 by a card club, and 1 by a law firm representing several tribal governments.

V. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the format of the rule proposed in the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The dollar threshold for reporting suspicious transactions has been raised from $3,000 to $5,000;
- A fourth category of reportable activity has been added to the rule, to clarify that all violations of law, other than those specifically exempted by the rule, are within the scope of required reporting;
- An exception from reporting relating to robbery or burglary has been added to the rule;
- The language requiring casinos annually to conduct independent testing of their compliance programs has been revised to permit casinos to determine the scope and frequency of such review based on an evaluation by the casino of money laundering risks posed by the casino's operations;
- The language requiring casinos annually to prepare a statement relating to the effectiveness of the casino's internal controls and procedures has been deleted; and
- The language requiring casinos to incorporate into their compliance

[13] The 2002 Strategy, published in August 2002, was the fourth in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998; Public Law 105–310 (October 30, 1998), codified at 31 U.S.C. 5340 *et seq.* Each annual report is to be submitted to Congress by the President, working through the Secretary of the Treasury in consultation with the Attorney General.

[14] 2002 Strategy, at page 44 ("FinCEN anticipates issuing a final rule [requiring casinos to report suspicious transactions] by December 2002").

[15] 1999 Money Laundering Strategy, at 35–36.

[16] FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[17] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either "*permitted or* required" to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services of facilities by money launderers and others engaged in financial crime.

[18] The Organization of American States ("OAS") reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

[19] As used hereafter in this document, the phrase "casino" when used singly includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(6), unless the context clearly indicates otherwise. *See* 31 CFR 103.11(n)(5)(iii). 31 CFR 103.11(n)(5)(iii) and (n)(6) were added to the BSA regulations by final rule published at 63 FR 1919 (January 13, 1998).

[20] These public meetings were held in New Orleans, Louisiana, on July 14, 1998; Chicago, Illinois, on July 23, 1998; Scottsdale, Arizona, on August 6, 1998; and New York City, New York, on September 9, 1998.

programs procedures for using all available information to determine the occurrence of suspicious transactions has been revised.

B. Comments on the Notice—Overview and General Issues

Comments on the Notice concentrated on three matters: (i) The proposed $3,000 threshold for reporting suspicious transactions; (ii) the proposed reporting standard requiring casinos to report suspicious transactions when they have "reason to suspect" that a transaction requires reporting under the terms of the rule; and (iii) the meaning of the term "suspicious" in the context of gaming.

1. Dollar Threshold for Reporting

FinCEN received several comments concerning the establishment of the proper dollar threshold for reporting suspicious transactions. The majority of commenters on this subject argued that the proposed $3,000 threshold was too low and urged that it be raised to at least $5,000, the suspicious transaction reporting threshold applicable to banks. In response to these comments, the final rule increases the dollar threshold for reporting suspicious transactions to $5,000. Adoption of this reporting threshold is intended to reduce the burden of reporting while at the same time ensuring collection of reports of suspicious transactions that are significant for law enforcement purposes.

FinCEN wishes to emphasize that the rule is not intended to require casinos mechanically to review every transaction that exceeds the reporting threshold. Rather, it is intended that casinos, like every type of financial institution to which the suspicious transaction reporting rules of 31 CFR part 103 apply, will evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular casino in light of such risks. In other words, it is expected that casinos will follow a risk-based approach in monitoring for suspicious transactions, and will report all detected suspicious transactions that involve $5,000 or more in funds or other assets. A well-implemented anti-money laundering compliance program should reinforce a casino's efforts in detecting suspicious activity. In addition, casinos are encouraged to report on a voluntary basis detected suspicious transactions that fall below the $5,000 reporting threshold, such as the submission by a customer of an identification document that the casino suspects is false or altered, in the course of a transaction that triggers an identification requirement under the Bank Secrecy Act or other law.

2. Standard for Reporting

Paragraph (a)(2) requires reporting if a casino "knows, suspects, or has reason to suspect" that a transaction requires reporting under the rule.[21] Commenters on the Notice and on the Request for Additional Comments raised several objections to inclusion in the rule of an objective reporting standard. First, commenters argued that the "fast-paced, entertainment-filled environment" at casinos makes implementation of an objective reporting standard overly burdensome. Commenters asserted that, although the objective reporting standard may be appropriate in the context of the environment found at banks, casinos would find it difficult to discern whether a transaction is unusual for a particular customer or lacks a legitimate business purpose. Commenters also argued that, under an objective reporting standard, casinos would likely find it necessary to document their reasons for not filing a suspicious activity report with respect to a particular transaction that meets the reporting threshold, or even to report all transactions that exceed the reporting threshold, whether or not suspicious. Some commenters suggested adding language to the rule specifically discussing a casino's obligation to exercise due diligence in the detection and reporting of suspicious activities. One commenter argued however, that even adding specific due diligence language to the text of the rule would not protect casinos from after the fact second-guessing by examiners.

FinCEN has determined that the "has reason to suspect" language, which is contained in all of the existing BSA suspicious transaction reporting rules, including those for depository institutions, broker-dealers, and certain money services businesses, should be retained because it is necessary to the imposition of a due diligence requirement on reporting entities. This does not mean, however, that casinos will be subjected to unfair second-guessing of their efforts in detecting and reporting suspicious activity. Rather, the standard incorporates well-recognized and objective due diligence concepts. As FinCEN explained in the Additional Request for Comments, the "reason to suspect" standard means that, on the facts existing at the time, a reasonable casino in similar circumstances would have suspected the transaction was subject to suspicious transaction reporting. This is a flexible standard that recognizes the variation in operating realities within a casino (for example, the differences between a casino cage and the gaming floor), among various types of casinos, and among various types of financial institutions generally. This reporting standard is complementary to language found in the requirement that casinos implement BSA compliance programs. Under 31 CFR 103.64, casinos are required to develop and implement a program "*reasonably* designed to assure and monitor compliance" with the requirements of the BSA, including the requirement to report suspicious transactions under the final rule. (Emphasis supplied.) For all of these reasons, FinCEN believes that it is appropriate to require all financial institutions to which suspicious activity reporting rules under the BSA have been extended to meet the "has reason to suspect" standard.

3. Meaning of "Suspicious" in the Context of Gaming Activity

Several commenters argued that the term "suspicious" is vague, and suggested that further definition of the term is necessary in order to help casinos identify those transactions that should be reported under the rule, and to avoid liability for failure to file a report in situations in which it is unclear whether a report is warranted. Commenters expressed concern that, if a specific definition for the term "suspicious" is not added to the rule, casinos will risk penalties in situations in which casinos and examiners disagree about what type of activity should be deemed suspicious.

FinCEN believes that to craft a more specific definition of the term "suspicious" would result in a rigid, automatic approach to suspicious transaction reporting. As noted above, a critical aspect of suspicious transaction reporting is that it enables law enforcement to benefit from the expertise of financial institution employees and officers in judging which transactions are suspicious in the context of the particular financial services offered by the financial institution. Each casino must be able to recognize the sorts of transactions that may require additional scrutiny and at the same time understand that not all such transactions are reportable if a reasonable explanation for the circumstances of a particular transaction arises upon such examination. It is a

[21] Because the standard requires reporting when a financial institution has "reason to suspect" that a transaction is suspicious, the standard is referred to in the comments and in this document as an "objective reporting standard."

common characteristic of money launderers that they seek to do for illegitimate purposes what others do for legitimate purposes. Thus, the rule does not contain a specific definition of "suspicious" or a list of potentially suspicious transactions. However, FinCEN intends, when appropriate, to provide guidance to assist the casino industry in identifying transactions that may be indicative of illegal activity. For example, in August 2000, FinCEN published a guidance document (a "SAR Bulletin") based on a review of suspicious activity reports filed by casinos, indicating the use of wire transfers and cashier's checks to deposit funds into casino accounts, used for little or no gaming activity, and then cashed out. Such guidance materials will be made available on FinCEN's Web site, *www.fincen.gov*

Several commenters criticized the guidance document that FinCEN published in July 1998 entitled "Suspicious Activity Reporting and Casinos," which provided examples of potentially suspicious casino transactions and was intended to be illustrative only. Addressing that guidance document is beyond the scope of this rulemaking. However, FinCEN intends to provide revised and updated guidance with input from law enforcement, regulators, and the casino industry to ensure that the guidance provided is timely, relevant, and useful.

VI. Section-by-Section Analysis

A. 103.11(ii)—Transaction

The final rule amends the definition of "transaction" in the BSA regulations, 31 CFR 103.11(ii), explicitly to include the purchase or redemption of casino chips or tokens, or other gaming instruments. This change is designed to clarify that the definition applies to transactions relating to gaming activity.

B. 103.21(a)—General

Paragraph 103.21(a)(1) generally sets forth the requirement that casinos report suspicious transactions to the Department of the Treasury. The paragraph also permits, but does not require, a casino voluntarily to file a suspicious transaction report in situations in which mandatory reporting is not required. The rule itself does not contain a separate reference to card clubs, given that, as noted above, 31 CFR 103.11(n)(5)(iii) generally provides that "[a]ny reference in [31 CFR part 103] * * * to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application." The final rule only applies to entities that fall within the definitions of "casino" [22] and "card club" [23] found in 31 CFR part 103. It should be noted that each definition contains a gross annual gaming revenue threshold of $1,000,000.

Paragraph (a)(2) provides that a transaction requires reporting under the rule if it is conducted or attempted by, at, or through a casino, involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction falls within one of four categories of transactions. Thus, transactions require reporting under the final rule whether or not they involve currency. This is the approach that FinCEN has taken with respect to all BSA suspicious transaction reporting rules.

1. *Dollar Threshold for Reporting.* The final rule requires reporting of suspicious transactions that involve or aggregate at least $5,000. Several commenters suggested eliminating the requirement to file a suspicious transaction report on related suspicious transactions that, when aggregated, total at least $5,000. Commenters argued that to require casinos to aggregate transactions would be overly burdensome. However, the intent of the rule is to capture both individual suspicious transactions that meet the reporting threshold, as well as multiple transactions detected by a casino that are related (either because they were conducted by the same person, or because they were conducted by individuals working together) that, when combined, reach the $5,000 reporting threshold. To enable criminals to evade reporting simply by breaking up suspicious transactions would significantly weaken the rule's effect. A casino's compliance system should be designed to capture suspicious activity in the aggregate.

2. *Reporting Standard.* Paragraph (a)(2) requires reporting if a casino "knows, suspects, or has reason to suspect" that a transaction requires reporting under the rule. As explained above, this reporting standard incorporates a concept of due diligence into the reporting requirement.

3. *Scope of Reporting.* Paragraph (a)(2) contains four categories of reportable transactions. The first three reporting categories are identical to those contained in the Notice. The first category, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted to hide or disguise funds or assets derived from illegal activity. The second category, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third category, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the casino knows of no reasonable explanation after examining the available facts. A number of commenters opposed the reporting of transactions that could not definitively be linked to wrongdoing. Commenters argued that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated by, for example, gambling superstitions. However, FinCEN believes that a suspicious transaction reporting rule must include a requirement for the reporting of transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions of possible illegality in the mind of a reasonable casino employee. Unlike many criminal acts, money laundering involves the taking of apparently lawful steps for an unlawful purpose. A skillful money launderer will often split the movement of funds between several institutions so that no one institution can have a complete picture of the transactions or funds movement involved. Thus, the reporting of transactions that are unusual for a gaming customer generally, or for a particular customer, is an important element of suspicious transaction reporting.

Commenters also urged FinCEN to remove the language in the rule requiring casinos to report transactions that have "no *business* or apparent lawful purpose" (emphasis added). Commenters argued that many casino patrons do not have a business purpose for the transactions they conduct at casinos; rather, casino customers conduct transactions for entertainment/gaming purposes and for this reason, such language is inappropriate for a suspicious transaction reporting rule applicable to casinos. This suggestion has not been adopted. Casinos do conduct many types of transactions that resemble those conducted at traditional financial institutions. For example, a customer at a casino cage can initiate or receive funds transfers, open and settle deposit and credit accounts, and

[22] *See* 31 CFR 103.11(n)(5)(i)

[23] *See* 31 CFR 103.11(n)(6)(i)

purchase and cash checks. Moreover, the simple fact that a customer is not motivated by a business purpose in conducting a transaction that is otherwise not suspicious would not trigger the requirement to report under the rule.

The final rule contains a fourth reporting category, described in paragraph (a)(2)(iv), involving the use of the casino to facilitate criminal activity.[24] The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the casino suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule. The addition of this reporting category is not intended to effect a substantive change in the rule. Such transactions should be reported under the broad language contained in the third reporting category, requiring the reporting of transactions with "no business or apparent lawful purpose." FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear linked to any form of criminal activity. Nevertheless, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule. It should be noted that, in determining whether transactions are required to be reported under the third or fourth reporting categories of the rule, casinos are not expected to have expert knowledge of what constitutes a violation of each state or federal criminal law. Rather, it is intended that casinos will report transactions that appear, for whatever reason, to be conducted for an unlawful purpose.

Several commenters indicated that the rule seems to require casinos to deem each transaction as suspicious until proven otherwise, and to retain documentation describing why the casino has determined that each transaction exceeding the reporting threshold for which a suspicious transaction report has not been filed is not suspicious. However, the rule does not require this level of review and documentation. Rather, as explained above, casinos are expected to evaluate customer activity in light of the casino's relationship with the customer, and knowledge of customer activity in general. This is emphasized by the compliance program requirement for casinos found at 31 CFR 103.64, which requires casinos to develop and implement a written program "*reasonably* designed to assure and monitor compliance with" the BSA and its implementing regulations. (Emphasis added.)

C. 103.21(b)—Filing Procedures

Paragraph (b) continues to set forth the filing procedures to be followed by casinos making reports of suspicious transactions. Within 30 days after a casino becomes aware of a suspicious transaction, the casino must report the transaction by completing a Form TD F 90–22.49, Suspicious Activity Reporting by Casinos ("SARC") and filing it in a central location, to be determined by FinCEN. Special provision is made for situations requiring immediate attention (*e.g.*, where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case casinos are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SARC. In addition, casinos may wish to contact FinCEN's Financial Institutions Hotline (1–866–556–3974), for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Casinos reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SARC to the extent required by the final rule. Published for comment elsewhere in this issue of the **Federal Register** is a revised SARC designed for use by the casino industry as a whole, and incorporating the terms of the final rule.

If a casino is unable to identify a suspect on the date the suspicious transaction is initially detected, the rule provides the casino with an additional 30 calendar days to identify the suspect before filing a SARC, but the suspicious transaction must be reported within 60 calendar days after the date of initial detection of the suspicious transaction, whether or not the casino is able to identify a suspect. Commenters requested clarification on the extent to which a casino must attempt to obtain customer identification for purposes of completing a SARC. Commenters argued that casinos often deal with customers with whom they are not familiar. The final rule does not require a casino to alter its relationship with its customers in a way that is inconsistent with industry practice. As a result, FinCEN anticipates receiving a certain number of SARCs that do not contain detailed customer identifying information. However, casinos must ensure that their BSA compliance programs include procedures for using all available information to determine and verify a customer's identification for purposes of satisfying a casino's reporting and recordkeeping requirements under the BSA.[25]

D. 103.21(c)—Exceptions

In response to comments, paragraph (c) provides that a casino is not required to report under the final rule a robbery or burglary that the casino reports to an appropriate law enforcement authority.

E.103.21(d)—Retention of Records

Paragraph (d) continues to provide that casinos must maintain copies of the SARCs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. Supporting documentation is to be made available to FinCEN, and any other appropriate law enforcement agencies, or federal, state, local, or tribal gaming regulators, upon request.

F.103.21(e)—Confidentiality of Reports; Limitation of Liability

Paragraph (e) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute as amended by the USA Patriot Act. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

[24] Although the fourth reporting category does not appear in FinCEN's suspicious activity reporting rules for banks and money services businesses, identical language appears in FinCEN's suspicious activity reporting rule for broker-dealers found at 31 CFR 103.19, while similar language appears in the banking regulatory agencies' suspicous transaction reporting rules for depository institutions promlugated under Title 12.

[25] *See* 31 CFR 103.64(a)(2)(v)(A).

G. Compliance

Paragraph (f) continues to note that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations, which may subject non-complying casinos to an enforcement action under the BSA.

H. 103.21(g)—Effective Date

Paragraph (g) provides a 180-day period before which compliance with the suspicious transaction reporting rule will become mandatory.

I. 103.64—Related Changes to Casino Compliance Program Requirements

General. As noted above, the suspicious transaction reporting rule is complemented by the compliance program requirement for casinos found at 31 CFR 103.64. (This requirement previously appeared at 31 CFR 103.54.) Prior to enactment of section 352 of the USA Patriot Act requiring all financial institutions to develop and implement anti-money laundering compliance programs, only casinos had been subject to a compliance program requirement under Title 31 of the United States Code. However, in response to the mandate of the USA Patriot Act, FinCEN has begun promulgating compliance program requirements for additional financial institutions, including money services businesses, mutual funds, and operators of credit card systems.[26] Thus, FinCEN has determined to revise the proposed changes to the casino compliance program requirement contained in the Notice in a manner consistent with the compliance program requirements promulgated under the USA Patriot Act.

a. *Testing for compliance.* 31 CFR 103.64(a)(2)(ii) requires that casino compliance programs include "[i]nternal and/or external independent testing for compliance." The Notice proposed modifying the requirement so that the necessary testing (i) would be required to occur at least annually, and (ii) would include a specific determination whether programs at the casino are working effectively to ensure that suspicious transactions, and currency transactions of more than $10,000, are detected and reported, and the casino is able properly to comply with recordkeeping and compliance program standards. However, 31 U.S.C. 5318(h) as amended by section 352 of the USA Patriot Act does not specify the frequency with which the required independent testing must be conducted, and in promulgating compliance program requirements pursuant to the USA Patriot Act, FinCEN has not required annual testing. Rather, the recently published anti-money laundering compliance program requirements for money services businesses and operators of credit card systems provide that the scope and frequency of testing must be commensurate with the risks posed by the products and services offered by the financial institutions to which they apply, and the manner in which such products and services are offered. FinCEN has determined that casinos too should be permitted to conduct their own risk-based analyses to determine the scope and frequency with which the independent testing required under the rule must take place. Therefore, the final rule provides that the scope and frequency of review of a casino's compliance program "shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino."

b. *Occurrence or patterns of suspicious transactions.* 31 CFR 103.64(a)(2)(v)(B) requires casinos to maintain procedures to determine "[w]hen required by [31 CFR part 103] the occurrence of unusual or suspicious transactions." The Notice proposed revising the rule to make clear that the necessary procedures extend to analysis not only of customer accounts but also of the casino's own records derived from or used to record, track, or monitor casino activity. However, some commenters expressed concern that the proposed language would require a casino to screen retrospectively all transactions in order to monitor for suspicious activity. Given that the rule already requires casinos to implement "procedures for using all available information" to determine customer identification, the occurrence of suspicious transactions, and whether a record must be made and retained, and that casinos that have automated data processing systems must use them to aid in assuring compliance, the final rule does not adopt the language contained in the Notice. Instead, the provision has been revised to reflect implementation of the final rule requiring casinos to report suspicious transactions.

VII. Executive Order 12866

The Department of the Treasury has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

VIII. Regulatory Flexibility Act

FinCEN certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The BSA authorizes Treasury to require financial institutions to report suspicious activities. 31 U.S.C. 5313(g). However, the BSA excludes casinos or gaming establishments with annual gaming revenue not exceeding $1 million from the definition of "financial institution." 31 U.S.C. 5312(a)(2)(X). Thus, certain small casinos and card clubs are excluded by statute from the operation of the final rule. Other casinos, namely those in Colorado and South Dakota, are subject to state law limitations on the size of wagers that may be made at those casinos. In casinos such as these, the burden to establish procedures to detect suspicious activity should be substantially reduced since the low dollar amount of the limits makes it unlikely that customers would engage in transactions at these casinos large enough to trigger a reporting requirement under the final rule.

As to the remaining casinos and card clubs, many of the requirements of the final regulation may be satisfied, in large part, using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers from information routinely collected from casino established deposit, credit, check cashing, and player rating accounts. This existing data can assist casinos in making decisions about whether a transaction is suspicious. Many casinos also already have policies and procedures in place and have trained personnel to detect unusual or suspicious transactions, as part of their own risk prevention programs. In addition, it is common in the casino industry to perform annual, and in some cases quarterly, testing of compliance programs. Further, a number of casinos have already begun voluntarily reporting suspicious transactions to Treasury.

In drafting the rule, FinCEN carefully considered the importance of suspicious transaction reporting to the administration of the BSA. Congress considers suspicious transaction reporting a "key ingredient in the anti-money laundering effort."[27] Moreover, the legislative history of the BSA demonstrates that money launderers will shift their activities away from more regulated to less regulated

[26] *See* 67 FR 21114, 21117, and 21121 (April 29, 2002).

[27] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

financial institutions.[28] Finally, there is no alternative mechanism for the government to obtain this information other than by requiring casinos and card clubs to set up procedures to detect and report suspicious activity.

IX. Paperwork Reduction Act Notice

The collection of information contained in this final regulation has been approved by the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506-0006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.21(b)(3) and (d). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.21. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is four hours per recordkeeper. The estimated average recordkeeping burden contained in the Notice was three hours. FinCEN received some comments during the comment period requesting that the burden estimate should better reflect the amount of time involved in analyzing whether transactions require reporting under the rule. Although, to a certain extent, such comments were based on a misunderstanding of the requirements of the rule that FinCEN subsequently clarified through publication of Request for Additional Comments, the burden estimate has been revised to address commenters' concerns. The burden estimate relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.21 will be reflected in the burden of the SARC form. FinCEN anticipates that the final rule will result in an annual filing of a total of 3000 SARCs. This result is an estimate, based on a projection of the size and volume of the industry.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

[28] "It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions]." *Id.*, at 19.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, Banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Amend § 103.11 as follows:

a. The first sentence of paragraph (n)(5)(ii) is amended by removing "(i)(7)" adding "(n)(5)" in its place.

b. In paragraph (n)(5)(iii), the references "(n)(7)" and "(n)(8)" are revised to read "(n)(5)" and "(n)(6)" respectively.

c. The third sentence of paragraph (n)(6)(i) is amended by removing "(n)(7)(iii)" and adding "(n)(5)(iii)" in its place.

d. The first sentence of paragraph (n)(6)(ii) is amended by removing "(n)(8)" and adding "(n)(6)" in its place.

e. Paragraph (ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or security, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

3. In subpart B, add new § 103.21 to read as follows:

§ 103.21 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos ("SARC"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as

indicated in the instructions to the SARC.

(3) *When to file.* A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SARC if required by this section.

(c) *Exceptions.* A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(e) *Confidentiality of reports; limitation of liability.* No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring after March 25, 2003.

4. Section 103.64 is amended by:

a. Revising paragraph (a)(2)(ii)

b. Removing the word "hereafter" in paragraph (a)(2)(iii); and

c. Revising paragraph (a)(2)(v)(B).

The revised paragraphs read as follows:

§ 103.64 Special rules for casinos.

(a) Compliance programs. * * *

(2) * * *

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

* * * * *

(v) * * *

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 103.21;

* * * * *

Dated: September 16, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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Federal Register

Thursday,
June 27, 2002

Part II

National Gaming Commission

25 CFR Part 542
Minimum Internal Control Standards;
Final Rule

43390 Federal Register/Vol. 67, No. 124/Thursday, June 27, 2002/Rules and Regulations

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: In response to the inherent risks and the need for effective controls in tribal gaming operations, the Commission, in 1999, developed Minimum Internal Control Standards (MICS). Since their original implementation, it has become obvious that the MICS require technical adjustments and revisions so that they may continue to be effective in protecting tribal assets, while allowing Tribes to utilize technological advances in the gaming industry. To that end, this final rule contains numerous revisions to the Commission's existing MICS that provide clarification of the rules and the flexibility to allow tribal gaming operations to make use of technological advances.

DATES: *Effective Date:* July 29, 2002.

Compliance Date: Each Tribal gaming regulatory authority shall, in accordance with the Tribal gaming ordinance, establish and implement tribal internal control standards within six (6) months of June 27, 2002, that satisfy the requirements of § 542.3 herein. For those Tribes whose tribal internal control standards already satisfy the requirements of § 542.3, no action is necessary.

FOR FURTHER INFORMATION CONTACT: Joe H. Smith, 202–632–7003 or 503–326–7050.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the Commission first published its Minimum Internal Control Standards (MICS) as a Final rule. Since this time, as gaming Tribes and the Commission gained practical experience with the MICS, it became apparent that some of the standards required clarification or modification to operate as the Commission had intended. Also recognizing the changes and advances in Indian gaming and gaming technology since implementation, on November 27, 2000, the Commission published an advanced notice of proposed rulemaking requesting public comments on the implementation of the MICS.

Along with requesting public comments, the Commission also solicited input and guidance from our own employees, many of whom work closely with Indian country to monitor compliance with the existing regulation. In addition to receiving input from our senior staff within the Washington, DC office, we also obtained input from staff working directly with Tribal gaming operations. This gathering of information culminated with a series of conference calls with our Regional Offices and auditing staff where we reviewed each provision of the regulation. Also reviewed were the numerous comments received in response to the advance notice of proposed rulemaking. Comments and suggestions received from our employees, emanating from actual, hands-on experience with the MICS, helped identify certain areas with which Commission employees had found difficulty. This input proved critical over the next several months as we worked to revise the regulation.

In keeping with its commitment to consultation and recognizing the government-to-government relationship it shares with Tribes, the Commission solicited nominations of individuals interested in serving on an Advisory Committee designed to assist in revising the MICS. Ten (10) tribal representatives were selected based on several factors, including the experiences and backgrounds of the individuals nominated, the size(s) of their gaming operation(s), the types of games played at their gaming operation(s), and the areas of the country their gaming operation(s) are located. The selection process was a difficult one as numerous highly qualified individuals expressed an interest in serving on this important Committee. As expected, the value added by involving tribal representatives who work daily with the MICS was immeasurable.

Those participating on the behalf of Tribes as members of this Advisory Committee were: Jamie Hummingbird, Director, Cherokee Nation Gaming Commission, Cherokee Nation; Patrick H. Lambert, Executive Director, Eastern Band of Cherokee Gaming Commission, Eastern Band of Cherokee; Stephen R. Lewis, Commissioner, Gila River Gaming Commission, Gila River Indian Community; Kristin L. Lumley, Executive Director, Yakama Nation Gaming Commission, Yakama Nation; John Monforte, Executive Director, Acoma Gaming Commission, Pueblo of Acoma; Kevin F. O'Toole, Executive Director, Oneida Nation Gaming Commission, Oneida Nation of New York; Sandra Plawman, Treasurer, Ho-Chunk Nation Gaming Commission, Ho-Chuck Nation; Jerome J. Schultze, Director, Morongo Gaming Agency, Morongo Band of Mission Indians; Lisa B. Whetzel, Director, Kaw Nation Enterprise Development Authority, Kaw Nation; and Saunie K. Wilson, Executive Secretary, Oglala Sioux Tribal Gaming Commission, Oglala Sioux. The Advisory Committee also included the following Commission representatives: Teresa E. Poust, Commissioner; Joe H. Smith, Acting Director of Audits; Michele F. Mitchell, Attorney; Timothy B. Russ, Financial Analyst; and Denise Desiderio, Assistant to the Commission. Also important to the success of this process was the involvement of a professional facilitator, Juliette A. Falkner, of Carr, Falkner & Swanson. Ms. Falkner was instrumental in keeping the Committee focused on our goals and realizing our optimistic timeframe for completion.

The tribal and federal representatives on the Advisory Committee worked together as a team, guided by a Partnership Agreement developed at its first meeting. An important component of this Partnership Agreement was that decision-making would be done by consensus. Without concurrence from all Committee members on a proposed change, none would be made. While a particular change may not be representative of an individual's first preference, it was something found to be within acceptable limits. As such, this rule represents a series of compromises made by all members of the Advisory Committee after much discussion.

The Commission worked closely with the Advisory Committee to address their concerns about the existing MICS and to address the nearly one hundred comments received in response to the advanced notice of proposed rulemaking. Between May and November 2001, the Commission sponsored six working meetings. During these meetings, every clause of the existing MICS was reviewed and every comment submitted to the Commission was considered. Each meeting was held in a different region of the country, enabling visits to a number of tribal gaming operations. These visits provided valuable, first-hand experience with technological advances and concerns expressed during the comment period. Changes were made to the existing MICS based on comments, input from Advisory Committee members, and data gathered during site visits. At the conclusion of this process, the Commission published the Proposed Rule in the **Federal Register** on December 26, 2001.

On February 5, 2002, the Commission hosted a public hearing on the Proposed Rule. This hearing provided an

excellent opportunity for individuals to provide comment about the regulation to both the Commission and to members of the Advisory Committee. A total of twenty (20) individuals presented testimony at this hearing.

The Commission received approximately ninety (90) comments in response to publication of the Proposed Rule. During the final meeting of the Advisory Committee, held in April 2002, each comment was reviewed and utilized to draft a Final Rule. The full Commission then approved this Final Rule.

General Comments

Authority

More than half of the commenters, as well as members of the Advisory Committee, question the Commission's authority to promulgate this rule, particularly as it pertains to class III gaming. Members of the Advisory Committee agreed to participate in the process of revising the MICS, despite their position that the Commission may be without authority to promulgate minimum internal controls for class III gaming. The Commission acknowledges that the participation of tribal representatives in this process does not in any way indicate concurrence in the Commission's determination that it does have the statutory authority to establish and enforce these regulations.

Internal controls are the primary procedures used to protect the integrity of casino funds and games, and are a vitally important part of properly regulated gaming. Inherent in gaming operations are problems of customer and employee access to cash, unrecorded cash transactions at table games, questions of the fairness of games, and the threat of collusion to circumvent controls. Internal control standards are therefore commonplace in the gaming industry and the Commission recognizes that many Tribes had sophisticated internal control standards in place prior to the Commission's original promulgation of the MICS.

For the Commission to appropriately fulfill it responsibilities under the Indian Gaming Regulatory Act (IGRA), it follows that there must exist some rules for the handling of cash and the tracking of transactions that occur with great frequency in a gaming operation. These MICS are designed to establish baseline, or *minimum* standards, required of Indian gaming operations. There is no doubt that the MICS provide the Commission with a significant tool for achieving the stated purposes of IGRA. The Commission firmly believes that minimum internal control standards are necessary, and that the promulgation of these standards is a permissible exercise of its statutory authority to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of IGRA.

The lengthy discussion amongst members of the Advisory Committee regarding authority also included a discussion as to whether the MICS should be promulgated as recommended guidelines versus a mandatory rule. Several commenters also made this proposal. The Commission continues to believe that the MICS should be issued as a rule.

MICS Structure

During both comment periods, several suggested that the Commission develop separate MICS for class II and class III gaming. Along these lines, several Advisory Committee members submitted proposals structuring the MICS so that the document itself was divided into class II and class III MICS. During consideration, a second alternative was discussed: that is, separating the MICS based upon tiers. A common complaint of tier A and B operations is that the existing MICS are confusing as to which requirements apply and which do not.

As with the original rule, this rule is not designed to classify games into class II or class III. Rather, the MICS address the control issues related to the particular game. Pull tabs, for example, can be played as a class II or a class III game depending on the nature and circumstances of their play. Section 542.8 pertaining to pull tabs applies regardless of whether they are being played as class II or class III gaming.

After extensive discussion, the Committee reached consensus on dividing the MICS along tier lines rather than game classification, recognizing that the requirements placed upon tribal gaming operations should differ based upon their annual gross gaming revenue. A number of commenters on the proposed rule indicated that they found this new structure helpful.

This final rule is organized essentially in two parts. Sections 542.1 through 542.18 contain both general provisions and standards relating to particular categories of games. Beginning with § 542.20, the rule is then divided based upon tier. Sections 542.20 through 542.23 apply only to Tier A gaming operations; §§ 542.30 through 542.33 apply only to Tier B operations; and §§ 542.40 through 542.43 apply only to Tier C operations. The Commission continues to believe that this structure provides the clearest guidance to Tribes of their obligations under the MICS.

The Commission recognizes that some Tribes may find it beneficial to have separate internal control standards for class II and class III games. The most effective method of tailoring these MICS for class II and/or class III operations is in the development of tribal internal control standards as discussed below.

Tribal Internal Control Standards

Indian gaming is and always will be very diverse. The Commission therefore recognizes that developing one set of MICS to address all situations in every tribal gaming operation is not possible. It is not intended for Tribes to simply adopt these MICS verbatim as tribal internal control standards. Instead, Tribal gaming regulatory authorities should utilize the following to develop their own internal control standards as provided for in § 542.3(c) of this part.

For example, a number of commenters suggested removing § 542.15 (establishing minimum internal control standards for credit) from the MICS because their operation does not extend credit, or because they are prohibited from doing so by their Tribal-State compact. Similarly, many operations do not participate in pari-mutuel wagering, or offer roulette. The Commission realizes that gaming operations do not play all games or utilize all procedures contained herein, and it is for this reason that we do not call for wholesale adoption of these MICS.

If an operation does not utilize credit, these provisions of the MICS do not have to be included in the tribal internal control standards. If craps, roulette, or poker, are not offered, standards regarding these games do not have to be included in the tribal internal control standards. If the Tribal gaming regulatory authority prefers having separate internal controls for class II and class III games, the tribal internal control standards can be written in this fashion. Tribal internal control standards should be developed in a manner that addresses the particular needs and desires of the Tribe. Doing so allows tailoring of the MICS to meet the individual needs of a diverse industry.

It is also within the tribal internal control standards that the Tribal gaming regulatory authority can elect to develop standards that are more stringent than those contained herein. Many commenters made recommendations that would increase the minimum standards set by this regulation. Although the Commission appreciates and commends the desire of some to increase the stringency of these standards, these MICS are considered

minimums; the base upon which tribal regulators should build their regulatory structure. It was the Commission's determination that some of the suggestions exceeded the minimum standards appropriate for all gaming operations, and they therefore were not incorporated.

Tribal Gaming Regulatory Authority

One of the terms used throughout the rule is "Tribal gaming regulatory authority." Tribes are responsible for the primary, day-to-day regulation of their operations, and the Commission recognizes that tribal governments have chosen different approaches of exercising their regulatory authority. A vast majority of Tribes have implemented independent tribal gaming commissions, which in most cases the Commission believes to be the most effective way of ensuring the proper regulation of gaming operations. Alternate regulatory structures have also been developed, such as utilizing existing tribal governments, business, or economic development agencies, when determined to be more appropriate to the needs of the Tribe. The term "Tribal gaming regulatory authority" is intended to refer to the tribally designated entity responsible for gaming regulation.

In order to clarify the role of Tribal gaming regulatory authorities and recognize their immense value, the requirement that the Tribal gaming regulatory authority approve procedures, in a manner as determined by the Tribe, before being implemented by the gaming operation has been added where appropriate. While the MICS require prior approval, it is important to note that they do not specify the manner in which the Tribal gaming regulatory authority should carry out this approval. The type of approval process implemented is a decision to be made by the Tribe. Some may desire issuance of an approval letter, while some may stipulate that failure to object within a specified period of time signifies approval. Others may wish to prescribe varying degrees of approval based upon the significance of the individual procedure. Regardless, this flexibility further enables the Tribe to tailor the MICS to their particular needs.

Overall, commenters commend the fact that revisions to the MICS specifically acknowledge that Tribes are responsible for the primary regulation of their gaming operation.

Accounting Standards

Information was presented to the Commission regarding the addition of accounting standards to the MICS. Data was reviewed from multiple gaming jurisdictions indicating that such standards are a typical element of a gaming regulatory framework. After much consideration, it was the Committee's consensus that promulgation of accounting standards should be reserved for the Tribal gaming regulatory authority. Furthermore, it was recommended that the Commission provide guidance to the Tribes in the development of the standards and that such guidance be in the form of a bulletin.

Technological Advances in Gaming

One of the most widely mentioned issues was that of technological advances. Many commenters felt that the existing MICS did not adequately address those areas in which new computer technology provides a level of control that equals or exceeds the standards set forth in this part. The Commission and the Committee have attempted to address this issue in two ways. First, where appropriate, specific sections of the MICS were modified to accommodate technological advances. Second, language was added to each section increasing flexibility by allowing use of computer applications that provide at least the level of control described by the standards in that section. Such usage would have to first be approved by the Tribal gaming regulatory authority. A variance would not be necessary, so long as the level of control required by the MICS is maintained and conflict with another standard is not created.

Investigation Results

In several instances throughout the MICS, the gaming operation is required to conduct investigations of statistical fluctuations. Several commenters suggested requiring that the results of these investigations be brought to the attention of the Tribal gaming regulatory authority. The Commission agrees and has added appropriate language.

Grandfathering

One commenter asked that their operation be "grandfathered," and not be required to comply with this final rule. The Commission believes that in most instances, the standards included in the revised MICS have not been increased. Any gaming operation in compliance with the existing MICS should, in most respects, be in compliance with this final rule. Further, the Commission has increased the time for gaming operations to come into compliance with any new tribal internal control standards developed in response to this final rule. Therefore, grandfathering was not incorporated.

Language Clarification

Several commenters suggested language and grammatical changes to clarify certain provisions of these standards. The Commission agrees with many of these recommendations and appropriate changes have been made.

Improvement to Existing MICS

A number of commenters stated that the proposed rule was a great improvement over the existing MICS and commended the Committee for its work. Commenters indicated that both the structure and content was more understandable and better organized.

Section 542.2 Definitions

Many commenters suggested changes to the definitions section of the MICS. Changes were made in response to these comments to clarify the meaning of a number of terms used. Definitions for "Tribal gaming regulatory authority" and "weigh scale calibration module" were added to the standard. The definitions for "bank or bankroll," "document acceptor," and "gaming machine fill" have been deleted.

Two commenters requested a change to "sufficient clarity." Industry standards were examined in developing the definition used in the proposed rule and this definition is believed to be appropriate. The Commission disagrees with the need for any change.

In some instances, commenters requested that definitions be developed for terms that are not used in the body of the MICS. The Commission decided that this may create confusion and chose not to add definitions of terms not used in the body of the MICS.

Section 542.3 Compliance

One commenter asked whether the determination of tier level discussed in § 542.3(b) would be made based on the collective annual gross gaming revenues of all gaming operations operated by a Tribe (for those Tribes operating more than one gaming operation). This is not the intent of the Commission. Rather, the determination of tier level will be made on a per operation basis. In other words, if a Tribe operates two separate gaming operations, one with annual gross gaming revenues of $4 million, and the other with gross gaming revenues of $14 million, the $4 million operation would be treated as a Tier A operation, and the $14 million operation would be treated as a Tier B operation. The two would *not* be combined to require compliance with Tier C standards.

Several commenters requested that the time limits contained within § 542.3(c) be extended. The Commission agrees in part and extends the deadline contained within § 542.3(c)(4) to nine (9) months by which a gaming operation must come into compliance with the tribal internal control standards.

Modification was also made to the ability of the Tribal gaming regulatory authority to extend this nine (9) month period by an additional six (6) months. Rather than requiring that a Tribal gaming regulatory authority request permission from the Commission to extend this time frame, the Tribal gaming regulatory authority now need only notify the Commission of its decision to extend the deadline.

One commenter suggested that the language used in § 542.3(c)(1) requiring standards adopted by Tribal gaming regulatory authorities be "at least as stringent as those set forth in this part," should be changed to "provide a level of control that equals or exceeds those set forth in this part." The Commission agrees that this language more clearly states the objective of the MICS as minimum standards.

Within § 542.3(c)(2), several commenters requested that the Commission develop and adopt standards that provide additional guidance for currency transaction reporting under 31 CFR part 103. While the Commission recognizes the importance of standards for currency transaction reporting, it does not believe it is the proper source of such guidance. Instead, gaming operations and Tribal gaming regulatory authorities should consult directly with the Internal Revenue Service to obtain assistance with 31 CFR part 103.

Regarding the requirement of § 542.3(f) that a certified public accountant (CPA) perform independent testing of the tribal internal control standards, several commenters suggested that, to save expense, the CPA should only perform testing of compliance with the Commission MICS. Both the Commission and the Committee agree that testing only against the Commission MICS would not be useful to those Tribes who have adopted tribal internal control standards tailored to meet the needs of their operation, particularly where certain standards have been made more stringent. As the primary regulator of their gaming operation, Tribal gaming regulatory authorities are equally, if not more, concerned with compliance with tribal internal control standards.

Several commenters asked that auditing standards be included in the MICS. The Commission believes that generally accepted auditing standards should be utilized, and therefore do not need to be included in the MICS. CPA guidelines continue to be available by request from the Commission.

Several commenters suggested adding language that tribal administrative remedies should be exhausted prior to any enforcement action being taken by the Commission. It is not the Commission's practice to take enforcement action without first informing the Tribe and Tribal gaming regulatory authority of deficiencies and allowing a reasonable period of time for resolution. Unless the deficiencies create an immediate and severe threat to the integrity of the gaming operation, the Commission will work with the Tribe and Tribal gaming regulatory authority to remedy the deficiencies. It is only after failure to address noted deficiencies within a reasonable period of time that the Commission would contemplate enforcement action. In response to these comments, the Commission has added language at § 542.3(g) recognizing this practice.

Section 542.4 Tribal-State Compacts

Commenters and members of the Committee requested clarification on the effect of the MICS on internal control standards contained within a Tribal-State compact. Advisory Committee members put forth wording that would require standards within a Tribal-State compact to take priority over these MICS. The Commission does not fully support this approach because some compacts do not contain internal control standards, or contain only limited standards insufficient alone to adequately protect the integrity of Indian gaming.

A number of Tribal-State compacts, however, do contain detailed internal control standards. In recognition, § 542.4 has been restructured to provide deference to internal control standards within a Tribal-State compact where they provide "a level of control that equals or exceeds the level of control under an internal control standard or requirement set forth in this part." The Commission believes this language provides appropriate deference to Tribal-State compacts containing detailed internal control standards, while also addressing those situations where compacts contain more limited standards.

Section 542.7 Bingo

Several commenters asked for clarification of the term "independent person" as used in § 542.7(b)(5). It is intended that a person independent of the bingo caller responsible for calling the speed bingo game verify the ball drawn. It is not necessary that this person is an employee, and in fact, some small operations use a customer for this purpose. This would meet the level of control required by the standard. Modification has been made to more clearly state the intent of this standard. It is worth noting, however, that § 542.7(b)(9), requiring "personnel independent of the transaction" to approve payouts in excess of $1,200, does require utilization of an employee of the gaming operation.

One commenter suggested that only promotional payouts or awards exceeding a fair-market value of over $100.00 be recorded. The Commission believes that, for purposes of accountability and reconciliation, all such payouts should be recorded, regardless of dollar value. Therefore, no changes were made to § 542.7(c).

One commenter suggested adding the requirement that a "blind count" be performed under § 542.7(d)(2). Another suggested that two signatures be required by § 542.7(c)(1)(iv) to authorize promotional payouts with a high dollar value. While the Commission decided not to require these higher standards of all gaming operations, the Commission continues to encourage implementation of higher standards of control where desired.

One commenter suggested that a department independent of the bingo department should be responsible for the securing and inventorying of bingo paper, as required by § 542.7(e)(4). The Commission agrees with another commenter that this would place an undue burden on small gaming operations. It is sufficient that personnel independent of bingo sales be assigned this function.

Section 542.8 Pull Tabs

As in bingo, several commenters suggested adding the requirement that an independent department be required to verify the accuracy of the ending pull tab balance, as required by § 542.8(b)(5). This increased level of control is encouraged but not required by these standards, as it would place an undue burden on small gaming operations. In response to another commenter, this section was clarified by stating that "a person or persons independent of the pull tab sales and inventory control" shall be assigned this responsibility.

The Commission agrees with a commenter that weighing pull tabs is an acceptable alternative to the counting of pull tabs specified in § 542.8(b)(5). Accordingly, the word "counting" was changed to the broader term "reconciling."

Section 542.9 Card Games

Several commenters suggested allowing the use of fill and credit slips in lieu of lammers for the transfer of cash equivalents between card tables and the bank as discussed in § 542.9(c)(2). The Commission did not adopt this change given that the fill and credit process for execution of transfers between tables and the card room bank represents a process exceedingly more cumbersome than that stipulated in the MICS. The use of the fill and credit process in this instance does however represent an acceptable alternative procedure.

One commenter asked whether § 542.9(d)(2) requires the Tribal gaming regulatory authority to physically mark or destroy playing cards. It does not. Instead, the Tribal gaming regulatory authority must approve the *process* of marking or destroying the cards. In fact, industry practice indicates that security personnel typically perform this function.

In reference to §§ 542.9(d) and (e), one commenter suggested that requiring the washing of plastic cards every seventy-two (72) hours of use makes no sense if non-plastic cards can be used for up to seven (7) days with no action. Typically, most operations use non-plastic playing cards for no more than twenty-four (24) hours, and this was presumed in developing these standards. Another commenter suggested adding language requiring cancellation of plastic cards showing wear. After consideration, the Commission agrees that it would provide better protection for the MICS to require routine inspection of plastic playing cards and allow the Tribal gaming regulatory authority to determine how often they should be washed.

Several commenters suggested that the standards for promotional progressive pots and pools at § 542.9(h) be changed to allow for the collection of a commission or administrative fee. The Commission disagrees and believes that funds contributed by the playing public to these pools should be returned to the public. It is worth noting, however, that there is nothing in the standard limiting the amount collected as a house rake, as long as players are made aware of the amount collected from each pot.

One commenter suggested adding key controls for duplicate keys to §§ 542.9(i) and (j). Such an addition is unnecessary as key control standards apply to all keys whether duplicate or original.

Section 542.10 Keno

One commenter requested clarification to the language at § 542.10(c)(1)(vi) regarding the inspection of keno balls in use. The commenter indicated that some have interpreted the standard to require inspection of keno balls while inside the drawing equipment. The standard, as currently written, does not require such inspection. Customarily, keno balls are removed from the keno equipment at the end of each session and transported to a secure location. Standard practice is for keno balls to be inspected once during each session of keno, generally as the balls are being reinserted into the keno equipment prior to the commencement of play.

One commenter suggested that the personnel access listing at § 542.10(j)(3)(vi) should require either an employee name or an identifying number. The Commission agrees and made this change.

One commenter suggested removing § 542.10(p) regarding manual keno. The Commission maintained this standard because it believes some gaming operations continue to offer manual keno.

Section 542.11 Pari-Mutuel Wagering

Commenters indicated that this section is largely improved from the existing MICS. Several commenters requested an additional exemption from the MICS for those operations that utilize an independent simulcast provider that is not a state-regulated racetrack. The Commission believes that the information required by the MICS, which must be obtained from the provider, is essential to the ability of the gaming operation to be able to determine whether it is receiving its guaranteed share of the handle. Thus, no additional exemption was added.

Several commenters also suggested fully exempting pari-mutuel wagering conducted pursuant to a Tribal-State compact, where the Tribe is responsible for security and other ancillary services, but not for the receipt, payment, and custody of all funds of the operation. The Commission believes that the exemption contained in § 542.11(a) would include those Tribes operating under such an agreement pursuant to their compact.

One commenter suggested removing the requirement at § 542.11(h)(9) that the gaming operation verify purged ticket information. The Commission believes that this information is necessary to verify that the purging of unpaid tickets is appropriate and is not being performed in an arbitrary manner that could impact winning patrons of the gaming operation. Likewise, reviewing purged ticket data is important to the participating locations since they affect the calculation of funds to and/or from the service provider.

One commenter suggested removing the "on a weekly basis" designation for the audit testing required at § 524.11(h)(3). The Commission disagrees. Weekly review of the information provided by the operator is necessary to ensure that the Tribe is receiving its contractually agreed upon percentage of the handle.

Section 542.12 Table Games

One commenter suggested that standards be included for debit card transactions at gaming tables. The Commission believes that, should a gaming operation choose to utilize this technology, the Tribal gaming regulatory authority would be responsible for developing controlling standards.

Several commenters suggested removing references to credit in this section. As discussed earlier, the Commission realizes that there are certain standards contained within the MICS that do not apply to all gaming operations. Gaming operations that do not utilize credit are not required to adopt standards specifically relating to credit.

Several commenters stated that reference to the standards for drop and count of table games found at § 542.12(b) should be worded the same as the reference to drop and count for gaming machines. The Commission agrees and has made this change.

One commenter stated that the requirement at § 542.12(c)(4) that the pit supervisor authorize a credit or fill was too stringent. The Commission agrees that intermediary gaming supervisors could authorize credits or fills and has changed the language to "pit supervisory personnel" to clarify this point.

Several commenters stated that the process of obtaining signatures on the copies of credit and fill slips was unclear. Section 542.12(c)(13) was reworded to clarify the signature progression required for these transactions. In addition, the standard was changed to allow a boxperson to sign for chip transactions at craps tables.

While some commented favorably about no longer requiring the counting of table banks of table games that were not opened during a shift, others suggested that § 542.12(d) should continue to require that table banks be counted, whether opened or not. The Commission believes the new standard allows for flexibility, particularly for small gaming operations. If a Tribal gaming regulatory authority believes that all tables should be counted regardless of whether they were opened,

they can include this higher standard in their tribal internal control standards.

Commenters stated that the requirement to "mark and remove cards and dice from play" places an unnecessary burden on the Tribal gaming regulatory authority. The language in § 542.12(f) was clarified to indicate that, as long as used cards and dice are secured, it is not necessary to mark them *immediately* after removal from play. It is also worth noting that this standard does not specify which entity is responsible for the task, only that the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establish a time frame (not to exceed seven (7) days) for the marking, canceling, or destruction of cards and dice.

One commenter felt that the daily recap requirement of § 542.12(i)(6) as it relates to pit credit was originally modeled after the Nevada MICS, and only important for the purpose of determining monthly taxes paid to the state. The Commission agrees that these requirements serve little if any value in Indian country and they therefore have been deleted.

One commenter suggested allowing non-supervisory personnel to sign customer markers in § 542.12(j)(1). The Commission disagrees, but has changed the term to "pit supervisory personnel" rather than "pit supervisor" to clarify that supervisors other than the pit supervisor may also perform this function.

Two commenters suggested prohibiting rim credit, indicating either that it is not used in tribal gaming operations, or that it may lead to collusion between a player and a dealer. While the Commission tends to agree, it believes that the Tribal gaming regulatory authority should determine the suitability of rim credit. Tribal gaming regulatory authorities not wishing to permit rim credit can make this determination in their tribal internal control standards.

Section 542.13 Gaming Machines

Several commenters discussed on-line accounting systems. Several were concerned that the MICS require such a system. Others felt that an on-line accounting system should be required. While the Commission encourages the use of an on-line accounting system, such system is not required for coin drop devices.

A number of comments were received on § 542.13(d), resulting in changes to both the content and structure of the section. Several asked that the documentation requirements of § 542.13(d)(1) be reduced. The Commission finds the documentation requirements for single jackpot payouts to be appropriate due to IRS requirements that single jackpots in excess of $1,199.99 be documented.

Section 542.13(d)(1)(vi)(B) permits jackpot payouts of less than $1,200 with the signature of only one employee if an on-line accounting system is utilized. Several commenters stated that hopper fills should be treated similarly. The Commission agrees that the risks associated with hopper fills is greatly reduced when an on-line accounting system is in use that confirms the fill transaction, and has therefore modified this section to include hopper fills.

Many commenters mentioned the positive attributes of on-line accounting systems. Recognizing their ability to provide adequate protection for many transactions, several changes were made, including for example, the reduction in signature requirements in § 542.13(d)(2) for short-pays and accumulated credit payouts of less than $3,000.

Several commenters stated that they believe multi-denominational machines are not covered by the MICS. While it is true that the MICS are silent with regard to specific mention of multi-denominational machines, it is not necessary that each type of machine be specifically addressed in order to be included within the MICS. Multi-denominational machines are subject to the MICS as they are applicable to gaming machines.

One commenter suggested eliminating the requirement at § 542.13(h)(10) that in-meter reading data be retained for 5 years because it is excessive. The Commission agrees and has made this change.

One commenter suggested that the investigation of large variances between theoretical and actual hold required by § 542.13(h)(19), should be performed by a department independent of the gaming machine department and that the results of the investigation should be provided to the Tribal gaming regulatory authority. The Commission agrees with this recommendation and the language has been changed accordingly. Furthermore, because the Tribal gaming regulatory authority bears the primary regulatory responsibility, language regarding the sharing of investigative findings with the Tribal gaming regulatory authority has been added throughout the MICS.

At § 542.13(i), the Commission proposed consolidating hopper contents standards when gaming machines are either temporarily or permanently removed from the gaming floor. One commenter felt that requiring the counting of the gaming machine drop and hopper contents when machines were temporarily removed from the floor was of little value, and suggested reverting to the existing language. The Commission agrees and the language was modified accordingly.

Commenters disagreed about whether booth employees should handle lost player club cards. Some felt that they should be able to return lost cards to players, while others felt that booth employees should under no circumstances have access to lost player cards. The Commission believes that the language at § 542.13(j)(iii), which allows booth employees to receive lost player club cards, provided that they are immediately deposited into a secured container to which they do not have access, is an acceptable minimum level of control. At least one commenter saw this language as an appropriate compromise.

Several commenters suggested that the thresholds contained in §§ 542.13(m)(5) and (7), whereby investigation of coin and currency drop variances is necessary, were inappropriate. The Commission feels these amounts are a reasonable reflection of industry standards. Again, for those commenters that believe these amounts should be lower, it is suggested that this be done in the development of tribal internal control standards.

Section 542.13(n)(3) discusses the redemption of cash-out tickets. Remote validation systems are a technological advance providing a reasonable level of control. The proposed rule recognized this new technology, but limited its use to tickets not exceeding $1,199. Based on comments and relevant research, the $1,199 limitation was increased to $2,999 per cash-out transaction.

The language throughout § 542.13(n) referring to a "cashier" has been clarified to include a "redeemer" to reflect use of a remote validation system. It is worth mentioning that in the event the system goes down, cash-out tickets must be redeemed at a change booth or cashier's cage in accordance with § 542.13(n)(8) to ensure adequate surveillance to protect the integrity of the transaction.

Two commenters opposed the prohibition by § 542.13(p) of smart cards. With smart cards, there is no duplicate record of the information stored on the card, placing both the customer and the operation at risk. If, in the future, technology is developed that would alleviate these concerns, a gaming operation wishing to utilize the system may request a variance from the Commission.

Section 542.14 Cage

One commenter asked whether the check cashing standards of § 542.14 apply to independent check cashing companies. They do not. However, the Commission strongly recommends that the Tribal gaming regulatory authority adopt regulations that will ensure persons employed by such companies are suitable to work in the gaming industry. Likewise, the Commission recommends that the Tribal gaming regulatory authority install surveillance cameras over appropriate counter areas to ensure that the interests of its customers are adequately protected. It is also important for the tribal regulators to require that the service provider has adopted necessary internal controls to ensure compliance with Title 31.

One commenter stated that the Tribal gaming regulatory authority, rather than the Commission, should determine the adequate minimum bankroll. The Commission agrees. The bankroll is the amount of cash or cash equivalents kept on hand to ensure that the gaming operation can satisfy its obligations to customers. Industry practice is for the gaming operation to determine the required bankroll. Section 542.14(d)(4) requires only that the Tribal gaming regulatory authority approve the formula utilized for this determination. The bankroll formula available from the Commission is merely recommended guidance issued in response to repeated requests from gaming operations.

One commenter asked whether chips, because they are a component of cage accountability, should be included in the bankroll formula. Chips, while they must be accounted for in the cage, are not cash equivalents for the purpose of paying customers.

Section 542.15 Credit

A number of commenters suggest removing this section from the MICS because they do not extend credit, or because they are prohibited from doing so by their Tribal-State compact. The Commission recognizes that not all gaming operations play all games or utilize all procedures contained herein. Again, this is where the process of developing tribal internal control standards becomes important. It is not intended for Tribes to simply adopt these MICS verbatim as tribal standards. Instead, Tribes should utilize the MICS to develop their own internal control standards that provide a level of control that equals or exceeds those set forth in this part and that address the particulars of their gaming operation(s). Doing so allows the opportunity of tailoring the MICS to meet the individual needs of a diverse industry. Tribes that do not extend credit are not required to include credit standards in their tribal internal control standards.

Section 542.16 Information Technology

Section 542.16(a)(1)(i) requires that all new vendor hardware and software agreements contain language requiring a vendor to adhere to tribal internal control standards. Two commenters opposed this requirement stating that such a requirement may create too few companies willing to do business with the Tribe. The Commission believes that, in order to protect the integrity of the systems provided by third-party vendors, this standard is necessary.

One commenter suggested adding the language "applicable to the goods or services the vendor is providing" to the end of § 542.16(a)(1)(i) to clarify what information is required. The language was added.

One commenter asked whether § 542.16(f)(1)(iii) requires a gaming operation to send computer hardware to the Commission for the purpose of performing auditing procedures. It does not. This standard instead requires that the Commission have access to hardware while on site.

Section 542.17 Complimentary Services or Items

The use of complimentary services or items, commonly known as "comps," is customary throughout the gaming industry. This is true not only of commercial gaming, but also of Indian gaming. The Commission does not prohibit the use of comps in Indian gaming. To the contrary, the Commission believes that tribal gaming operations should possess the same business tools as commercial gaming so they can compete on an equal footing.

Complimentaries are typically used for marketing or promotional purposes. They can be used to entice new customers, reward continuing customers, or promote community goodwill. Because the issuance of a comp amounts to the provision of goods or services, comps result in a cost to the gaming operation. As such, a complimentary generally should not be issued unless it provides an economic benefit, real or potential, to the operation.

Determining how much of a gaming operation's resources should be expended on comps, as well as to whom they should be awarded, is a decision dictated by market conditions and unique to each operation. A gaming operation in a tightly competitive market may rely on comps to a much greater degree to attract or retain patrons than a gaming operation in a market with little local competition. When implemented properly, a gaming operation's use of comps will improve revenues and profitability, and ensure that the operation is competing effectively for the gaming customers within its market.

A number of commenters and members of the Advisory Committee objected to § 542.17 being included in the MICS. Most view complimentaries as a business decision and outside the scope of the Commission's authority. While the Commission agrees that the use of comps involves important business decisions, it also recognizes that abuse can amount to misappropriation of gaming revenues.

Given that the issuance of a complimentary results in an expense to the operation, misuse negatively impacts gaming revenues. This lowering of gaming revenues leads directly to a reduction in the amount of revenues available for transfer to the Tribal government, and in turn, a reduction in the overall services a Tribe can provide to its members. Misuse of complimentaries thereby thwarts the principle that gaming revenues should benefit the Tribal community as a whole, and not individuals. Without clearly defined procedures for the authorization, issuance, and tracking of complimentaries, the potential for abuse can escalate.

Several comments prompt a discussion about the difference between complimentaries and expenditures by a Tribal government. Most Tribes have a number of businesses or enterprises operated for economic development. It is customary that at some point during the year, each of these businesses or enterprises transfer a portion of their net revenues to the Tribal government in order to fund governmental operations. Some commenters expressed concern that the Commission has placed restrictions upon the manner in which a Tribal government can spend these revenues. The Commission has not. Instead, the Congress stipulated such limitations when they enacted the Indian Gaming Regulatory Act (IGRA). Revenues transferred to a Tribal government from a gaming operation must be spent as specified by the Congress within the IGRA.

It is also important to note that expenditures of net gaming revenues by Tribal governments are not "complimentaries." "Complimentaries" is a term used to define certain types of expenditures of a gaming operation, not expenditures of a Tribal government. Because expenditures of net gaming

revenues by a Tribal government are not comps, they are therefore outside the scope of these MICS.

In response to numerous comments, the requirement that certain data be obtained for all complimentary services or items that exceed $50.00 has been modified to state that the collection of such data is not required for complimentary services or items below a "reasonable amount" to be established by the Tribal gaming regulatory authority. It is the Commission's view that for some large operations in a competitive market, $100 may be a reasonable amount. For others, $20 may be more appropriate. In any case, the Commission recognizes that the Tribal gaming regulatory authority can most appropriately establish this amount.

Section 542.18 Variances

This section was restructured to provide clarity and to recognize that the Tribal gaming regulatory authority, in the first instance, should determine whether the gaming operation should be granted a variance. Clearly, tribal regulators who are most familiar with a gaming operation are best equipped to make these initial determinations. The Commission would then be requested to concur with the variance. If the Commission does not agree, it must justify its objection. The new process also allows for an appeal to the full Commission. A number of commenters agreed that the changes to this section are an improvement.

Many commenters believe that the ninety (90) day time frame for Commission action in § 542.18(b) is too long. Previous experience has shown that review of a variance approval can be lengthy, particularly where the variance is somewhat complicated or involves new technology. The Commission has a shortage of staff able to review variance approvals, and such activity requires reassignment from current workload. In many cases, review may also entail travel to the gaming operation, as well as review of equivalent standards in comparable gaming jurisdictions. In response to the numerous comments, however, the Commission has shortened its response time to sixty (60) days. Further shortening of this time frame was not entertained out of fear that it may lead to lack of concurrence simply because of insufficient time for review, as opposed to concern with the variance itself.

One commenter suggested a standard whereby the Commission would notify a Tribe if its Tribal gaming regulatory authority requests a variance. The Commission believes that communication between the Tribal gaming regulatory authority and the Tribe is important, but also believes that it is an internal matter better addressed by the Tribe than through the MICS.

One commenter suggested that a gaming operation be able to appeal a Tribal gaming regulatory authority's denial of a variance request directly to the Commission. Again, the Commission believes that this is an internal issue, best addressed by the Tribe.

Several commenters stated that the Commission should not be involved in the variance process and that such decisions should be left entirely to the Tribal gaming regulatory authority. While acknowledging the vital role Tribal gaming regulatory authorities play in the primary regulation of gaming, the Commission would find it problematical to review compliance of gaming operations if each were being operated under different variances. In addition to being time-consuming and an unnecessary waste of Commission resources, such a process could also lead to a situation where the Commission disagrees with the level of control provided by a variance after implementation, resulting in unnecessary expense to the gaming operation. Furthermore, the MICS are the Commission's regulation and it therefore follows that the Commission should ultimately be responsible for review of variances.

Several commenters requested that the effective date of a variance, discussed in § 542.17(e), be changed to the date approved by the Tribal gaming regulatory authority. The Commission believes that the gaming operation should comply with standards that achieve a level of control sufficient to accomplish the purpose of the standard it is to replace until such time as the Commission objects.

A commenter requested that the Commission publish approved variances. This issue was considered in developing the proposed rule and rejected because of concerns that a variance (often based on intimate knowledge of the requesting gaming operation) that works for one operation, may not be sufficient to meet the needs of another. Even so, the Commission agrees that having the ability to review approved variances may be of benefit to other Tribal gaming operations. The Commission agrees to make public on its web page a list of Tribes who have received a variance concurrence, including the particular standard of the MICS it addressed. Tribal gaming regulatory authorities may then contact each other for specific details of the variance. A variance continues to be applicable only to the operation receiving concurrence.

The Committee expressed concern that nowhere is it clearly indicated to whom requests for variances should be sent. The Commission agrees with this concern and has in the past recommended that requests for variances be clearly marked both on the request itself and on the outside of the envelope. The Committee asked that the Commission issue clear guidance about the procedures that should be followed in requesting a variance concurrence.

Section 542.20 Tier A Gaming Operations

Several commenters requested that the upper limit for Tier A be raised. Based upon earlier comments and input from the Advisory Committee, the upper limit for Tier A gaming operations has been increased from the current level of $3 million to $5 million. The Commission believes that further adjustment of the upper limit may result in an unacceptable risk to tribal assets.

Sections 542.21, 542.31, and 542.41 Drop and Count for Tier A, B, and C Gaming Operations

One commenter asked that the clause regarding computer applications, included elsewhere in the MICS, be added to drop and count. The Commission agrees and has added such language at §§ 542.21(a), 542.31(a), and 542.41(a).

While some commented favorably about no longer requiring the drop of tables that were not opened during a shift, others suggested that §§ 542.21(b)(2)(ii), 542.31(b)(2)(ii), and 542.41(b)(2)(ii) should continue to require that tables be dropped, whether opened or not. The Commission believes the new standard allows for flexibility, particularly for small gaming operations. If a Tribal gaming regulatory authority believes that all tables should be dropped, regardless of whether they were opened, they can include this higher standard in their tribal internal control standards.

Several commenters indicated that they use computerized bar codes to mark table game drop boxes. The Commission agrees that use of such technology satisfies the requirements of §§ 542.21(b)(5), 542.31(b)(5), and 542.41(b)(5).

One commenter suggested that no one other than count room personnel should be permitted to enter or exit the count room during the count. The Commission was concerned that this could be interpreted to include gaming regulators, which is not the intent of §§ 542.21(c)(2), 542.31(c)(2), and

542.41(c)(2). Therefore, no change was made.

Several commenters were concerned about lack of independence if a dealer or cage cashier is used as a member of the count team, as permitted by §§ 542.21(c)(4), 542.31(c)(4), and 542.41(c)(4). The Commission tends to agree, but is concerned about how removing this provision would impact small gaming operations. Therefore, the ability to utilize a dealer or cage cashier was removed only from § 542.41(c)(4).

One commenter stated that the second count required by §§ 542.21(d)(4)(ii), 542.31(d)(4)(ii), and 542.41(d)(4)(ii) should be conducted of each box. The standard requires only that a second count of the entire drop be conducted, which is believed to be an appropriate minimum standard. A second commenter asked if an automated currency counting machine meets the requirements of this standard. The Commission agrees that utilization of this type of technology is appropriate, so long as the system is capable of conducting two independent counts. Yet another commenter suggested requiring a blind second count. The Commission would agree that this provides an additional layer of security, but would not require blind counts of all operations. Similar comments and changes were also made to §§ 542.21(f)(4)(ii), 542.31(f)(4)(ii), and 542.41(f)(4)(ii).

The standard at §§ 542.31(e)(3)(i) and 542.41(e)(3)(i) regarding a surveillance log has been moved to the surveillance section upon a recommendation that surveillance would be the department responsible for keeping the log.

Several commenters indicated that they use computerized bar codes to mark bill acceptor canisters. The Commission agrees that use of such technology satisfies the requirements of §§ 542.21(e)(4), 542.31(e)(5), and 542.41(e)(5).

One commenter recommended modification to §§ 542.21(f)(11), 542.31(f)(11), and 542.41(f)(11) to allow authorized personnel access to stored bill acceptor canisters in an emergency for the resolution of a problem. The Commission agrees and appropriate language was added.

One commenter suggested modification to the on-the-floor drop system standards at §§ 542.21(i)(2)(i), 542.31(i)(2)(i), and 542.41(i)(2)(i). These changes were accepted.

Sections 542.22, 542.32, and 542.42 Internal Audit for Tier A, B, and C Gaming Operations

One commenter recommended that a tiered approach should be considered for internal audit testing. The commenter suggested that while annual testing was appropriate for Tier A operations, in some instances, Tiers B and C should complete testing on a more frequent basis. While the Commission supports testing on a more frequent basis, it is believed that the approach specified in these standards is an appropriate minimum standard.

Language was also added at §§ 542.22(b)(1)(xi), 542.32(b)(1)(xi), and 542.42(b)(1)(xi), that expands the entities entitled to ask for additional internal audits to include the Tribe, Tribal gaming regulatory authority, audit committee, or any other entity designated by the Tribe.

Sections 542.23, 542.33, and 542.43 Surveillance for Tier A, B, and C Gaming Operations

Several commenters requested clarification that Tier A gaming operations require only the "recording" of areas under surveillance, not "monitoring." The Commission agrees. Unlike Tier B and C gaming operations, Tier A gaming operations are not required to maintain a staffed surveillance room. Therefore, "monitoring" is not required of Tier A gaming operations.

Several commenters also requested clarification of the meaning of the word "monitor." The Commission agrees that it should be read as the "ability to monitor." Surveillance personnel must continuously prioritize their activities as events unfold within the operation. To require "continuous monitoring" of one area or of one event may in fact divert attention from more pressing matters. The Commission does not expect continuous monitoring, only that surveillance personnel be able to monitor the particular area or event in the manner specified.

One commenter indicated concern with the camera coverage required by §§ 542.23(m), 542.33(p), and 542.43(q). The commenter believes that if camera coverage is set so that card values and suits can be clearly identified (as required by §§ 542.23(m)(1)(i), 542.33(p)(1)(i), and 542.43(q)(1)(i)), it may not be possible to also maintain an overall view of the entire table (as required by §§ 542.23(m)(1)(ii)), 542.33(p)(1)(ii)), and 542.43(q)(1)(ii)). These sections are not meant to specify the number or types of cameras that should be utilized. While several commenters suggested that the Commission should set a specific number and type of camera required for each standard, the Commission believes that the Tribal gaming regulatory authority and gaming operation are better suited to make this determination. As such, these sections are meant only to specify the required areas of coverage. To help alleviate any confusion, the beginning of the section was changed by deleting the word "each." Similar changes were also made to other comparable sections of the MICS.

Some commenters requested clarification of the meaning of "base payout amount" as used in §§ 542.23(n)(2) and (3), 542.33(q)(2) and (3), and 542.43(r)(2) and (3). The base payout amount is the jackpot reset amount. Clarifying language has been added to §§ 542.23(n)(2), 542.33(q)(2), and 542.43(r)(2). By way of example, an in-house progressive machine offering a base payout (jackpot reset) amount of $90,000 that increases to $200,000, is not required to be monitored and recorded by a dedicated camera under this section because the base payout amount of $90,000 is less than the $100,000 threshold.

One commenter questioned why the surveillance standards are less stringent for wide-area progressive machines, in that the base payout amount requiring dedicated camera coverage is set at $1.5 million. (§§ 542.23(n)(3), 542.33(q)(3), 542.43(r)(3)) The Commission believes that because these games are monitored by independent vendors, primary payouts are made by independent vendors, and they utilize an on-line monitoring system, the threat to tribal gaming operations' assets are reduced and therefore, the surveillance requirements should be less stringent.

Several commenters objected to the standard contained within §§ 542.23(p)(3), 542.33(v)(3), and 542.43(w)(3) requiring that an original surveillance tape or digital recording be provided to the Commission. The standard was changed to allow Commission access to a duly authenticated copy instead of an original.

Section 542.30 Tier B Gaming Operations

Several commenters requested that the upper limit for Tier B be raised. Based upon earlier comments and input from the Advisory Committee, the upper limit for Tier B gaming operations has been increased from the current level of $10 million to $15 million. The Commission believes that further adjustment of the upper limit may result in an unacceptable risk to tribal assets.

Section 542.40 Tier C Gaming Operations

Several commenters requested that the threshold at which gaming operations become Tier C be raised.

Based upon earlier comments and input from the Advisory Committee, the level at which gaming operations become Tier C has been increased from $10 million to $15 million. The Commission believes that further adjustment may result in an unacceptable risk to tribal assets.

One commenter suggested requiring that all Tier C gaming operations install on-line accounting systems. While the Commission believes that on-line systems provide a higher level of protection of assets, we do not agree that, as a minimum standard, this system should be required.

Regulatory Flexibility Act

On April 23, 2002, the Commission published for public comment its certification that the proposed regulation would not have a significant impact on small entities. In response the Commission received nineteen comments. A majority of the comments received were similar, stating that the Commission had violated the Regulatory Flexibility Act by failing to prepare an analysis. The Commission disagrees. The Regulatory Flexibility Act allows an agency to certify that a proposed rule will not have a significant economic impact on small entities subject to the rule as long as the agency provides an explanation of the factual basis for the certification. 5 U.S.C. § 605(b). The Commission provided this basis in its notice dated April 23, 2002, and again certifies in this final rule.

A majority of the commenters also disagree with the Commission's determination that it possesses the statutory authority to promulgate this regulation. That issue is considered and addressed elsewhere in this preamble.

One commenter objected to the Commission's definition of "small entity" under the Regulatory Flexibility Act. The Commission, in determining that gaming operations with gross revenues under $5 million may qualify as "small businesses" and, therefore as "small entities," relied, as does the Regulatory Flexibility Act, on the definitions contained with the Small Business Act, and associated regulations. 15 U.S.C. 632; 13 CFR 121.201. Therefore, the Commission disagrees with this comment.

The same commenter disagreed with the Commission's certification that this regulation does not impose significant economic costs to affected Indian gaming operations. The Commission disagrees. As stated in its certification, internal controls are requirements that are mandated by the nature of gaming operations. In the absence of federal regulations, Tribes would continue to incur many, if not all, of the same regulatory expenses. The same commenter suggested that the Commission should consider the effect of all of the Commission's regulatory activities in determining economic impact. The Commission is aware of its obligations under the Regulatory Flexibility Act and will continue to comply with the Act in fitting regulatory and informational requirements to the scale of entities subject to its regulations. For example, as stated in the request for public comment dated April 23, 2002, the Commission has tiered this regulation to take into account the needs of large and small gaming operations. The Commission's advisory committee consisted of representatives from both large and small gaming operations. The Commission also requested and responded to public comments in the form of written comments and held a public hearing.

One commenter stated that the Commission's proposal to exempt gaming operations grossing under $1 million from compliance with these regulations was commendable, but asked that the Commission consider exempting all gaming operations grossing less than $5 million from regulatory compliance. The Commission believes that such an exemption would jeopardize the integrity of Indian gaming as a whole; and exempting such a large group of gaming operations from federal oversight would be a shirking of the responsibilities of the Commission. The Commission does, however, realize that the costs of compliance with minimum internal control standards should reflect the risk of loss to Indian gaming operations. Because of this, the Commission has reduced the requirements of Tier A gaming facilities. In addition, tribal gaming regulatory authorities may request a variance from these requirements if adequate alternative controls are put in place. The Commission believes that the flexibility of the new regulation adequately addresses the concerns of smaller gaming operations, while fulfilling its statutory obligation of the federal oversight of Indian gaming.

Future Revisions to the MICS

Indian gaming, like commercial gaming, is an ever-changing industry. As new technology emerges and the industry itself continues to mature, this regulation will likewise require evolution. The MICS are a technical regulation greatly impacting all Tribal gaming operations. As such, input from those most affected is critical to developing a mutually beneficial regulatory framework. The Commission firmly believes that any future changes to this regulation be made in a fully consultative process, similar to the one utilized in developing this final rule.

Regulatory Matters

Regulatory Flexibility Act

The Commission certifies that the Minimum Internal Control Standards contained within this regulation will not have a significant economic impact on small entities, 5 U.S.C. 605(b). The factual basis for this certification is as follows:

Of the 315 Indian gaming operations across the country, approximately 100 of the operations have gross revenues of less than $5 million. Of these, approximately 50 operations have gross revenues of under $1 million. Since the proposed revisions will not apply to gaming operations with gross revenues under $1 million, only 50 small operations may be affected. While this is a substantial number, the Commission believes that the regulations will not have a significant economic impact on these operations for several reasons. First, internal controls are essential to gaming operations in order to protect assets. The costs involved in implementing these controls are part of the regular business costs incurred by such an operation. The Commission also believes that many Indian gaming operations have already implemented internal control standards that are more stringent than those contained in these regulations.

Under the proposed revisions, small gaming operations grossing under $1 million are exempted from MICS compliance. Tier A facilities (those with gross revenues between $1 and $5 million) are subject to the yearly requirement that independent certified public accountant testing occur. The purpose of this testing is to measure the gaming operation's compliance with the tribe's internal control standards. The cost of compliance with this requirement for a small gaming operation is estimated at between $3,000 and $5,000. The cost of this report is minimal and does not create a significant economic effect on gaming operations. What little impact exists is further offset because other regulations require a yearly independent financial audit that can be conducted at the same time. For these reasons, the Commission has concluded that the proposed rule will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions, and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or 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, 2 U.S.C. 1501 *et seq.*

The Commission has, however, determined that this final rule may have a unique effect on tribal governments (this rule applies exclusively to tribal governments) whenever they undertake the ownership, operation, regulation, or licensing of gaming operations on Indian lands as defined by the Indian Gaming Regulatory Act. The Commission has therefore undertaken the following actions: on two occasions, made a request for public comment on changes to the regulation; formed a Tribal Advisory Committee to assist in writing the new regulation; held discussions with Tribal leaders and Tribal associations about desired changes to the regulation; prepared guidance material and model documents; held a public hearing; and continues to provide technical assistance.

Between May and November 2001, the Commission and the Tribal Advisory Committee met six times to develop a regulatory proposal. In selecting Committee members, consideration was placed on the applicant's experience in this area, as well as the size of the Tribe the nominee represented, geographic location of the Tribe's gaming operation, and the size and type of gaming conducted. The Commission believes it assembled a diverse Committee representative of Indian gaming interests.

Since beginning formulation of this final rule, the Commission spoke at several tribal association meetings. The Commission will develop guidance materials that will include guidelines for CPA firms who must audit gaming operations to determine compliance with tribal internal control standards. The Commission also held a public hearing on the proposed regulation prior to development and publication of a final rule. The Commission and the Tribal Advisory Committee met one last time to discuss the public comments received as a result of publication of the proposed rule and to develop a recommendation regarding the final rule. The Commission also plans on continuing its policy of providing technical assistance, through its field offices, to Tribes to assist in complying with the MICS.

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

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

Paperwork Reduction Act

This final rule requires an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*, as did the regulation it replaces. There is no change to the paperwork requirements created by this amendment. The Commission's OMB Control number for this regulation is 3141–0009.

National Environmental Policy Act

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

List of Subjects in 25 CFR Part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and record keeping requirements.

For reasons stated in the preamble, the National Indian Gaming Commission revises 25 CFR part 542 to read as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

Sec.

542.1 What does this part cover?
542.2 What are the definitions for this part?
542.3 How do I comply with this part?
542.4 How do these regulations affect minimum internal control standards establish in a Tribal-State compact?
542.5 How do these regulations affect state jurisdiction?
542.6 Does this part apply to small and charitable gaming operations?
542.7 What are the minimum internal control standards for bingo?
542.8 What are the minimum internal control standards for pull tabs?
542.9 What are the minimum internal control standards for card games?
542.10 What are the minimum internal control standards for keno?
542.11 What are the minimum internal control standards for pari-mutuel wagering?
542.12 What are the minimum internal control standards for table games?
542.13 What are the minimum internal control standards for gaming machines?
542.14 What are the minimum internal control standards for the cage?
542.15 What are the minimum internal control standards for credit?
542.16 What are the minimum internal control standards for information technology?
542.17 What are the minimum internal control standards for complimentary services or items?
542.18 How does a gaming operation apply for a variance from the standards of this part?
542.20 What is a Tier A gaming operation?
542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?
542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?
542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?
542.30 What is a Tier B gaming operation?
542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?
542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?
542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?
542.40 What is a Tier C gaming operation?
542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?
542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?
542.43 What are the minimum internal control standards for surveillance for a Tier C gaming operation?

Authority: 25 U.S.C. 2702(c), 2706(b)(10).

§ 542.1 What does this part cover?

This part establishes the minimum internal control standards for gaming operations on Indian land.

§ 542.2 What are the definitions for this part?

The definitions in this section shall apply to all sections of this part unless otherwise noted.

Account access card means an instrument used to access customer accounts for wagering at a gaming machine. Account access cards are used in connection with a computerized account database.

Accountability means all items of cash, chips, coins, tokens, plaques, receivables, and customer deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Accumulated credit payout means credit earned in a gaming machine that is paid to a customer manually in lieu of a machine payout.

Actual hold percentage means the percentage calculated by dividing the win by the drop or coin-in (number of credits wagered). Can be calculated for individual tables or gaming machines, type of table games, or gaming machines on a per day or cumulative basis.

Ante means a player's initial wager or predetermined contribution to the pot before the dealing of the first hand.

Betting station means the area designated in a pari-mutuel area that accepts wagers and pays winning bets.

Betting ticket means a printed, serially numbered form used to record the event upon which a wager is made, the amount and date of the wager, and sometimes the line or spread (odds).

Bill acceptor means the device that accepts and reads cash by denomination in order to accurately register customer credits.

Bill acceptor canister means the box attached to the bill acceptor used to contain cash received by bill acceptors.

Bill acceptor canister release key means the key used to release the bill acceptor canister from the bill acceptor device.

Bill acceptor canister storage rack key means the key used to access the storage rack where bill acceptor canisters are secured.

Bill acceptor drop means cash contained in bill acceptor canisters.

Bill-in meter means a meter included on a gaming machine accepting cash that tracks the number of bills put in the machine.

Boxperson means the first-level supervisor who is responsible for directly participating in and supervising the operation and conduct of a craps game.

Breakage means the difference between actual bet amounts paid out by a racetrack to bettors and amounts won due to bet payments being rounded up or down. For example, a winning bet that should pay $4.25 may be actually paid at $4.20 due to rounding.

Cage means a secure work area within the gaming operation for cashiers and a storage area for the gaming operation bankroll.

Cage accountability form means an itemized list of the components that make up the cage accountability.

Cage credit means advances in the form of cash or gaming chips made to customers at the cage. Documented by the players signing an IOU or a marker similar to a counter check.

Cage marker form means a document, signed by the customer, evidencing an extension of credit at the cage to the customer by the gaming operation.

Calibration module means the section of a weigh scale used to set the scale to a specific amount or number of coins to be counted.

Call bets means a wager made without cash or chips, reserved for a known customer and includes marked bets (which are supplemental bets made during a hand of play). For the purpose of settling a call bet, a hand of play in craps is defined as a natural winner (e.g., seven or eleven on the come-out roll), a natural loser (e.g., a two, three or twelve on the come-out roll), a seven-out, or the player making his point, whichever comes first.

Card game means a game in which the gaming operation is not party to wagers and from which the gaming operation receives compensation in the form of a rake, a time buy-in, or other fee or payment from a player for the privilege of playing.

Card room bank means the operating fund assigned to the card room or main card room bank.

Cash-out ticket means an instrument of value generated by a gaming machine representing a cash amount owed to a customer at a specific gaming machine. This instrument may be wagered at other machines by depositing the cash-out ticket in the machine bill acceptor.

Chips means cash substitutes, in various denominations, issued by a gaming operation and used for wagering.

Coin-in meter means the meter that displays the total amount wagered in a gaming machine that includes coins-in and credits played.

Coin meter count machine means a device used in a coin room to count coin.

Coin room means an area where coins and tokens are stored.

Coin room inventory means coins and tokens stored in the coin room that are generally used for gaming machine department operation.

Commission means the National Indian Gaming Commission.

Complimentary means a service or item provided at no cost, or at a reduced cost, to a customer.

Count means the total funds counted for a particular game, gaming machine, shift, or other period.

Count room means a room where the coin and cash drop from gaming machines, table games, or other games are transported to and counted.

Count team means personnel that perform either the count of the gaming machine drop and/or the table game drop.

Counter check means a form provided by the gaming operation for the customer to use in lieu of a personal check.

Credit means the right granted by a gaming operation to a customer to defer payment of debt or to incur debt and defer its payment.

Credit limit means the maximum dollar amount of credit assigned to a customer by the gaming operation.

Credit slip means a form used to record either:

(1) The return of chips from a gaming table to the cage; or

(2) The transfer of IOUs, markers, or negotiable checks from a gaming table to a cage or bankroll.

Customer deposits means the amounts placed with a cage cashier by customers for the customers' use at a future time.

Deal means a specific pull tab game that has a specific serial number associated with each game.

Dealer means an employee who operates a game, individually or as a part of a crew, administering house rules and making payoffs.

Dedicated camera means a video camera required to continuously record a specific activity.

Deskman means a person who authorizes payment of winning tickets and verifies payouts for keno games.

Draw ticket means a blank keno ticket whose numbers are punched out when balls are drawn for the game. Used to verify winning tickets.

Drop (for gaming machines) means the total amount of cash, cash-out tickets, coupons, coins, and tokens removed from drop buckets and/or bill acceptor canisters.

Drop (for table games) means the total amount of cash, chips, and tokens removed from drop boxes, plus the amount of credit issued at the tables.

Drop box means a locked container affixed to the gaming table into which

the drop is placed. The game type, table number, and shift are indicated on the box.

Drop box contents keys means the key used to open drop boxes.

Drop box release keys means the key used to release drop boxes from tables.

Drop box storage rack keys means the key used to access the storage rack where drop boxes are secured.

Drop bucket means a container located in the drop cabinet (or in a secured portion of the gaming machine in coinless/cashless configurations) for the purpose of collecting coins, tokens, cash-out tickets, and coupons from the gaming machine.

Drop cabinet means the wooden or metal base of the gaming machine that contains the gaming machine drop bucket.

Earned and unearned take means race bets taken on present and future race events. Earned take means bets received on current or present events. Unearned take means bets taken on future race events.

EPROM means erasable programmable read-only memory or other equivalent game software media.

Fill means a transaction whereby a supply of chips, coins, or tokens is transferred from a bankroll to a table game or gaming machine.

Fill slip means a document evidencing a fill.

Flare means the information sheet provided by the manufacturer that sets forth the rules of a particular pull tab game and that is associated with a specific deal of pull tabs. The flare shall contain the following information:

(1) Name of the game;

(2) Manufacturer name or manufacturer's logo;

(3) Ticket count; and

(4) Prize structure, which shall include the number of winning pull tabs by denomination, with their respective winning symbols, numbers, or both.

Future wagers means bets on races to be run in the future (e.g., Kentucky Derby).

Game server means an electronic selection device, utilizing a random number generator.

Gaming machine means an electronic or electromechanical machine which contains a microprocessor with random number generator capability which allows a player to play games of chance, some of which may be affected by skill, which machine is activated by the insertion of a coin, token or cash, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements be redeemable for cash.

Gaming machine analysis report means a report prepared that compares theoretical to actual hold by a gaming machine on a monthly or other periodic basis.

Gaming machine booths and change banks means a booth or small cage in the gaming machine area used to provide change to players, store change aprons and extra coin, and account for jackpot and other payouts.

Gaming machine count means the total amount of coins, tokens, and cash removed from a gaming machine. The amount counted is entered on the Gaming Machine Count Sheet and is considered the drop. Also, the procedure of counting the coins, tokens, and cash or the process of verifying gaming machine coin and token inventory.

Gaming machine pay table means the reel strip combinations illustrated on the face of the gaming machine that can identify payouts of designated coin amounts.

Gaming operation accounts receivable (for gaming operation credit) means credit extended to gaming operation customers in the form of markers, returned checks, or other credit instruments that have not been repaid.

Gross gaming revenue means annual total amount of cash wagered on class II and class III games and admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded.

Hold means the relationship of win to coin-in for gaming machines and win to drop for table games.

Hub means the person or entity that is licensed to provide the operator of a pari-mutuel wagering operation information related to horse racing that is used to determine winners of races or payoffs on wagers accepted by the pari-mutuel wagering operation.

Internal audit means persons who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship, as the internal audit department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Internal audit personnel may provide audit coverage to more than one operation within a Tribe's gaming operation holdings.

Issue slip means a copy of a credit instrument that is retained for numerical sequence control purposes.

Jackpot payout means the portion of a jackpot paid by gaming machine personnel. The amount is usually determined as the difference between the total posted jackpot amount and the coins paid out by the machine. May also be the total amount of the jackpot.

Lammer button means a type of chip that is placed on a gaming table to indicate that the amount of chips designated thereon has been given to the customer for wagering on credit before completion of the credit instrument. Lammer button may also mean a type of chip used to evidence transfers between table banks and card room banks.

Linked electronic game means any game linked to two (2) or more gaming operations that are physically separate and not regulated by the same Tribal gaming regulatory authority.

Main card room bank means a fund of cash, coin, and chips used primarily for poker and pan card game areas. Used to make even cash transfers between various games as needed. May be used similarly in other areas of the gaming operation.

Marker means a document, signed by the customer, evidencing an extension of credit to him by the gaming operation.

Marker credit play means that players are allowed to purchase chips using credit in the form of a marker.

Marker inventory form means a form maintained at table games or in the gaming operation pit that are used to track marker inventories at the individual table or pit.

Marker transfer form means a form used to document transfers of markers from the pit to the cage.

Master credit record means a form to record the date, time, shift, game, table, amount of credit given, and the signatures or initials of the persons extending the credit.

Master game program number means the game program number listed on a gaming machine EPROM.

Master game sheet means a form used to record, by shift and day, each table game's winnings and losses. This form reflects the opening and closing table inventories, the fills and credits, and the drop and win.

Mechanical coin counter means a device used to count coins that may be used in addition to or in lieu of a coin weigh scale.

Meter means an electronic (soft) or mechanical (hard) apparatus in a gaming machine. May record the number of coins wagered, the number of coins dropped, the number of times the handle was pulled, or the number of coins paid out to winning players.

MICS means minimum internal control standards in this part 542.

Motion activated dedicated camera means a video camera that, upon its

detection of activity or motion in a specific area, begins to record the activity or area.

Multi-game machine means a gaming machine that includes more than one type of game option.

Multi-race ticket means a keno ticket that is played in multiple games.

On-line gaming machine monitoring system means a system used by a gaming operation to monitor gaming machine meter readings and/or other activities on an on-line basis.

Order for credit means a form that is used to request the transfer of chips or markers from a table to the cage. The order precedes the actual transfer transaction that is documented on a credit slip.

Outstation means areas other than the main keno area where bets may be placed and tickets paid.

Par percentage means the percentage of each dollar wagered that the house wins (i.e., gaming operation advantage).

Par sheet means a specification sheet for a gaming machine that provides machine hold percentage, model number, hit frequency, reel combination, number of reels, number of coins that can be accepted, and reel strip listing.

Pari-mutuel wagering means a system of wagering on horse races, jai-alai, greyhound, and harness racing, where the winners divide the total amount wagered, net of commissions and operating expenses, proportionate to the individual amount wagered.

Payment slip means that part of a marker form on which customer payments are recorded.

Payout means a transaction associated with a winning event.

PIN means the personal identification number used to access a player's account.

Pit podium means a stand located in the middle of the tables used by gaming operation supervisory personnel as a workspace and a record storage area.

Pit supervisor means the employee who supervises all games in a pit.

Player tracking system means a system typically used in gaming machine departments that can record the gaming machine play of individual customers.

Post time means the time when a pari-mutuel track stops accepting bets in accordance with rules and regulations of the applicable jurisdiction.

Primary and secondary jackpots means promotional pools offered at certain card games that can be won in addition to the primary pot.

Progressive gaming machine means a gaming machine, with a payoff indicator, in which the payoff increases as it is played (i.e., deferred payout). The payoff amount is accumulated, displayed on a machine, and will remain until a player lines up the jackpot symbols that result in the progressive amount being paid.

Progressive jackpot means deferred payout from a progressive gaming machine.

Progressive table game means table games that offer progressive jackpots.

Promotional payout means merchandise or awards given to players by the gaming operation based on a wagering activity.

Promotional progressive pots and/or pools means funds contributed to a table game by and for the benefit of players. Funds are distributed to players based on a predetermined event.

Rabbit ears means a device, generally V-shaped, that holds the numbered balls selected during a keno or bingo game so that the numbers are visible to players and employees.

Rake means a commission charged by the house for maintaining or dealing a game such as poker.

Rake circle means the area of a table where rake is placed.

Random number generator means a device that generates numbers in the absence of a pattern. May be used to determine numbers selected in various games such as keno and bingo. Also commonly used in gaming machines to generate game outcome.

Reel symbols means symbols listed on reel strips of gaming machines.

Rim credit means extensions of credit that are not evidenced by the immediate preparation of a marker and does not include call bets.

Runner means a gaming employee who transports chips/cash to or from a gaming table and a cashier.

SAM means a screen-automated machine used to accept pari-mutuel wagers. SAM's also pay winning tickets in the form of a voucher, which is redeemable for cash.

Shift means an eight-hour period, unless otherwise approved by the Tribal gaming regulatory authority, not to exceed twenty-four (24) hours.

Shill means an employee financed by the house and acting as a player for the purpose of starting or maintaining a sufficient number of players in a game.

Short pay means a payoff from a gaming machine that is less than the listed amount.

Soft count means the count of the contents in a drop box or a bill acceptor canister.

Sufficient clarity means use of monitoring and recording at a minimum of twenty (20) frames per second. Multiplexer tape recordings are insufficient to satisfy the requirement of sufficient clarity.

Surveillance room means a secure location(s) in a gaming operation used primarily for casino surveillance.

Surveillance system means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other ancillary equipment used for casino surveillance.

Table games means games that are banked by the house or a pool whereby the house or the pool pays all winning bets and collects from all losing bets.

Table inventory means the total coins, chips, and markers at a table.

Table inventory form means the form used by gaming operation supervisory personnel to document the inventory of chips, coins, and tokens on a table at the beginning and ending of a shift.

Table tray means the container located on gaming tables where chips, coins, or cash are stored that are used in the game.

Take means the same as earned and unearned take.

Theoretical hold means the intended hold percentage or win of an individual gaming machine as computed by reference to its payout schedule and reel strip settings or EPROM.

Theoretical hold worksheet means a worksheet provided by the manufacturer for all gaming machines that indicate the theoretical percentages that the gaming machine should hold based on adequate levels of coin-in. The worksheet also indicates the reel strip settings, number of credits that may be played, the payout schedule, the number of reels and other information descriptive of the particular type of gaming machine.

Tier A means gaming operations with annual gross gaming revenues of more than $1 million but not more than $5 million.

Tier B means gaming operations with annual gross gaming revenues of more than $5 million but not more than $15 million.

Tier C means gaming operations with annual gross gaming revenues of more than $15 million.

Tokens means a coin-like cash substitute, in various denominations, used for gambling transactions.

Tribal gaming regulatory authority means the tribally designated entity responsible for gaming regulation.

Vault means a secure area within the gaming operation where tokens, checks, cash, coins, and chips are stored.

Weigh/count means the value of coins and tokens counted by a weigh machine.

Weigh scale calibration module means the device used to adjust a coin weigh scale.

Weigh scale interface means a communication device between the weigh scale used to calculate the amount of funds included in drop buckets and the computer system used to record the weigh data.

Weigh tape means the tape where weighed coin is recorded.

Wide area progressive gaming machine means a progressive gaming machine that is linked to machines in other operations and play on the machines affect the progressive amount. As wagers are placed, the progressive meters on all of the linked machines increase.

Win means the net win resulting from all gaming activities. Net win results from deducting all gaming losses from all wins prior to considering associated operating expenses.

Win-to-write hold percentage means win divided by write to determine hold percentage.

Wrap means the method of storing coins after the count process has been completed, including, but not limited to, wrapping, racking, or bagging. May also refer to the total amount or value of the counted and stored coins.

Write means the total amount wagered in keno, bingo, pull tabs, and pari-mutuel operations.

Writer means an employee who writes keno, bingo, pull tabs, or pari-mutuel tickets. A keno writer usually also makes payouts.

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier.* (1) Tier A gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.20 through 542.23.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.30 through 542.33.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.40 through 542.43.

(b) *Determination of tier.* (1) The determination of tier level shall be made based upon the annual gross gaming revenues indicated within the gaming operation's audited financial statements. Gaming operations moving from one tier to another shall have nine (9) months from the date of the independent certified public accountant's audit report to achieve compliance with the requirements of the new tier.

(2) The Tribal gaming regulatory authority may extend the deadline by an additional six (6) months if written notice is provided to the Commission no later than two weeks before the expiration of the nine (9) month period.

(c) *Tribal internal control standards.* Within six (6) months of June 27, 2002, each Tribal gaming regulatory authority shall, in accordance with the Tribal gaming ordinance, establish and implement tribal internal control standards that shall:

(1) Provide a level of control that equals or exceeds those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103;

(3) Establish standards for games that are not addressed in this part; and

(4) Establish a deadline, which shall not exceed nine (9) months from June 27, 2002, by which a gaming operation must come into compliance with the tribal internal control standards. However, the Tribal gaming regulatory authority may extend the deadline by an additional six (6) months if written notice is provided to the Commission no later than two weeks before the expiration of the nine (9) month period.

(d) *Gaming operations.* Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal internal control standards.

(1) *Existing gaming operations.* All gaming operations that are operating on or before June 27, 2002, shall comply with this part within the time requirements established in paragraph (c) of this section. In the interim, such operations shall continue to comply with existing tribal internal control standards.

(2) *New gaming operations.* All gaming operations that commence operations after August 26, 2002, shall comply with this part before commencement of operations.

(e) *Submission to Commission.* Tribal regulations promulgated pursuant to this part shall not be required to be submitted to the Commission pursuant to 25 CFR 522.3(b).

(f) *CPA testing.* (1) An independent certified public accountant (CPA) shall be engaged to perform procedures to verify, on a test basis, that the gaming operation is in material compliance with the tribal internal control standards or a tribally approved variance that has received Commission concurrence. The procedures may be performed in conjunction with the annual audit. The CPA shall report its findings to the Tribe, Tribal gaming regulatory authority, and management. The Tribe shall submit a copy of the report to the Commission within 120 days of the gaming operation's fiscal year end.

(2) *CPA Guidelines.* In connection with the CPA testing pursuant to paragraph (f)(1) of this section, the Commission shall develop recommended CPA Guidelines available upon request.

(g) *Enforcement of Commission Minimum Internal Control Standards.* (1) Each Tribal gaming regulatory authority is required to establish and implement internal control standards pursuant to paragraph (c) of this section. Each gaming operation is then required, pursuant to paragraph (d) of this section, to develop and implement an internal control system that complies with the Tribal internal control standards. Failure to do so may subject the Tribal operator of the gaming operation, and/or the management contractor, to penalties under 25 U.S.C. 2713.

(2) Recognizing that Tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the Tribe and Tribal gaming regulatory authority of deficiencies in the internal controls of its gaming operation and allowing a reasonable period of time to address such deficiencies. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.

§ 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

(a) If there is a direct conflict between an internal control standard established in a Tribal-State compact and a standard or requirement set forth in this part, then the internal control standard established in a Tribal-State compact shall prevail.

(b) If an internal control standard in a Tribal-State compact provides a level of control that equals or exceeds the level of control under an internal control standard or requirement set forth in this part, then the Tribal-State compact standard shall prevail.

(c) If an internal control standard or a requirement set forth in this part provides a level of control that exceeds the level of control under an internal control standard established in a Tribal-State compact, then the internal control standard or requirement set forth in this part shall prevail.

§ 542.5 How do these regulations affect state jurisdiction?

Nothing in this part shall be construed to grant to a state jurisdiction in class II gaming or extend a state's jurisdiction in class III gaming.

§ 542.6 Does this part apply to small and charitable gaming operations?

(a) *Small gaming operations.* This part shall not apply to small gaming operations provided that:

(1) The Tribal gaming regulatory authority permits the operation to be exempt from this part;

(2) The annual gross gaming revenue of the operation does not exceed $1 million; and

(3) The Tribal gaming regulatory authority develops and the operation complies with alternate procedures that:

(i) Protect the integrity of games offered; and

(ii) Safeguard the assets used in connection with the operation.

(b) *Charitable gaming operations.* This part shall not apply to charitable gaming operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The Tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(3) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers;

(4) The annual gross gaming revenue of the charitable gaming operation does not exceed $100,000;

(i) Where the annual gross gaming revenues of the charitable gaming operation exceed $100,000, but are less than $1 million, paragraph (a) of this section shall also apply; and

(ii) [Reserved]

(5) The Tribal gaming regulatory authority develops and the charitable gaming operation complies with alternate procedures that:

(i) Protect the integrity of the games offered; and

(ii) Safeguard the assets used in connection with the gaming operation.

(c) *Independent operators.* Nothing in this section shall exempt gaming operations conducted by independent operators for the benefit of a charitable organization.

§ 542.7 What are the minimum internal control standards for bingo?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Game play standards.* (1) The functions of seller and payout verifier shall be segregated. Employees who sell cards on the floor shall not verify payouts with cards in their possession. Floor clerks who sell cards on the floor are permitted to announce the serial numbers of winning cards.

(2) All sales of bingo cards shall be documented by recording at least the following:

(i) Date;

(ii) Shift (if applicable);

(iii) Session (if applicable);

(iv) Dollar amount;

(v) Signature, initials, or identification number of at least one seller (if manually documented); and

(vi) Signature, initials, or identification number of a person independent of the seller who has randomly verified the card sales (this requirement is not applicable to locations with $1 million or less in annual write).

(3) The total win and write shall be computed and recorded by shift (or session, if applicable).

(4) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that ensure the correct calling of numbers selected in the bingo game.

(5) Each ball shall be shown to a camera immediately before it is called so that it is individually displayed to all customers. For speed bingo games not verified by camera equipment, each ball drawn shall be verified by a person independent of the bingo caller responsible for calling the speed bingo game.

(6) For all coverall games and other games offering a payout of $1,200 or more, as the balls are called the numbers shall be immediately recorded by the caller and maintained for a minimum of twenty-four (24) hours.

(7) Controls shall be present to assure that the numbered balls are placed back into the selection device prior to calling the next game.

(8) The authenticity of each payout shall be verified by at least two persons. A computerized card verifying system may function as the second person verifying the payout if the card with the winning numbers is displayed on a reader board.

(9) Payouts in excess of $1,200 shall require written approval, by personnel independent of the transaction, that the bingo card has been examined and verified with the bingo card record to ensure that the ticket has not been altered.

(10) Total payout shall be computed and recorded by shift or session, if applicable.

(c) *Promotional payouts or awards.* (1) If the gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(i) Date and time;

(ii) Dollar amount of payout or description of personal property (*e.g.*, jacket, toaster, car, etc.), including fair market value;

(iii) Type of promotion; and

(iv) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(d) *Accountability form.* (1) All funds used to operate the bingo department shall be recorded on an accountability form.

(2) All funds used to operate the bingo department shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(e) *Bingo equipment.* (1) Access to controlled bingo equipment (e.g., blower, balls in play, and back-up balls) shall be restricted to authorized persons.

(2) The procedures established by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall include standards relating to the inspection of new bingo balls put into play as well as for those in use.

(3) Bingo equipment shall be maintained and checked for accuracy on a periodic basis.

(4) The bingo card inventory shall be controlled so as to assure the integrity of the cards being used as follows:

(i) Purchased paper shall be inventoried and secured by a person or persons independent of the bingo sales;

(ii) The issue of paper to the cashiers shall be documented and signed for by the person responsible for inventory control and a cashier. The document log shall include the series number of the bingo paper;

(iii) A copy of the bingo paper control log shall be given to the bingo ball caller for purposes of determining if the winner purchased the paper that was issued for sale that day (electronic verification satisfies this standard);

(iv) At the end of each month, a person or persons independent of bingo sales and inventory control shall verify the accuracy of the ending balance in the bingo paper control by reconciling the paper on-hand;

(v) A monthly comparison for reasonableness shall be made of the amount of paper sold from the bingo paper control log to the amount of revenue recognized.

(f) *Standards for statistical reports.* (1) Records shall be maintained, which include win, write (card sales), and a win-to-write hold percentage, for:

(i) Each shift or each session;

(ii) Each day;
(iii) Month-to-date; and
(iv) Year-to-date or fiscal year-to-date.
(2) A manager independent of the bingo department shall review bingo statistical information on at least a monthly basis and investigate any large or unusual statistical fluctuations.
(3) Investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.
(g) *Electronic equipment.* (1) If the gaming operation utilizes electronic equipment in connection with the play of bingo, then the following standards shall also apply.
(i) If the electronic equipment contains a bill acceptor, then § 542.21(d) and (e), § 542.31(d) and (e), or § 542.41(d) and (e) (as applicable) shall apply.
(ii) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically by a person or persons independent of the bingo department to determine that it is correctly reading the bar code or the microchip.
(iii) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.13(n) (as applicable) shall apply.
(2) [Reserved]
(h) *Standards for linked electronic games.* Management shall ensure that all agreements/contracts entered into after June 27, 2002 to provide linked electronic games shall contain language requiring the vendor to comply with the standards in this section applicable to the goods or services the vendor is providing.
(i) *Host requirements/game information (for linked electronic games).* (1) Providers of any linked electronic game(s) shall maintain complete records of game data for a period of one (1) year from the date the games are played (or a time frame established by the Tribal gaming regulatory authority). This data may be kept in an archived manner, provided the information can be produced within twenty-four (24) hours upon request. In any event, game data for the preceding seventy-two (72) hours shall be immediately accessible.
(2) Data required to be maintained for each game played includes:
(i) Date and time game start and game end;
(ii) Sales information by location;
(iii) Cash distribution by location;
(iv) Refund totals by location;
(v) Cards-in-play count by location;
(vi) Identification number of winning card(s);
(vii) Ordered list of bingo balls drawn; and
(viii) Prize amounts at start and end of game.
(j) *Host requirements/sales information (for linked electronic games).* (1) Providers of any linked electronic game(s) shall maintain complete records of sales data for a period of one (1) year from the date the games are played (or a time frame established by the Tribal gaming regulatory authority). This data may be kept in an archived manner, provided the information can be produced within twenty-four (24) hours upon request. In any event, sales data for the preceding ten (10) days shall be immediately accessible. Summary information must be accessible for at least 120 days.
(2) Sales information required shall include:
(i) Daily sales totals by location;
(ii) Commissions distribution summary by location;
(iii) Game-by-game sales, prizes, refunds, by location; and
(iv) Daily network summary, by game by location.
(k) *Remote host requirements (for linked electronic games).* (1) Linked electronic game providers shall maintain on-line records at the remote host site for any game played. These records shall remain on-line until the conclusion of the session of which the game is a part. Following the conclusion of the session, records may be archived, but in any event, must be retrievable in a timely manner for at least seventy-two (72) hours following the close of the session. Records shall be accessible through some archived media for at least ninety (90) days from the date of the game.
(2) Game information required includes date and time of game start and game end, sales totals, cash distribution (prizes) totals, and refund totals.
(3) Sales information required includes cash register reconciliations, detail and summary records for purchases, prizes, refunds, credits, and game/sales balance for each session.
(l) *Standards for player accounts (for proxy play and linked electronic games).* (1) Prior to participating in any game, players shall be issued a unique player account number. The player account number can be issued through the following means:
(i) Through the use of a point-of-sale (cash register device);
(ii) By assignment through an individual play station; or
(iii) Through the incorporation of a "player tracking" media.
(2) Printed receipts issued in conjunction with any player account should include a time/date stamp.
(3) All player transactions shall be maintained, chronologically by account number, through electronic means on a data storage device. These transaction records shall be maintained on-line throughout the active game and for at least twenty-four (24) hours before they can be stored on an "off-line" data storage media.
(4) The game software shall provide the ability to, upon request, produce a printed account history, including all transactions, and a printed game summary (total purchases, deposits, wins, debits, for any account that has been active in the game during the preceding twenty-four (24) hours).
(5) The game software shall provide a "player account summary" at the end of every game. This summary shall list all accounts for which there were any transactions during that game day and include total purchases, total deposits, total credits (wins), total debits (cash-outs) and an ending balance.

§ 542.8 What are the minimum internal control standards for pull tabs?

(a) *Computer applications.* For any computer application utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.
(b) *Pull tab inventory.* (1) Pull tab inventory (including unused tickets) shall be controlled to assure the integrity of the pull tabs.
(2) Purchased pull tabs shall be inventoried and secured by a person or persons independent of the pull tab sales.
(3) The issue of pull tabs to the cashier or sales location shall be documented and signed for by the person responsible for inventory control and the cashier. The document log shall include the serial number of the pull tabs issued.
(4) Appropriate documentation shall be given to the redemption booth for purposes of determining if the winner purchased the pull tab from the pull tabs issued by the gaming operation. Electronic verification satisfies this requirement.
(5) At the end of each month, a person or persons independent of pull tab sales and inventory control shall verify the accuracy of the ending balance in the pull tab control by reconciling the pull tabs on hand.
(6) A monthly comparison for reasonableness shall be made of the amount of pull tabs sold from the pull tab control log to the amount of revenue recognized.

(c) *Access.* Access to pull tabs shall be restricted to authorized persons.

(d) *Transfers.* Transfers of pull tabs from storage to the sale location shall be secured and independently controlled.

(e) *Winning pull tabs.* (1) Winning pull tabs shall be verified and paid as follows:

(i) Payouts in excess of a dollar amount determined by the gaming operation, as approved by the Tribal gaming regulatory authority, shall be verified by at least two employees.

(ii) Total payout shall be computed and recorded by shift.

(iii) The winning pull tabs shall be voided so that they cannot be presented for payment again.

(2) Personnel independent of pull tab operations shall verify the amount of winning pull tabs redeemed each day.

(f) *Accountability form.* (1) All funds used to operate the pull tab game shall be recorded on an accountability form.

(2) All funds used to operate the pull tab game shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(g) *Standards for statistical reports.* (1) Records shall be maintained, which include win, write (sales), and a win-to-write hold percentage as compared to the theoretical hold percentage derived from the flare, for each deal or type of game, for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(2) A manager independent of the pull tab operations shall review statistical information at least on a monthly basis and shall investigate any large or unusual statistical fluctuations. These investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(3) Each month, the actual hold percentage shall be compared to the theoretical hold percentage. Any significant variations (3%) shall be investigated.

(h) *Electronic equipment.* (1) If the gaming operation utilizes electronic equipment in connection with the play of pull tabs, then the following standards shall also apply.

(i) If the electronic equipment contains a bill acceptor, then § 542.21(d) and (e), § 542.31(d) and (e), or § 542.41(d) and (e)(as applicable) shall apply.

(ii) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically to determine that it is correctly reading the bar code or microchip.

(iii) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.13(n)(as applicable) shall apply.

(2) [Reserved]

§ 542.9 What are the minimum internal control standards for card games?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Standards for drop and count.* The procedures for the collection of the card game drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(c) *Standards for supervision.* (1) Supervision shall be provided at all times the card room is in operation by personnel with authority equal to or greater than those being supervised.

(2) Exchanges between table banks and the main card room bank (or cage, if a main card room bank is not used) in excess of $100.00 shall be authorized by a supervisor. All exchanges shall be evidenced by the use of a lammer unless the exchange of chips, tokens, and/or cash takes place at the table.

(3) Exchanges from the main card room bank (or cage, if a main card room bank is not used) to the table banks shall be verified by the card room dealer and the runner.

(4) If applicable, transfers between the main card room bank and the cage shall be properly authorized and documented.

(5) A rake collected or ante placed shall be done in accordance with the posted rules.

(d) *Standards for playing cards.* (1) Playing cards shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering.

(2) Used cards shall be maintained in a secure location until marked, scored, or destroyed, in a manner approved by the Tribal gaming regulatory authority, to prevent unauthorized access and reduce the possibility of tampering.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a reasonable time period, which shall not exceed seven (7) days, within which to mark, cancel, or destroy cards from play.

(i) This standard shall not apply where playing cards are retained for an investigation.

(ii) [Reserved]

(4) A card control log shall be maintained that documents when cards and dice are received on site, distributed to and returned from tables and removed from play by the gaming operation.

(e) *Plastic cards.* Notwithstanding paragraph (d) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are routinely inspected, and washed or cleaned in a manner and time frame approved by the Tribal gaming regulatory authority.

(f) *Standards for shills.* (1) Issuance of shill funds shall have the written approval of the supervisor.

(2) Shill returns shall be recorded and verified on the shill sign-out form.

(3) The replenishment of shill funds shall be documented.

(g) *Standards for reconciliation of card room bank.* (1) The amount of the main card room bank shall be counted, recorded, and reconciled on at least a per shift basis.

(2) At least once per shift, the table banks that were opened during that shift shall be counted, recorded, and reconciled by a dealer or other person, and a supervisor, and shall be attested to by their signatures on the check-out form.

(h) *Standards for promotional progressive pots and pools.* (1) All funds contributed by players into the pools shall be returned when won in accordance with the posted rules with no commission or administrative fee withheld.

(2) Rules governing promotional pools shall be conspicuously posted and designate:

(i) The amount of funds to be contributed from each pot;

(ii) What type of hand it takes to win the pool (e.g., what constitutes a "bad beat");

(iii) How the promotional funds will be paid out;

(iv) How/when the contributed funds are added to the jackpots; and

(v) Amount/percentage of funds allocated to primary and secondary jackpots, if applicable.

(3) Promotional pool contributions shall not be placed in or near the rake circle, in the drop box, or commingled with gaming revenue from card games or any other gambling game.

(4) The amount of the jackpot shall be conspicuously displayed in the card room.

(5) At least once a day, the posted pool amount shall be updated to reflect the current pool amount.

(6) At least once a day, increases to the posted pool amount shall be

reconciled to the cash previously counted or received by the cage by personnel independent of the card room.

(7) All decreases to the pool must be properly documented, including a reason for the decrease.

(i) *Promotional progressive pots and pools where funds are displayed in the card room.* (1) Promotional funds displayed in the card room shall be placed in a locked container in plain view of the public.

(2) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(3) The contents key shall be maintained by personnel independent of the card room.

(4) At least once a day, the locked container shall be removed by two persons, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted, recorded, and verified.

(5) The locked container shall then be returned to the card room where the posted pool amount shall be updated to reflect the current pool amount.

(j) *Promotional progressive pots and pools where funds are maintained in the cage.* (1) Promotional funds removed from the card game shall be placed in a locked container.

(2) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(3) The contents key shall be maintained by personnel independent of the card room.

(4) At least once a day, the locked container shall be removed by two persons, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted, recorded, and verified, prior to accepting the funds into cage accountability.

(5) The posted pool amount shall then be updated to reflect the current pool amount.

§ 542.10 What are the minimum internal control standards for keno?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Game play standards.* (1) The computerized customer ticket shall include the date, game number, ticket sequence number, station number, and conditioning (including multi-race if applicable).

(2) The information on the ticket shall be recorded on a restricted transaction log or computer storage media concurrently with the generation of the ticket.

(3) Keno personnel shall be precluded from having access to the restricted transaction log or computer storage media.

(4) When it is necessary to void a ticket, the void information shall be inputted in the computer and the computer shall document the appropriate information pertaining to the voided wager (e.g., void slip is issued or equivalent documentation is generated).

(5) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and after the number selection process for that game has begun.

(6) The controls in effect for tickets prepared in outstations (if applicable) shall be identical to those in effect for the primary keno game.

(c) *Rabbit ear or wheel system.* (1) The following standards shall apply if a rabbit ear or wheel system is utilized:

(i) A dedicated camera shall be utilized to monitor the following both prior to, and subsequent to, the calling of a game:

(A) Empty rabbit ears or wheel;

(B) Date and time;

(C) Game number; and

(D) Full rabbit ears or wheel.

(ii) The film of the rabbit ears or wheel shall provide a legible identification of the numbers on the balls drawn.

(iii) Keno personnel shall immediately input the selected numbers in the computer and the computer shall document the date, the game number, the time the game was closed, and the numbers drawn.

(iv) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that prevent unauthorized access to keno balls in play.

(v) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(vi) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for inspecting new keno balls put into play as well as for those in use.

(2) [Reserved]

(d) *Random number generator.* (1) The following standards shall apply if a random number generator is utilized:

(i) The random number generator shall be linked to the computer system and shall directly relay the numbers selected into the computer without manual input.

(ii) Keno personnel shall be precluded from access to the random number generator.

(2) [Reserved]

(e) *Winning tickets.* Winning tickets shall be verified and paid as follows:

(1) The sequence number of tickets presented for payment shall be inputted into the computer, and the payment amount generated by the computer shall be given to the customer.

(2) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that preclude payment on tickets previously presented for payment, unclaimed winning tickets (sleepers) after a specified period of time, voided tickets, and tickets that have not been issued yet.

(3) All payouts shall be supported by the customer (computer-generated) copy of the winning ticket (payout amount is indicated on the customer ticket or a payment slip is issued).

(4) A manual report or other documentation shall be produced and maintained documenting any payments made on tickets that are not authorized by the computer.

(5) Winning tickets over a specified dollar amount (not to exceed $10,000 for locations with more than $5 million annual keno write and $3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department, evidenced by their signature;

(ii) Review of the video recording and/or digital record of the rabbit ears or wheel to verify the legitimacy of the draw and the accuracy of the draw ticket (for rabbit ear or wheel systems only);

(iii) Comparison of the winning customer copy to the computer reports;

(iv) Regrading of the customer copy using the payout schedule and draw information; and

(v) Documentation and maintenance of the procedures in this paragraph.

(6) When the keno game is operated by one person, all winning tickets in excess of an amount to be determined by management (not to exceed $1,500) shall be reviewed and authorized by a person independent of the keno department.

(f) *Check out standards at the end of each keno shift.* (1) For each writer

station, a cash summary report (count sheet) shall be prepared that includes:

(i) Computation of net cash proceeds for the shift and the cash turned in; and

(ii) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in.

(2) [Reserved]

(g) *Promotional payouts or awards.* (1) If a gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(i) Date and time;

(ii) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.), including fair market value;

(iii) Type of promotion; and

(iv) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(h) *Standards for statistical reports.* (1) Records shall be maintained that include win and write by individual writer for each day.

(2) Records shall be maintained that include win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(3) A manager independent of the keno department shall review keno statistical data at least on a monthly basis and investigate any large or unusual statistical variances.

(4) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of ±3%. The base level shall be defined as the gaming operation's win percentage for the previous business year or the previous twelve (12) months.

(5) Such investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(i) *System security standards.* (1) All keys (including duplicates) to sensitive computer hardware in the keno area shall be maintained by a department independent of the keno function.

(2) Personnel independent of the keno department shall be required to accompany such keys to the keno area and shall observe changes or repairs each time the sensitive areas are accessed.

(j) *Documentation standards.* (1) Adequate documentation of all pertinent keno information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) Ticket information (as described in paragraph (b)(1) of this section);

(ii) Payout information (date, time, ticket number, amount, etc.);

(iii) Game information (number, ball draw, time, etc.);

(iv) Daily recap information, including:

(A) Write;

(B) Payouts; and

(C) Gross revenue (win);

(v) System exception information, including:

(A) Voids;

(B) Late pays; and

(C) Appropriate system parameter information (e.g., changes in pay tables, ball draws, payouts over a predetermined amount, etc.); and

(vi) Personnel access listing, including:

(A) Employee name or employee identification number; and

(B) Listing of functions employee can perform or equivalent means of identifying same.

(k) *Keno audit standards.* (1) The keno audit function shall be independent of the keno department.

(2) At least annually, keno audit shall foot the write on the restricted copy of the keno transaction report for a minimum of one shift and compare the total to the total as documented by the computer.

(3) For at least one shift every other month, keno audit shall perform the following:

(i) Foot the customer copy of the payouts and trace the total to the payout report; and

(ii) Regrade at least 1% of the winning tickets using the payout schedule and draw ticket.

(4) Keno audit shall perform the following:

(i) For a minimum of five games per week, compare the video recording and/or digital record of the rabbit ears or wheel to the computer transaction summary;

(ii) Compare net cash proceeds to the audited win/loss by shift and investigate any large cash overages or shortages (*i.e.*, in excess of $25.00);

(iii) Review and regrade all winning tickets greater than or equal to $1,500, including all forms that document that proper authorizations and verifications were obtained and performed;

(iv) Review the documentation for payout adjustments made outside the computer and investigate large and frequent payments;

(v) Review personnel access listing for inappropriate functions an employee can perform;

(vi) Review system exception information on a daily basis for propriety of transactions and unusual occurrences including changes to the personnel access listing;

(vii) If a random number generator is used, then at least weekly review the numerical frequency distribution for potential patterns; and

(viii) Investigate and document results of all noted improper transactions or unusual occurrences.

(5) When the keno game is operated by one person:

(i) The customer copies of all winning tickets in excess of $100 and at least 5% of all other winning tickets shall be regraded and traced to the computer payout report;

(ii) The video recording and/or digital record of rabbit ears or wheel shall be randomly compared to the computer game information report for at least 10% of the games during the shift; and

(iii) Keno audit personnel shall review winning tickets for proper authorization pursuant to paragraph (e)(6) of this section.

(6) In the event any person performs the writer and deskman functions on the same shift, the procedures described in paragraphs (k)(5)(i) and (ii) of this section (using the sample sizes indicated) shall be performed on tickets written by that person.

(7) Documentation (e.g., a log, checklist, etc.) that evidences the performance of all keno audit procedures shall be maintained.

(8) A manager independent of the keno department shall review keno audit exceptions, and perform and document investigations into unresolved exceptions. These investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(9) When a multi-game ticket is part of the sample in paragraphs (k)(3)(ii), (k)(5)(i) and (k)(6) of this section, the procedures may be performed for ten (10) games or ten percent (10%) of the games won, whichever is greater.

(l) *Access.* Access to the computer system shall be adequately restricted (i.e., passwords are changed at least quarterly, access to computer hardware is physically restricted, etc.).

(m) *Equipment standards.* (1) There shall be effective maintenance planned to service keno equipment, including computer program updates, hardware servicing, and keno ball selection equipment (e.g., service contract with lessor).

(2) Keno equipment maintenance (excluding keno balls) shall be

independent of the operation of the keno game.

(3) Keno maintenance personnel shall report irregularities to management personnel independent of the keno department.

(4) If the gaming operation utilizes a barcode or microchip reader in connection with the play of keno, the reader shall be tested at least annually by personnel independent of the keno department to determine that it is correctly reading the barcode or microchip.

(n) *Document retention.* (1) All documents (including computer storage media) discussed in this section shall be retained for five (5) years, except for the following, which shall be retained for at least seven (7) days:

(i) Video recordings and/or digital records of rabbit ears or wheel;

(ii) All copies of winning keno tickets of less than $1,500.00.

(2) [Reserved]

(o) *Multi-race tickets.* (1) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with standards in paragraph (e)(5) of this section.

(2) Procedures shall be established to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(p) *Manual keno.* For gaming operations that conduct manual keno games, alternate procedures that provide at least the level of control described by the standards in this section shall be developed and implemented.

§ 542.11 What are the minimum internal control standards for pari-mutuel wagering?

(a) *Exemptions.* (1) The requirements of this section shall not apply to gaming operations who house pari-mutuel wagering operations conducted entirely by a state licensed simulcast service provider pursuant to an approved tribal-state compact if:

(i) The simulcast service provider utilizes its own employees for all aspects of the pari-mutuel wagering operation;

(ii) The gaming operation posts, in a location visible to the public, that the simulcast service provider and its employees are wholly responsible for the conduct of pari-mutuel wagering offered at that location;

(iii) The gaming operation receives a predetermined fee from the simulcast service provider; and

(iv) In addition, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with standards that ensure that the gaming operation receives, from the racetrack, its contractually guaranteed percentage of the handle.

(2) Gaming operations that contract directly with a state regulated racetrack as a simulcast service provider, but whose on-site pari-mutuel operations are conducted wholly or in part by tribal gaming operation employees, shall not be required to comply with paragraphs (h)(5) thru (h)(9) of this section.

(i) If any standard contained within this section conflicts with state law, a tribal-state compact, or a contract, then the gaming operation shall document the basis for noncompliance and shall maintain such documentation for inspection by the Tribal gaming regulatory authority and the Commission.

(ii) In addition, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with standards that ensure that the gaming operation receives, from the racetrack, its contractually guaranteed percentage of the handle.

(b) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(c) *Betting ticket and equipment standards.* (1) All pari-mutuel wagers shall be transacted through the pari-mutuel satellite system. In case of computer failure between the pari-mutuel book and the hub, no tickets shall be manually written.

(2) Whenever a betting station is opened for wagering or turned over to a new writer/cashier, the writer/cashier shall sign on and the computer shall document gaming operation name (or identification number), station number, the writer/cashier identifier, and the date and time.

(3) A betting ticket shall consist of at least two parts:

(i) An original, which shall be transacted and issued through a printer and given to the customer; and

(ii) A copy that shall be recorded concurrently with the generation of the original ticket either on paper or other storage media (e.g., tape or diskette).

(4) Upon accepting a wager, the betting ticket that is created shall contain the following:

(i) A unique transaction identifier;

(ii) Gaming operation name (or identification number) and station number;

(iii) Race track, race number, horse identification or event identification, as applicable;

(iv) Type of bet(s), each bet amount, total number of bets, and total take; and

(v) Date and time.

(5) All tickets shall be considered final at post time.

(6) If a gaming operation voids a betting ticket written prior to post time, it shall be immediately entered into the system.

(7) Future wagers shall be accepted and processed in the same manner as regular wagers.

(d) *Payout standards.* (1) Prior to making payment on a ticket, the writer/cashier shall input the ticket for verification and payment authorization.

(2) The computer shall be incapable of authorizing payment on a ticket that has been previously paid, a voided ticket, a losing ticket, or an unissued ticket.

(e) *Checkout standards.* (1) Whenever the betting station is closed or the writer/cashier is replaced, the writer/cashier shall sign off and the computer shall document the gaming operation name (or identification number), station number, the writer/cashier identifier, the date and time, and cash balance.

(2) For each writer/cashier station a summary report shall be completed at the conclusion of each shift including:

(i) Computation of cash turned in for the shift; and

(ii) Signatures of two employees who have verified the cash turned in for the shift.

(f) *Employee wagering.* Pari-mutuel employees shall be prohibited from wagering on race events while on duty, including during break periods.

(g) *Computer reports standards.* (1) Adequate documentation of all pertinent pari-mutuel information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall be created for each day's operation and shall include, but is not limited to:

(i) Unique transaction identifier;

(ii) Date/time of transaction;

(iii) Type of wager;

(iv) Animal identification or event identification;

(v) Amount of wagers (by ticket, writer/SAM, track/event, and total);

(vi) Amount of payouts (by ticket, writer/SAM, track/event, and total);

(vii) Tickets refunded (by ticket, writer, track/event, and total);

(viii) Unpaid winners/vouchers ("outs") (by ticket/voucher, track/event, and total);

(ix) Voucher sales/payments (by ticket, writer/SAM, and track/event);

(x) Voids (by ticket, writer, and total);

(xi) Future wagers (by ticket, date of event, total by day, and total at the time of revenue recognition);

(xii) Results (winners and payout data);

(xiii) Breakage data (by race and track/event);

(xiv) Commission data (by race and track/event); and

(xv) Purged data (by ticket and total).

(4) The system shall generate the following reports:

(i) A reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(ii) An exception report that contains a listing of all system functions and overrides not involved in the actual writing or cashing of tickets, including sign-on/off, voids, and manually input paid tickets; and

(iii) A purged ticket report that contains a listing of the unique transaction identifier(s), description, ticket cost and value, and date purged.

(b) *Accounting and auditing functions.* A gaming operation shall perform the following accounting and auditing functions:

(1) The parimutuel audit shall be conducted by personnel independent of the parimutuel operation.

(2) Documentation shall be maintained evidencing the performance of all parimutuel accounting and auditing procedures.

(3) An accounting employee shall review handle, commission, and breakage for each day's play and recalculate the net amount due to or from the systems operator on a weekly basis.

(4) The accounting employee shall verify actual cash/cash equivalents turned in to the system's summary report for each cashier's drawer (Beginning balance, (+) fills (draws), (+) net write (sold less voids), (−) payouts (net of IRS withholding), (−) cashbacks (paids), (=) cash turn-in).

(5) An accounting employee shall produce a gross revenue recap report to calculate gross revenue for each day's play and for a month-to-date basis, including the following totals:

(i) Commission;

(ii) Positive breakage;

(iii) Negative breakage;

(iv) Track/event fees;

(v) Track/event fee rebates; and

(vi) Purged tickets.

(6) All winning tickets and vouchers shall be physically removed from the SAM's for each day's play.

(7) In the event a SAM does not balance for a day's play, the auditor shall perform the following procedures:

(i) Foot the winning tickets and vouchers deposited and trace to the totals of SAM activity produced by the system;

(ii) Foot the listing of cashed vouchers and trace to the totals produced by the system;

(iii) Review all exceptions for propriety of transactions and unusual occurrences;

(iv) Review all voids for propriety;

(v) Verify the results as produced by the system to the results provided by an independent source;

(vi) Regrade 1% of paid (cashed) tickets to ensure accuracy and propriety; and

(vii) When applicable, reconcile the totals of future tickets written to the totals produced by the system for both earned and unearned take, and review the reports to ascertain that future wagers are properly included on the day of the event.

(8) At least annually, the auditor shall foot the wagers for one day and trace to the total produced by the system.

(9) At least one day per quarter, the auditor shall recalculate and verify the change in the unpaid winners to the total purged tickets.

§ 542.12 What are the minimum internal control standards for table games?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Standards for drop and count.* The procedures for the collection of the table game drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(c) *Fill and credit standards.* (1) Fill slips and credit slips shall be in at least triplicate form, and in a continuous, prenumbered series. Such slips shall be concurrently numbered in a form utilizing the alphabet and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year.

(2) Unissued and issued fill/credit slips shall be safeguarded and adequate procedures shall be employed in their distribution, use, and control. Personnel from the cashier or pit departments shall have no access to the secured (control) copies of the fill/credit slips.

(3) When a fill/credit slip is voided, the cashier shall clearly mark "void" across the face of the original and first copy, the cashier and one other person independent of the transactions shall sign both the original and first copy, and shall submit them to the accounting department for retention and accountability.

(4) Fill transactions shall be authorized by pit supervisory personnel before the issuance of fill slips and transfer of chips, tokens, or cash equivalents. The fill request shall be communicated to the cage where the fill slip is prepared.

(5) At least three parts of each fill slip shall be utilized as follows:

(i) One part shall be transported to the pit with the fill and, after the appropriate signatures are obtained, deposited in the table game drop box;

(ii) One part shall be retained in the cage for reconciliation of the cashier bank; and

(iii) For computer systems, one part shall be retained in a secure manner to insure that only authorized persons may gain access to it. For manual systems, one part shall be retained in a secure manner in a continuous unbroken form.

(6) For Tier C gaming operations, the part of the fill slip that is placed in the table game drop box shall be of a different color for fills than for credits, unless the type of transaction is clearly distinguishable in another manner (the checking of a box on the form shall not be a clearly distinguishable indicator).

(7) The table number, shift, and amount of fill by denomination and in total shall be noted on all copies of the fill slip. The correct date and time shall be indicated on at least two copies.

(8) All fills shall be carried from the cashier's cage by a person who is independent of the cage or pit.

(9) The fill slip shall be signed by at least the following persons (as an indication that each has counted the amount of the fill and the amount agrees with the fill slip):

(i) Cashier who prepared the fill slip and issued the chips, tokens, or cash equivalent;

(ii) Runner who carried the chips, tokens, or cash equivalents from the cage to the pit;

(iii) Dealer or boxperson who received the chips, tokens, or cash equivalents at the gaming table; and

(iv) Pit supervisory personnel who supervised the fill transaction.

(10) Fills shall be broken down and verified by the dealer or boxperson in public view before the dealer or boxperson places the fill in the table tray.

(11) A copy of the fill slip shall then be deposited into the drop box on the table by the dealer, where it shall appear in the soft count room with the cash receipts for the shift.

(12) Table credit transactions shall be authorized by a pit supervisor before the issuance of credit slips and transfer of chips, tokens, or other cash equivalent. The credit request shall be communicated to the cage where the credit slip is prepared.

(13) At least three parts of each credit slip shall be utilized as follows:

(i) Two parts of the credit slip shall be transported by the runner to the pit. After signatures of the runner, dealer, and pit supervisor are obtained, one copy shall be deposited in the table game drop box and the original shall accompany transport of the chips, tokens, markers, or cash equivalents from the pit to the cage for verification and signature of the cashier.

(ii) For computer systems, one part shall be retained in a secure manner to insure that only authorized persons may gain access to it. For manual systems, one part shall be retained in a secure manner in a continuous unbroken form.

(14) The table number, shift, and the amount of credit by denomination and in total shall be noted on all copies of the credit slip. The correct date and time shall be indicated on at least two copies.

(15) Chips, tokens, and/or cash equivalents shall be removed from the table tray by the dealer or boxperson and shall be broken down and verified by the dealer or boxperson in public view prior to placing them in racks for transfer to the cage.

(16) All chips, tokens, and cash equivalents removed from the tables and markers removed from the pit shall be carried to the cashier's cage by a person who is independent of the cage or pit.

(17) The credit slip shall be signed by at least the following persons (as an indication that each has counted or, in the case of markers, reviewed the items transferred):

(i) Cashier who received the items transferred from the pit and prepared the credit slip;

(ii) Runner who carried the items transferred from the pit to the cage;

(iii) Dealer who had custody of the items prior to transfer to the cage; and

(iv) Pit supervisory personnel who supervised the credit transaction.

(18) The credit slip shall be inserted in the drop box by the dealer.

(19) Chips, tokens, or other cash equivalents shall be deposited on or removed from gaming tables only when accompanied by the appropriate fill/credit or marker transfer forms.

(20) Cross fills (the transfer of chips between table games) and even cash exchanges are prohibited in the pit.

(d) *Table inventory forms.* (1) At the close of each shift, for those table banks that were opened during that shift:

(i) The table's chip, token, coin, and marker inventory shall be counted and recorded on a table inventory form; or

(ii) If the table banks are maintained on an imprest basis, a final fill or credit shall be made to bring the bank back to par.

(2) If final fills are not made, beginning and ending inventories shall be recorded on the master game sheet for shift win calculation purposes.

(3) The accuracy of inventory forms prepared at shift end shall be verified by the outgoing pit supervisor and the dealer. Alternatively, if the dealer is not available, such verification may be provided by another pit supervisor or another supervisor from another gaming department. Verifications shall be evidenced by signature on the inventory form.

(4) If inventory forms are placed in the drop box, such action shall be performed by a person other than a pit supervisor.

(e) *Table games computer generated documentation standards.* (1) The computer system shall be capable of generating adequate documentation of all information recorded on the source documents and transaction detail (e.g., fill/credit slips, markers, etc.).

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) System exception information (*e.g.*, appropriate system parameter information, corrections, voids, etc.); and

(ii) Personnel access listing, which includes, at a minimum:

(A) Employee name or employee identification number (if applicable); and

(B) Listing of functions employees can perform or equivalent means of identifying the same.

(f) *Standards for playing cards and dice.* (1) Playing cards and dice shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering.

(2) Used cards and dice shall be maintained in a secure location until marked, scored, or destroyed, in a manner as approved by the Tribal gaming regulatory authority, to prevent unauthorized access and reduce the possibility of tampering.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a reasonable time period, which shall not exceed seven (7) days, within which to mark, cancel, or destroy cards and dice from play.

(i) This standard shall not apply where playing cards or dice are retained for an investigation.

(ii) [Reserved]

(4) A card control log shall be maintained that documents when cards and dice are received on site, distributed to and returned from tables and removed from play by the gaming operation.

(g) *Plastic cards.* Notwithstanding paragraph (f) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are routinely inspected, and washed or cleaned in a manner and time frame approved by the Tribal gaming regulatory authority.

(h) *Standards for supervision.* Pit supervisory personnel (with authority equal to or greater than those being supervised) shall provide supervision of all table games.

(i) *Analysis of table game performance standards.* (1) Records shall be maintained by day and shift indicating any single-deck blackjack games that were dealt for an entire shift.

(2) Records reflecting hold percentage by table and type of game shall be maintained by shift, by day, cumulative month-to-date, and cumulative year-to-date.

(3) This information shall be presented to and reviewed by management independent of the pit department on at least a monthly basis.

(4) The management in paragraph (h)(3) of this section shall investigate any unusual fluctuations in hold percentage with pit supervisory personnel.

(5) The results of such investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Accounting/auditing standards.* (1) The accounting and auditing procedures shall be performed by personnel who are independent of the transactions being audited/accounted for.

(2) If a table game has the capability to determine drop (*e.g.*, bill-in/coin-drop meters, bill acceptor, computerized record, etc.) the dollar amount of the drop shall be reconciled to the actual drop by shift.

(3) Accounting/auditing employees shall review exception reports for all computerized table games systems at

least monthly for propriety of transactions and unusual occurrences.

(4) All noted improper transactions or unusual occurrences shall be investigated with the results documented.

(5) Evidence of table games auditing procedures and any follow-up performed shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(6) A daily recap shall be prepared for the day and month-to-date, which shall include the following information:

(i) Drop;

(ii) Win; and

(iii) Gross revenue.

(k) *Marker credit play.* (1) If a gaming operation allows marker credit play (exclusive of rim credit and call bets), the following standards shall apply:

(i) A marker system shall allow for credit to be both issued and repaid in the pit.

(ii) Prior to the issuance of gaming credit to a player, the employee extending the credit shall contact the cashier or other independent source to determine if the player's credit limit has been properly established and there is sufficient remaining credit available for the advance.

(iii) Proper authorization of credit extension in excess of the previously established limit shall be documented.

(iv) The amount of credit extended shall be communicated to the cage or another independent source and the amount documented within a reasonable time subsequent to each issuance.

(v) The marker form shall be prepared in at least triplicate form (triplicate form being defined as three parts performing the functions delineated in the standard in paragraph (j)(1)(vi) of this section), with a preprinted or concurrently-printed marker number, and utilized in numerical sequence. (This requirement shall not preclude the distribution of batches of markers to various pits.)

(vi) At least three parts of each separately numbered marker form shall be utilized as follows:

(A) Original shall be maintained in the pit until settled or transferred to the cage;

(B) Payment slip shall be maintained in the pit until the marker is settled or transferred to the cage. If paid in the pit, the slip shall be inserted in the table game drop box. If not paid in the pit, the slip shall be transferred to the cage with the original;

(C) Issue slip shall be inserted into the appropriate table game drop box when credit is extended or when the player has signed the original.

(vii) When marker documentation (e.g., issue slip and payment slip) is inserted in the drop box, such action shall be performed by the dealer or boxperson at the table.

(viii) A record shall be maintained that details the following (e.g., master credit record retained at the pit podium):

(A) The signature or initials of the person(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

(B) The legible name of the person receiving the credit;

(C) The date and shift of granting the credit;

(D) The table on which the credit was extended;

(E) The amount of credit issued;

(F) The marker number;

(G) The amount of credit remaining after each issuance or the total credit available for all issuances;

(H) The amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

(I) The signature or initials of the person receiving payment/settlement.

(ix) The forms required in paragraphs (j)(1)(v), (vi), and (viii) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

(x) All credit extensions shall be initially evidenced by lammer buttons, which shall be displayed on the table in public view and placed there by supervisory personnel.

(xi) Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

(xii) Lammer buttons shall be removed only by the dealer or boxperson employed at the table upon completion of a marker transaction.

(xiii) The original marker shall contain at least the following information:

(A) Marker number;

(B) Player's name and signature;

(C) Date; and

(D) Amount of credit issued.

(xiv) The issue slip or stub shall include the same marker number as the original, the table number, date and time of issuance, and amount of credit issued. The issue slip or stub shall also include the signature of the person extending the credit, and the signature or initials of the dealer or boxperson at the applicable table, unless this information is included on another document verifying the issued marker.

(xv) The payment slip shall include the same marker number as the original. When the marker is paid in full in the pit, it shall also include the table number where paid, date and time of payment, nature of settlement (cash, chips, etc.), and amount of payment. The payment slip shall also include the signature of pit supervisory personnel acknowledging payment, and the signature or initials of the dealer or boxperson receiving payment, unless this information is included on another document verifying the payment of the marker.

(xvi) When partial payments are made in the pit, a new marker shall be completed reflecting the remaining balance and the marker number of the marker originally issued.

(xvii) When partial payments are made in the pit, the payment slip of the marker that was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (j)(1)(xv) of this section, and inserted into the drop box.

(xviii) The cashier's cage or another independent source shall be notified when payments (full or partial) are made in the pit so that cage records can be updated for such transactions. Notification shall be made no later than when the customer's play is completed or at shift end, whichever is earlier.

(xix) All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

(xx) An investigation shall be performed to determine the cause and responsibility for loss whenever marker forms, or any part thereof, are missing. These investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(xxi) When markers are transferred to the cage, marker transfer forms or marker credit slips (or similar documentation) shall be utilized and such documents shall include, at a minimum, the date, time, shift, marker number(s), table number(s), amount of each marker, the total amount transferred, signature of pit supervisory personnel releasing instruments from the pit, and the signature of cashier verifying receipt of instruments at the cage.

(xxii) All markers shall be transferred to the cage within twenty-four (24) hours of issuance.

(xxiii) Markers shall be transported to the cashier's cage by a person who is independent of the marker issuance and payment functions (pit clerks may perform this function).

(2) [Reserved]

(l) *Name credit instruments accepted in the pit.* (1) For the purposes of this paragraph, name credit instruments means personal checks, payroll checks, counter checks, hold checks, traveler's checks, or other similar instruments that are accepted in the pit as a form of credit issuance to a player with an approved credit limit.

(2) The following standards shall apply if name credit instruments are accepted in the pit:

(i) A name credit system shall allow for the issuance of credit without using markers;

(ii) Prior to accepting a name credit instrument, the employee extending the credit shall contact the cashier or another independent source to determine if the player's credit limit has been properly established and the remaining credit available is sufficient for the advance;

(iii) All name credit instruments shall be transferred to the cashier's cage (utilizing a two-part order for credit) immediately following the acceptance of the instrument and issuance of chips (if name credit instruments are transported accompanied by a credit slip, an order for credit is not required);

(iv) The order for credit (if applicable) and the credit slip shall include the customer's name, amount of the credit instrument, the date, time, shift, table number, signature of pit supervisory personnel releasing instrument from pit, and the signature of the cashier verifying receipt of instrument at the cage;

(v) The procedures for transacting table credits at standards in paragraphs (c)(12) through (19) of this section shall be strictly adhered to; and

(vi) The acceptance of payments in the pit for name credit instruments shall be prohibited.

(m) *Call bets.* (1) The following standards shall apply if call bets are accepted in the pit:

(i) A call bet shall be evidenced by the placement of a lammer button, chips, or other identifiable designation in an amount equal to that of the wager in a specific location on the table;

(ii) The placement of the lammer button, chips, or other identifiable designation shall be performed by supervisory/boxperson personnel. The placement may be performed by a dealer only if the supervisor physically observes and gives specific authorization;

(iii) The call bet shall be settled at the end of each hand of play by the preparation of a marker, repayment of the credit extended, or the payoff of the winning wager. Call bets extending beyond one hand of play shall be prohibited; and

(iv) The removal of the lammer button, chips, or other identifiable designation shall be performed by the dealer/ boxperson upon completion of the call bet transaction.

(2) [Reserved]

(n) *Rim credit.* (1) The following standards shall apply if rim credit is extended in the pit:

(i) Rim credit shall be evidenced by the issuance of chips to be placed in a neutral zone on the table and then extended to the customer for the customer to wager, or to the dealer to wager for the customer, and by the placement of a lammer button or other identifiable designation in an amount equal to that of the chips extended; and

(ii) Rim credit shall be recorded on player cards, or similarly used documents, which shall be:

(A) Prenumbered or concurrently numbered and accounted for by a department independent of the pit;

(B) For all extensions and subsequent repayments, evidenced by the initials or signatures of a supervisor and the dealer attesting to the validity of each credit extension and repayment;

(C) An indication of the settlement method (e.g., serial number of marker issued, chips, cash);

(D) Settled no later than when the customer leaves the table at which the card is prepared;

(E) Transferred to the accounting department on a daily basis; and

(F) Reconciled with other forms utilized to control the issuance of pit credit (e.g., master credit records, table cards).

(2) [Reserved]

(o) *Foreign currency.* (1) The following standards shall apply if foreign currency is accepted in the pit:

(i) Foreign currency transactions shall be authorized by a pit supervisor/ boxperson who completes a foreign currency exchange form before the exchange for chips or tokens;

(ii) Foreign currency exchange forms include the country of origin, total face value, amount of chips/token extended (*i.e.*, conversion amount), signature of supervisor/boxperson, and the dealer completing the transaction;

(iii) Foreign currency exchange forms and the foreign currency shall be inserted in the drop box by the dealer; and

(iv) Alternate procedures specific to the use of foreign valued gaming chips shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(2) [Reserved]

§ 542.13 What are the minimum internal control standards for gaming machines?

(a) *Standards for gaming machines.* (1) For this section only, credit or customer credit means a unit of value equivalent to cash or cash equivalents deposited, wagered, won, lost, or redeemed by a customer.

(2) Coins shall include tokens.

(3) For all computerized gaming machine systems, a personnel access listing shall be maintained, which includes at a minimum:

(i) Employee name or employee identification number (or equivalent); and

(ii) Listing of functions employee can perform or equivalent means of identifying same.

(b) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(c) *Standards for drop and count.* The procedures for the collection of the gaming machine drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(d) *Jackpot payouts, gaming machines fills, short pays and accumulated credit payouts standards.* (1) For jackpot payouts and gaming machine fills, documentation shall include the following information:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of cash payout or gaming machine fill (both alpha and numeric) or description of personal property awarded, including fair market value. Alpha is optional if another unalterable method is used for evidencing the amount of the payout;

(iv) Game outcome (including reel symbols, card values, suits, etc.) for jackpot payouts. Game outcome is not required if a computerized jackpot/fill system is used;

(v) Preprinted or concurrently printed sequential number; and

(vi) Signatures of at least two employees verifying and witnessing the payout or gaming machine fill (except as otherwise provided in paragraphs (d)(1)(vi)(A), (B), and (C) of this section).

(A) Jackpot payouts over a predetermined amount shall require the signature and verification of a supervisory or management employee independent of the gaming machine department (in addition to the two signatures required in paragraph (d)(1)(vi) of this section). Alternatively, if an on-line accounting system is utilized, only two signatures are

required: one employee and one supervisory or management employee independent of the gaming machine department. This predetermined amount shall be authorized by management (as approved by the Tribal gaming regulatory authority), documented, and maintained.

(B) With regard to jackpot payouts and hopper fills, the signature of one employee is sufficient if an on-line accounting system is utilized and the jackpot or fill is less than $1,200.

(C) On graveyard shifts (eight-hour maximum) payouts/fills less than $100 can be made without the payout/fill being witnessed by a second person.

(2) For short pays of $10.00 or more, and payouts required for accumulated credits, the payout form shall include the following information:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of payout (both alpha and numeric); and

(iv) The signature of at least one (1) employee verifying and witnessing the payout.

(A) Where the payout amount is $50 or more, signatures of at least two (2) employees verifying and witnessing the payout. Alternatively, the signature of one (1) employee is sufficient if an on-line accounting system is utilized and the payout amount is less than $3,000.

(B) [Reserved]

(3) Computerized jackpot/fill systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by one person as required by § 542.16(a).

(4) Payout forms shall be controlled and routed in a manner that precludes any one person from producing a fraudulent payout by forging signatures or by altering the amount paid out subsequent to the payout and misappropriating the funds.

(e) *Promotional payouts or awards.* (1) If a gaming operation offers promotional payouts or awards that are not reflected on the gaming machine pay table, then the payout form/documentation shall include:

(i) Date and time;

(ii) Machine number and denomination;

(iii) Dollar amount of payout or description of personal property (*e.g.*, jacket, toaster, car, etc.), including fair market value;

(iv) Type of promotion (*e.g.*, double jackpots, four-of-a-kind bonus, etc.); and

(v) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(f) *Gaming machine department funds standards.* (1) The gaming machine booths and change banks that are active during the shift, shall be counted down and reconciled each shift utilizing appropriate accountability documentation.

(2) The wrapping of loose gaming machine booth and cage cashier coin shall be performed at a time or location that does not interfere with the hard count/wrap process or the accountability of that process.

(3) A record shall be maintained evidencing the transfers of wrapped and unwrapped coins and retained for seven (7) days.

(g) *EPROM control standards.* (1) At least annually, procedures shall be performed to insure the integrity of a sample of gaming machine game program EPROMs, or other equivalent game software media, by personnel independent of the gaming machine department or the machines being tested.

(2) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop and implement procedures for the following:

(i) Removal of EPROMs, or other equivalent game software media, from devices, the verification of the existence of errors as applicable, and the correction via duplication from the master game program EPROM, or other equivalent game software media;

(ii) Copying one gaming device program to another approved program;

(iii) Verification of duplicated EPROMs before being offered for play;

(iv) Receipt and destruction of EPROMs, or other equivalent game software media; and

(v) Securing the EPROM, or other equivalent game software media, duplicator, and master game EPROMs, or other equivalent game software media, from unrestricted access.

(3) The master game program number, par percentage, and the pay table shall be verified to the par sheet when initially received from the manufacturer.

(4) Gaming machines with potential jackpots in excess of $100,000 shall have the game software circuit boards locked or physically sealed. The lock or seal shall necessitate the presence of a person independent of the gaming machine department to access the device game program EPROM, or other equivalent game software media. If a seal is used to secure the board to the frame of the gaming device, it shall be pre-numbered.

(5) Records that document the procedures in paragraph (g)(2)(i) of this section shall include the following information:

(i) Date;

(ii) Machine number (source and destination);

(iii) Manufacturer;

(iv) Program number;

(v) Personnel involved;

(vi) Reason for duplication;

(vii) Disposition of any permanently removed EPROM, or other equivalent game software media;

(viii) Seal numbers, if applicable; and

(ix) Approved testing lab approval numbers, if available.

(6) EPROMS, or other equivalent game software media, returned to gaming devices shall be labeled with the program number. Supporting documentation shall include the date, program number, information identical to that shown on the manufacturer's label, and initials of the person replacing the EPROM, or other equivalent game software media.

(h) *Standards for evaluating theoretical and actual hold percentages.* (1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For those gaming machines or groups of identical machines (excluding multi-game machines) with differences in theoretical payback percentage exceeding a 4% spread between the minimum and maximum theoretical payback, an employee or department independent from the gaming machine department shall perform a weighted average calculation to periodically adjust theoretical as follows:

(i) On a quarterly basis, record the meters that contain the number of plays by wager (*i.e.*, one coin, two coins, etc.);

(ii) On an annual basis, calculate the theoretical hold percentage based on the distribution of plays by wager type;

(iii) On an annual basis, adjust the machine(s) theoretical hold percentage in the gaming machine statistical report to reflect this revised percentage; and

(iv) The adjusted theoretical hold percentage shall be within the spread between the minimum and maximum theoretical payback percentages.

(3) For those gaming operations that are unable to perform the weighted average calculation as required by paragraph (h)(2) of this section, the following procedures shall apply:

(i) On at least an annual basis, calculate the actual hold percentage for each aming machine;

(ii) On at least an annual basis, adjust the theoretical hold percentage in the gaming machine statistical report for each gaming machine to the previously calculated actual hold percentage; and

(iii) The adjusted theoretical hold percentage shall be within the spread

between the minimum and maximum theoretical payback percentages.

(4) For multi-game machines with a four percent (4%) or greater spread between minimum and maximum theoretical payback percentages, an employee or department independent of the gaming machine department shall:

(i) Weekly, record the total coin-in meter;

(ii) Quarterly, record the coin-in meters for each game contained in the machine; and

(iii) On an annual basis, adjust the theoretical hold percentage in the gaming machine statistical report to a weighted average based upon the ratio of coin-in for each game.

(5) The adjusted theoretical hold percentage for multi-game machines may be combined for machines with exactly the same game mix throughout the year.

(6) The theoretical hold percentages used in the gaming machine analysis reports should be within the performance standards set by the manufacturer.

(7) Records shall be maintained for each machine indicating the dates and type of changes made and the recalculation of theoretical hold as a result of the changes.

(8) Records shall be maintained for each machine that indicate the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations.

(9) All of the gaming machines shall contain functioning meters that shall record coin-in or credit-in, or on-line gaming machine monitoring system that captures similar data.

(10) All gaming machines with bill acceptors shall contain functioning bill-in meters that record the dollar amounts or number of bills accepted by denomination.

(11) Gaming machine in-meter readings shall be recorded at least weekly (monthly for Tier A and Tier B gaming operations) immediately prior to or subsequent to a gaming machine drop. On-line gaming machine monitoring systems can satisfy this requirement. However, the time between readings may extend beyond one week in order for a reading to coincide with the end of an accounting period only if such extension is for no longer than six (6) days.

(12) The employee who records the in-meter reading shall either be independent of the hard count team or shall be assigned on a rotating basis, unless the in-meter readings are randomly verified quarterly for all gaming machines and bill acceptors by a person other than the regular in-meter reader.

(13) Upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters.

(14) Prior to final preparation of statistical reports, meter readings that do not appear reasonable shall be reviewed with gaming machine department employees or other appropriate designees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected.

(15) A report shall be produced at least monthly showing month-to-date, year-to-date (previous twelve (12) months data preferred), and if practicable, life-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage previously discussed.

(16) Each change to a gaming machine's theoretical hold percentage, including progressive percentage contributions, shall result in that machine being treated as a new machine in the statistical reports (*i.e.*, not commingling various hold percentages), except for adjustments made in accordance with paragraph (h)(2) of this section.

(17) If promotional payouts or awards are included on the gaming machine statistical reports, it shall be in a manner that prevents distorting the actual hold percentages of the affected machines.

(18) The statistical reports shall be reviewed by both gaming machine department management and management employees independent of the gaming machine department on at least a monthly basis.

(19) For those machines in play for more than six (6) months, large variances (three percent (3%) recommended) between theoretical hold and actual hold shall be investigated and resolved by a department independent of the gaming machine department with the findings documented and provided to the Tribal gaming regulatory authority upon request in a timely manner.

(20) Maintenance of the on-line gaming machine monitoring system data files shall be performed by a department independent of the gaming machine department. Alternatively, maintenance may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified on a monthly basis by employees independent of the gaming machine department.

(21) Updates to the on-line gaming machine monitoring system to reflect additions, deletions, or movements of gaming machines shall be made at least weekly prior to in-meter readings and the weigh process.

(i) *Gaming machine hopper contents standards.* (1) When machines are temporarily removed from the floor, gaming machine drop and hopper contents shall be protected to preclude the misappropriation of stored funds.

(2) When machines are permanently removed from the floor, the gaming machine drop and hopper contents shall be counted and recorded by at least two employees with appropriate documentation being routed to the accounting department for proper recording and accounting for initial hopper loads.

(j) *Player tracking system.* (1) The following standards apply if a player tracking system is utilized:

(i) The player tracking system shall be secured so as to prevent unauthorized access (e.g., changing passwords at least quarterly and physical access to computer hardware, etc.).

(ii) The addition of points to members' accounts other than through actual gaming machine play shall be sufficiently documented (including substantiation of reasons for increases) and shall be authorized by a department independent of the player tracking and gaming machines. Alternatively, addition of points to members' accounts may be authorized by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by employees independent of the gaming machine department on a quarterly basis.

(iii) Booth employees who redeem points for members shall be allowed to receive lost players club cards, provided that they are immediately deposited into a secured container for retrieval by independent personnel.

(iv) Changes to the player tracking system parameters, such as point structures and employee access, shall be performed by supervisory employees independent of the gaming machine department. Alternatively, changes to player tracking system parameters may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by supervisory employees independent of the gaming machine department on a monthly basis.

(v) All other changes to the player tracking system shall be appropriately documented.

(2) [Reserved]

(k) *In-house progressive gaming machine standards.* (1) A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies.

(2) At least once each day, each gaming operation shall record the amount shown on each progressive jackpot meter at the gaming operation except for those jackpots that can be paid directly from the machine's hopper;

(3) Explanations for meter reading decreases shall be maintained with the progressive meter reading sheets, and where the payment of a jackpot is the explanation for a decrease, the gaming operation shall record the jackpot payout number on the sheet or have the number reasonably available; and

(4) Each gaming operation shall record the base amount of each progressive jackpot the gaming operation offers.

(5) The Tribal gaming regulatory authority shall approve procedures specific to the transfer of progressive amounts in excess of the base amount to other gaming machines. Such procedures may also include other methods of distribution that accrue to the benefit of the gaming public via an award or prize.

(l) *Wide area progressive gaming machine standards.* (1) A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies.

(2) As applicable to participating gaming operations, the wide area progressive gaming machine system shall be adequately restricted to prevent unauthorized access (e.g., changing passwords at least quarterly, restrict access to EPROMs or other equivalent game software media, and restrict physical access to computer hardware, etc.).

(3) The Tribal gaming regulatory authority shall approve procedures for the wide area progressive system that:

(i) Reconcile meters and jackpot payouts;

(ii) Collect/drop gaming machine funds;

(iii) Verify jackpot, payment, and billing to gaming operations on pro-rata basis;

(iv) System maintenance;

(v) System accuracy; and

(vi) System security.

(4) Reports, where applicable, adequately documenting the procedures required in paragraph (1)(3) of this section shall be generated and retained.

(m) *Accounting/auditing standards.* (1) Gaming machine accounting/auditing procedures shall be performed by employees who are independent of the transactions being reviewed.

(2) For on-line gaming machine monitoring systems, procedures shall be performed at least monthly to verify that the system is transmitting and receiving data from the gaming machines properly and to verify the continuing accuracy of the coin-in meter readings as recorded in the gaming machine statistical report.

(3) For weigh scale and currency interface systems, for at least one drop period per month accounting/auditing employees shall make such comparisons as necessary to the system generated count as recorded in the gaming machine statistical report. Discrepancies shall be resolved prior to generation/distribution of gaming machine reports.

(4) For each drop period, accounting/auditing personnel shall compare the coin-to-drop meter reading to the actual drop amount. Discrepancies should be resolved prior to generation/distribution of on-line gaming machine monitoring system statistical reports.

(5) Follow-up shall be performed for any one machine having an unresolved variance between actual coin drop and coin-to-drop meter reading in excess of three percent (3%) and over $25.00. The follow-up performed and results of the investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(6) At least weekly, accounting/auditing employees shall compare the bill-in meter reading to the total bill acceptor drop amount for the week. Discrepancies shall be resolved before the generation/distribution of gaming machine statistical reports.

(7) Follow-up shall be performed for any one machine having an unresolved variance between actual currency drop and bill-in meter reading in excess of $200.00. The follow-up performed and results of the investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(8) At least annually, accounting/auditing personnel shall randomly verify that EPROM or other equivalent game software media changes are properly reflected in the gaming machine analysis reports.

(9) Accounting/auditing employees shall review exception reports for all computerized gaming machine systems on a daily basis for propriety of transactions and unusual occurrences.

(10) All gaming machine auditing procedures and any follow-up performed shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(n) *Cash-out tickets.* For gaming machines that utilize cash-out tickets, the following standards apply. This standard is not applicable to Tiers A and B. Tier A and B gaming operations shall develop adequate standards governing the security over the issuance of the cash-out paper to the gaming machines and the redemption of cash-out slips.

(1) In addition to the applicable auditing and accounting standards in paragraph (m) of this section, on a quarterly basis, the gaming operation shall foot all jackpot cash-out tickets equal to or greater than $1,200 and trace totals to those produced by the host validation computer system.

(2) The customer may request a cash-out ticket from the gaming machine that reflects all remaining credits. The cash-out ticket shall be printed at the gaming machine by an internal document printer. The cash-out ticket shall be valid for a time period specified by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority. Cash-out tickets may be redeemed for payment or inserted in another gaming machine and wagered, if applicable, during the specified time period.

(3) The customer shall redeem the cash-out ticket at a change booth or cashiers' cage. Alternatively, if a gaming operation utilizes a remote computer validation system, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall develop alternate standards for the maximum amount that can be redeemed, which shall not exceed $2,999.99 per cash-out transaction.

(4) Upon presentation of the cash-out ticket(s) for redemption, the following shall occur:

(i) Scan the bar code via an optical reader or its equivalent; or

(ii) Input the cash-out ticket validation number into the computer.

(5) The information contained in paragraph (n)(4) of this section shall be communicated to the host computer. The host computer shall verify the authenticity of the cash-out ticket and communicate directly to the redeemer of the cash-out ticket.

(6) If valid, the cashier (redeemer of the cash-out ticket) pays the customer the appropriate amount and the cash-out ticket is electronically noted "paid" in the system. The "paid" cash-out

ticket shall remain in the cashiers" bank for reconciliation purposes. The host validation computer system shall electronically reconcile the cashier's banks for the paid cashed-out tickets.

(7) If invalid, the host computer shall notify the cashier (redeemer of the cash-out ticket). The cashier (redeemer of the cash-out ticket) shall refuse payment to the customer and notify a supervisor of the invalid condition. The supervisor shall resolve the dispute.

(8) If the host validation computer system temporarily goes down, cashiers may redeem cash-out tickets at a change booth or cashier's cage after recording the following:

(i) Serial number of the cash-out ticket;

(ii) Date and time;

(iii) Dollar amount;

(iv) Issuing gaming machine number;

(v) Marking ticket "paid"; and

(vi) Ticket shall remain in cashier's bank for reconciliation purposes.

(9) Cash-out tickets shall be validated as expeditiously as possible when the host validation computer system is restored.

(10) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures to control cash-out ticket paper, which shall include procedures that:

(i) Mitigate the risk of counterfeiting of cash-out ticket paper;

(ii) Adequately control the inventory of the cash-out ticket paper; and

(iii) Provide for the destruction of all unused cash-out ticket paper.

(iv) Alternatively, if the gaming operation utilizes a computer validation system, this standard shall not apply.

(11) If the host validation computer system is down for more than four (4) hours, the gaming operation shall promptly notify the Tribal gaming regulatory authority or its designated representative.

(12) These gaming machine systems shall comply with all other standards (as applicable) in this part including:

(i) Standards for bill acceptor drop and count;

(ii) Standards for coin drop and count; and

(iii) Standards concerning EPROMS or other equivalent game software media.

(o) *Account access cards.* For gaming machines that utilize account access cards to activate play of the machine, the following standards shall apply:

(1) *Equipment.* (i) A central computer, with supporting hardware and software, to coordinate network activities, provide system interface, and store and manage a player/account database;

(ii) A network of contiguous player terminals with touch-screen or button-controlled video monitors connected to an electronic selection device and the central computer via a communications network;

(iii) One or more electronic selection devices, utilizing random number generators, each of which selects any combination or combinations of numbers, colors, and/or symbols for a network of player terminals.

(2) *Player terminals standards.* (i) The player terminals are connected to a game server;

(ii) The game server shall generate and transmit to the bank of player terminals a set of random numbers, colors, and/or symbols at regular intervals. The subsequent game results are determined at the player terminal and the resulting information is transmitted to the account server;

(iii) The game server shall be housed in a game server room or a secure locked cabinet.

(3) *Customer account maintenance standards.* (i) A central computer acting as an account server shall provide customer account maintenance and the deposit/withdrawal function of those account balances;

(ii) Customers may access their accounts on the computer system by means of an account access card at the player terminal. Each player terminal may be equipped with a card reader and personal identification number (PIN) pad or touch screen array for this purpose;

(iii) All communications between the player terminal, or bank of player terminals, and the account server shall be encrypted for security reasons.

(4) *Customer account generation standards.* (i) A computer file for each customer shall be prepared by a clerk, with no incompatible functions, prior to the customer being issued an account access card to be utilized for machine play. The customer may select his/her PIN to be used in conjunction with the account access card.

(ii) The clerk shall sign-on with a unique password to a terminal equipped with peripherals required to establish a customer account. Passwords are issued and can only be changed by information technology personnel at the discretion of the department director.

(iii) After entering a specified number of incorrect PIN entries at the cage or player terminal, the customer shall be directed to proceed to the Gaming Machine Information Center to obtain a new PIN. If a customer forgets, misplaces or requests a change to their PIN, the customer shall proceed to the Gaming Machine Information Center.

(5) *Deposit of credits standards.* (i) The cashier shall sign-on with a unique password to a cashier terminal equipped with peripherals required to complete the credit transactions. Passwords are issued and can only be changed by information technology personnel at the discretion of the department director.

(ii) The customer shall present cash, chips, coin or coupons along with their account access card to a cashier to deposit credits.

(iii) The cashier shall complete the transaction by utilizing a card scanner that the cashier shall slide the customer's account access card through.

(iv) The cashier shall accept the funds from the customer and enter the appropriate amount on the cashier terminal.

(v) A multi-part deposit slip shall be generated by the point of sale receipt printer. The cashier shall direct the customer to sign the deposit slip receipt. One copy of the deposit slip shall be given to the customer. The other copy of the deposit slip shall be secured in the cashier's cash drawer.

(vi) The cashier shall verify the customer's balance before completing the transaction. The cashier shall secure the funds in their cash drawer and return the account access card to the customer.

(vii) Alternatively, if a kiosk is utilized to accept a deposit of credits, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that safeguard the integrity of the kiosk system.

(6) *Prize standards.* (i) Winners at the gaming machines may receive cash, prizes redeemable for cash or merchandise.

(ii) If merchandise prizes are to be awarded, the specific type of prize or prizes that may be won shall be disclosed to the player before the game begins.

(iii) The redemption period of account access cards, as approved by the Tribal gaming regulatory authority, shall be conspicuously posted in the gaming operation.

(7) *Credit withdrawal.* The customer shall present their account access card to a cashier to withdraw their credits. The cashier shall perform the following:

(i) Scan the account access card;

(ii) Request the customer to enter their PIN, if the PIN was selected by the customer;

(iii) The cashier shall ascertain the amount the customer wishes to withdraw and enter the amount into the computer;

(iv) A multi-part withdrawal slip shall be generated by the point of sale receipt printer. The cashier shall direct the customer to sign the withdrawal slip;

(v) The cashier shall verify that the account access card and the customer match by:

(A) Comparing the customer to image on the computer screen;

(B) Comparing the customer to image on customer's picture ID; or

(C) Comparing the customer signature on the withdrawal slip to signature on the computer screen.

(vi) The cashier shall verify the customer's balance before completing the transaction. The cashier shall pay the customer the appropriate amount, issue the customer the original withdrawal slip and return the account access card to the customer;

(vii) The copy of the withdrawal slip shall be placed in the cash drawer. All account transactions shall be accurately tracked by the account server computer system. The copy of the withdrawal slip shall be forwarded to the accounting department at the end of the gaming day; and

(viii) In the event the imaging function is temporarily disabled, customers shall be required to provide positive ID for cash withdrawal transactions at the cashier stations.

(p) *Smart cards.* All smart cards (i.e., cards that possess the means to electronically store and retrieve data) that maintain the only source of account data are prohibited.

§ 542.14 What are the minimum internal control standards for the cage?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Personal checks, cashier's checks, payroll checks, and counter checks.* (1) If personal checks, cashier's checks, payroll checks, or counter checks are cashed at the cage, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with appropriate controls for purposes of security and integrity.

(2) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for the acceptance of personal checks, collecting and recording checks returned to the gaming operation after deposit, re-deposit, and write-off authorization.

(3) When counter checks are issued, the following shall be included on the check:

(i) The customer's name and signature;

(ii) The dollar amount of the counter check (both alpha and numeric);

(iii) Customer's bank name and bank account number;

(iv) Date of issuance; and

(v) Signature or initials of the person approving the counter check transaction.

(4) When traveler's checks or other guaranteed drafts such as cashier's checks are presented, the cashier shall comply with the examination and documentation procedures as required by the issuer.

(c) *Customer deposited funds.* If a gaming operation permits a customer to deposit funds with the gaming operation at the cage, the following standards shall apply.

(1) The receipt or withdrawal of a customer deposit shall be evidenced by at least a two-part document with one copy going to the customer and one copy remaining in the cage file.

(2) The multi-part receipt shall contain the following information:

(i) Same receipt number on all copies;

(ii) Customer's name and signature;

(iii) Date of receipt and withdrawal;

(iv) Dollar amount of deposit/withdrawal; and

(v) Nature of deposit (cash, check, chips); however,

(vi) Provided all of the information in paragraph (c)(2)(i) through (v) is available, the only required information for all copies of the receipt is the receipt number.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that:

(i) Maintain a detailed record by customer name and date of all funds on deposit;

(ii) Maintain a current balance of all customer cash deposits that are in the cage/vault inventory or accountability; and

(iii) Reconcile this current balance with the deposits and withdrawals at least daily.

(4) The gaming operation, as approved by the Tribal gaming regulatory authority, shall describe the sequence of the required signatures attesting to the accuracy of the information contained on the customer deposit or withdrawal form ensuring that the form is signed by the cashier.

(5) All customer deposits and withdrawal transactions at the cage shall be recorded on a cage accountability form on a per-shift basis.

(6) Only cash, cash equivalents, chips, and tokens shall be accepted from customers for the purpose of a customer deposit.

(7) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that verify the customer's identity, including photo identification.

(8) A file for customers shall be prepared prior to acceptance of a deposit.

(d) *Cage and vault accountability standards.* (1) All transactions that flow through the cage shall be summarized on a cage accountability form on a per shift basis and shall be supported by documentation.

(2) The cage and vault (including coin room) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison of accuracy and maintenance of individual accountability. Such counts shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated.

(3) The gaming operation cash-on-hand shall include, but is not limited to, the following components:

(i) Currency and coins;

(ii) House chips, including reserve chips;

(iii) Personal checks, cashier's checks, counter checks, and traveler's checks for deposit;

(iv) Customer deposits;

(v) Chips on tables;

(vi) Hopper loads (coins put into machines when they are placed in service); and

(vii) Fills and credits (these documents shall be treated as assets and liabilities, respectively, of the cage during a business day. When win or loss is recorded at the end of the business day, they are removed from the accountability).

(4) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's customers as they are incurred. A suggested bankroll

formula will be provided by the Commission upon request.

(e) *Chip and token standards.* The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for the receipt, inventory, storage, and destruction of gaming chips and tokens.

(f) *Coupon standards.* Any program for the exchange of coupons for chips, tokens, and/or another coupon program shall be approved by the Tribal gaming regulatory authority prior to implementation. If approved, the gaming operation shall establish and comply with procedures that account for and control such programs.

(g) *Accounting/auditing standards.* (1) The cage accountability shall be reconciled to the general ledger at least monthly.

(2) A trial balance of gaming operation accounts receivable, including the name of the customer and current balance, shall be prepared at least monthly for active, inactive, settled or written-off accounts.

(3) The trial balance of gaming operation accounts receivable shall be reconciled to the general ledger each month. The reconciliation and any follow-up performed shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(4) On a monthly basis an evaluation of the collection percentage of credit issued to identify unusual trends shall be performed.

(5) All cage and credit accounting procedures and any follow-up performed shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(h) *Extraneous items.* The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures to address the transporting of extraneous items, such as coats, purses, and/or boxes, into and out of the cage, coin room, count room, and/or vault.

§ 542.15 What are the minimum internal control standards for credit?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Credit standards.* The following standards shall apply if the gaming operation authorizes and extends credit to customers:

(1) At least the following information shall be recorded for customers that have credit limits or are issued credit (excluding personal checks, payroll checks, cashier's checks, and traveler's checks):

(i) Customer's name, current address, and signature;

(ii) Identification verifications;

(iii) Authorized credit limit;

(iv) Documentation of authorization by a person designated by management to approve credit limits; and

(v) Credit issuances and payments.

(2) Prior to extending credit, the customer's gaming operation credit record and/or other documentation shall be examined to determine the following:

(i) Properly authorized credit limit;

(ii) Whether remaining credit is sufficient to cover the credit issuance; and

(iii) Identity of the customer (except for known customers).

(3) Credit extensions over a specified dollar amount shall be approved by personnel designated by management.

(4) Proper approval of credit extensions over ten percent (10%) of the previously established limit shall be documented.

(5) The job functions of credit approval (i.e., establishing the customer's credit worthiness) and credit extension (*i.e.*, advancing customer's credit) shall be segregated for credit extensions to a single customer of $10,000 or more per day (applies whether the credit is extended in the pit or the cage).

(6) If cage credit is extended to a single customer in an amount exceeding $2,500, appropriate gaming personnel shall be notified on a timely basis of the customers playing on cage credit, the applicable amount of credit issued, and the available balance.

(7) Cage marker forms shall be at least two parts (the original marker and a payment slip), prenumbered by the printer or concurrently numbered by the computerized system, and utilized in numerical sequence.

(8) The completed original cage marker shall contain at least the following information:

(i) Marker number;

(ii) Player's name and signature; and

(iii) Amount of credit issued (both alpha and numeric).

(9) The completed payment slip shall include the same marker number as the original, date and time of payment, amount of payment, nature of settlement (cash, chips, etc.), and signature of cashier receiving the payment.

(c) *Payment standards.* (1) All payments received on outstanding credit instruments shall be recorded in ink or other permanent form of recordation in the gaming operation's records.

(2) When partial payments are made on credit instruments, they shall be evidenced by a multi-part receipt (or another equivalent document) that contains:

(i) The same preprinted number on all copies;

(ii) Customer's name;

(iii) Date of payment;

(iv) Dollar amount of payment (or remaining balance if a new marker is issued), and nature of settlement (cash, chips, etc.);

(v) Signature of employee receiving payment; and

(vi) Number of credit instrument on which partial payment is being made.

(3) Unless account balances are routinely confirmed on a random basis by the accounting or internal audit departments, or statements are mailed by a person independent of the credit transactions and collections thereon, and the department receiving payments cannot access cash, then the following standards shall apply:

(i) The routing procedures for payments by mail require that they be received by a department independent of credit instrument custody and collection;

(ii) Such receipts by mail shall be documented on a listing indicating the customer's name, amount of payment, nature of payment (if other than a check), and date payment received; and

(iii) The total amount of the listing of mail receipts shall be reconciled with the total mail receipts recorded on the appropriate accountability form by the accounting department on a random basis (for at least three (3) days per month).

(d) *Access to credit documentation.* (1) Access to credit documentation shall be restricted as follows:

(i) The credit information shall be restricted to those positions that require access and are so authorized by management;

(ii) Outstanding credit instruments shall be restricted to persons authorized by management; and

(iii) Written-off credit instruments shall be further restricted to persons specified by management.

(2) [Reserved]

(e) *Maintenance of credit documentation.* (1) All extensions of cage credit, pit credit transferred to the cage, and subsequent payments shall be documented on a credit instrument control form.

(2) Records of all correspondence, transfers to and from outside agencies, and other documents related to issued credit instruments shall be maintained.

(f) *Write-off and settlement standards.* (1) Written-off or settled credit instruments shall be authorized in writing.

(2) Such authorizations shall be made by at least two management officials who are from departments independent of the credit transaction.

(g) *Collection agency standards.* (1) If credit instruments are transferred to collection agencies or other collection representatives, a copy of the credit instrument and a receipt from the collection representative shall be obtained and maintained until the original credit instrument is returned or payment is received.

(2) A person independent of credit transactions and collections shall periodically review the documents in paragraph (g)(1) of this section.

(h) *Accounting/auditing standards.* (1) A person independent of the cage, credit, and collection functions shall perform all of the following at least three (3) times per year:

(i) Ascertain compliance with credit limits and other established credit issuance procedures;

(ii) Randomly reconcile outstanding balances of both active and inactive accounts on the accounts receivable listing to individual credit records and physical instruments;

(iii) Examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded; and

(iv) For a minimum of five (5) days per month, partial payment receipts shall be subsequently reconciled to the total payments recorded by the cage for the day and shall be numerically accounted for.

(2) [Reserved]

§ 542.16 What are the minimum internal control standards for information technology?

(a) *General controls for gaming hardware and software.* (1) Management shall take an active role in making sure that physical and logical security measures are implemented, maintained, and adhered to by personnel to prevent unauthorized access that could cause errors or compromise data or processing integrity.

(i) Management shall ensure that all new gaming vendor hardware and software agreements/contracts contain language requiring the vendor to adhere to tribal internal control standards applicable to the goods and services the vendor is providing.

(ii) Physical security measures shall exist over computer, computer terminals, and storage media to prevent unauthorized access and loss of integrity of data and processing.

(iii) Access to systems software and application programs shall be limited to authorized personnel.

(iv) Access to computer data shall be limited to authorized personnel.

(v) Access to computer communications facilities, or the computer system, and information transmissions shall be limited to authorized personnel.

(vi) Standards in paragraph (a)(1) of this section shall apply to each applicable department within the gaming operation.

(2) The main computers (i.e., hardware, software, and data files) for each gaming application (*e.g.*, keno, race and sports, gaming machines, etc.) shall be in a secured area with access restricted to authorized persons, including vendors.

(3) Access to computer operations shall be restricted to authorized personnel to reduce the risk of loss of integrity of data or processing.

(4) Incompatible duties shall be adequately segregated and monitored to prevent error in general information technology procedures to go undetected or fraud to be concealed.

(5) Non-information technology personnel shall be precluded from having unrestricted access to the secured computer areas.

(6) The computer systems, including application software, shall be secured through the use of passwords or other approved means where applicable. Management personnel or persons independent of the department being controlled shall assign and control access to system functions.

(7) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have their own individual password;

(ii) Passwords shall be changed at least quarterly with changes documented; and

(iii) For computer systems that automatically force a password change on a quarterly basis, documentation shall be maintained listing the systems and the date the user was given access.

(8) Adequate backup and recovery procedures shall be in place that include:

(i) Frequent backup of data files;

(ii) Backup of all programs;

(iii) Secured off-site storage of all backup data files and programs, or other adequate protection; and

(iv) Recovery procedures, which are tested on a sample basis at least annually with documentation of results.

(9) Adequate information technology system documentation shall be maintained, including descriptions of hardware and software, operator manuals, etc.

(b) *Independence of information technology personnel.* (1) The information technology personnel shall be independent of the gaming areas (*e.g.*, cage, pit, count rooms, etc.). Information technology personnel procedures and controls should be documented and responsibilities communicated.

(2) Information technology personnel shall be precluded from unauthorized access to:

(i) Computers and terminals located in gaming areas;

(ii) Source documents; and

(iii) Live data files (not test data).

(3) Information technology personnel shall be restricted from:

(i) Having unauthorized access to cash or other liquid assets; and

(ii) Initiating general or subsidiary ledger entries.

(c) *Gaming program changes.* (1) Program changes for in-house developed systems should be documented as follows:

(i) Requests for new programs or program changes shall be reviewed by the information technology supervisor. Approvals to begin work on the program shall be documented;

(ii) A written plan of implementation for new and modified programs shall be maintained, and shall include, at a minimum, the date the program is to be placed into service, the nature of the change, a description of procedures required in order to bring the new or modified program into service (conversion or input of data, installation procedures, etc.), and an indication of who is to perform all such procedures;

(iii) Testing of new and modified programs shall be performed and documented prior to implementation; and

(iv) A record of the final program or program changes, including evidence of user acceptance, date in service, programmer, and reason for changes, shall be documented and maintained.

(2) [Reserved]

(d) *Security logs.* (1) If computer security logs are generated by the system, they shall be reviewed by information technology supervisory personnel for evidence of:

(i) Multiple attempts to log-on, or alternatively, the system shall deny user access after three attempts to log-on;

(ii) Unauthorized changes to live data files; and

(iii) Any other unusual transactions.

(2) This paragraph shall not apply to personal computers.

(e) *Remote dial-up.* (1) If remote dial-up to any associated equipment is allowed for software support, the gaming operation shall maintain an access log that includes:

(i) Name of employee authorizing modem access;

(ii) Name of authorized programmer or manufacturer representative;

(iii) Reason for modem access;

(iv) Description of work performed; and

(v) Date, time, and duration of access.

(2) [Reserved]

(f) *Document storage.* (1) Documents may be scanned or directly stored to an unalterable storage medium under the following conditions.

(i) The storage medium shall contain the exact duplicate of the original document.

(ii) All documents stored on the storage medium shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available upon request by the Commission.

(iii) Upon request and adequate notice by the Commission, hardware (terminal, printer, etc.) shall be made available in order to perform auditing procedures.

(iv) Controls shall exist to ensure the accurate reproduction of records up to and including the printing of stored documents used for auditing purposes.

(v) The storage medium shall be retained for a minimum of five years.

(vi) Original documents must be retained until the books and records have been audited by an independent certified public accountant.

(2) [Reserved]

§ 542.17 What are the minimum internal control standards for complimentary services or items?

(a) Each Tribal gaming regulatory authority or gaming operation shall establish and the gaming operation shall comply with procedures for the authorization, issuance, and tracking of complimentary services and items, including cash and non-cash gifts. Such procedures must be approved by the Tribal gaming regulatory authority and shall include, but shall not be limited to, the procedures by which the gaming operation delegates to its employees the authority to approve the issuance of complimentary services and items, and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified (including limits based on relationships between the authorizer and recipient), and shall further include effective provisions for audit purposes.

(b) At least monthly, accounting, information technology, or audit personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information:

(1) Name of customer who received the complimentary service or item;

(2) Name(s) of authorized issuer of the complimentary service or item;

(3) The actual cash value of the complimentary service or item;

(4) The type of complimentary service or item (i.e., food, beverage, etc.); and

(5) Date the complimentary service or item was issued.

(c) The report required by paragraph (b) of this section shall not be required to include complimentary services or items below a reasonable amount to be established by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(d) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least monthly. These reports shall be made available to the Tribe, Tribal gaming regulatory authority, audit committee, other entity designated by the Tribe, and the Commission upon request.

§ 542.18 How does a gaming operation apply for a variance from the standards of this part?

(a) *Tribal gaming regulatory authority approval.* (1) A Tribal gaming regulatory authority may approve a variance for a gaming operation if it has determined that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the Tribal gaming regulatory authority approves a variance, it shall submit to the Commission, within thirty (30) days, a detailed report, which shall include the following:

(i) A detailed description of the variance;

(ii) An explanation of how the variance achieves a level of control sufficient to accomplish the purpose of the standard it is to replace; and

(iii) Evidence that the Tribal gaming regulatory authority has approved the variance.

(3) In the event that the Tribal gaming regulatory authority or the Tribe chooses to submit a variance request directly to the Commission, it may do so without the approval requirement set forth in paragraph (a)(2)(iii) of this section.

(b) *Commission concurrence.* (1) Following receipt of the variance approval, the Commission shall have sixty (60) days to concur with or object to the approval of the variance.

(2) Any objection raised by the Commission shall be in the form of a written explanation based upon the following criteria:

(i) There is no valid explanation of why the gaming operation should have received a variance approval from the Tribal gaming regulatory authority on the enumerated standard; or

(ii) The variance as approved by the Tribal gaming regulatory authority does not provide a level of control sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Commission fails to object in writing within sixty (60) days after the date of receipt of a complete submission, the variance shall be considered concurred with by the Commission.

(4) The 60-day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Commission.

(c) *Curing Commission objections.* (1) Following an objection by the Commission to the issuance of a variance, the Tribal gaming regulatory authority shall have the opportunity to cure any objections noted by the Commission.

(2) A Tribal gaming regulatory authority may cure the objections raised by the Commission by:

(i) Rescinding its initial approval of the variance; or

(ii) Amending its initial approval and re-submitting it to the Commission.

(3) Upon any re-submission of a variance approval, the Commission shall have thirty (30) days to concur with or object to the re-submitted variance.

(4) If the Commission fails to object in writing within thirty (30) days after the date of receipt of the re-submitted variance, the re-submitted variance shall be considered concurred with by the Commission.

(d) *Appeals.* (1) Upon receipt of objections to a re-submission of a variance, the Tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(i) Within thirty (30) days of receiving an objection to a re-submission, the Tribal gaming regulatory authority shall file its notice of appeal.

(ii) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iii) An appeal under this section shall specify the reasons why the Tribal gaming regulatory authority believes the

Commission's objections should be reviewed, and shall include supporting documentation, if any.

(iv) Within thirty (30) days after receipt of the appeal, the Commission shall render a decision based upon the criteria contained within paragraph (b)(2) of this section unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision.

(v) In the absence of a decision within the time provided, the Tribal gaming regulatory authority's re-submission shall be considered concurred with by the Commission and become effective.

(2) [Reserved]

(e) *Effective date of variance.* The gaming operation shall comply with standards that achieve a level of control sufficient to accomplish the purpose of the standard it is to replace until such time as the Commission objects to the Tribal gaming regulatory authority's approval of a variance as provided in paragraph (b) of this section.

§ 542.20 What is a Tier A gaming operation?

A Tier A gaming operation is one with annual gross gaming revenues of more than $1 million but not more than $5 million.

§ 542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by a person independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two persons, at least one of whom is independent of the pit shift being dropped.

(5) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(c) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of two employees.

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count, shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, a dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(d) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change, unless the count team only has two (2) members in which case the initials of only one (1) verifying member is required.

(5) If cash counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all cash at the cash counter, including rejected cash.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(9) Foreign currency exchange forms (if applicable) removed from the table game drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(10) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(e) *Gaming machine bill acceptor drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) The bill acceptor canisters shall be removed by a person independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two persons, at least one of whom is independent of the gaming machine department.

(4) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If cash counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all cash at the cash counter, including rejected cash.

(6) Canisters, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) Authorized personnel in an emergency for resolution of a problem.

(12) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(g) *Gaming machine coin drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(4) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such drop proceeds. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(5) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(6) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(7) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(h) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of two employees.

(2) At no time during the weigh/count shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability.

(i) If the gaming machine count is conducted with a continuous mechanical count meter that is not reset during the count and is verified in writing by at least two employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, unless they are non-supervisory gaming machine employees and perform the laborer function only (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor). A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all count documentation.

(i) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.13(m)(3);

(B) Components of the on-the-floor drop system shall include, but not be limited to, a weigh scale, a laptop computer through which weigh/count applications are operated, a security camera available for the mobile scale system, and a VCR to be housed within the video compartment of the mobile scale. The system may include a mule cart used for mobile weigh scale system locomotion.

(C) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(D) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(E) Prior to the drop, a videotape shall be inserted into the VCR used to record the drop in conjunction with the security camera system and the VCR shall be activated;

(F) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(G) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(H) An observer independent of the weigh/drop/count teams (independent observer) shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(I) Physical custody of the key(s) needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(J) The mule key (if applicable), the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(K) A person independent of the weigh/drop/count teams shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(L) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(M) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count; and

(N) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function, which involves the recording of the gaming machine count; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor shall not perform the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coins.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Drawing a single line through the error on the gaming machine document, writing the correct figure above the original figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(*2*) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction, and the count team employees attesting to the correction.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts prior to the reconciliation of the weigh to the wrap.

(8) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(9) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or a person independent of the cashier's department. Alternatively, it may be adequately secured (*e.g.*, locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) Variances. Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (*e.g.*, zero for weigh/count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team, and the cage/vault functions on a timely basis. The results of such investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Security of the coin room inventory during the gaming machine coin count and wrap.* (1) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (j)(1)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (j)(1)(ii)(A) of this section shall be recorded on a summary report(s) that evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers, and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(iii) The functions described in paragraph (j)(1)(ii)(A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (j)(1)(ii)(E).

(2) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison, and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(k) *Transfers during the gaming machine coin count and wrap.* (1) Transfers may be permitted during the count and wrap only if permitted under the internal control standards approved by the Tribal gaming regulatory authority.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) that shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by a person independent of the count team who is responsible for authorizing the transfer.

(l) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed.

(m) *Table game drop box key control standards.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(3) The involvement of at least two persons independent of the cage department shall be required to access stored empty table game drop boxes.

(4) The release keys shall be separately keyed from the contents keys.

(5) At least two count team members are required to be present at the time count room and other count keys are issued for the count.

(6) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(7) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(n) *Table game drop box release keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The table game drop box release keys shall be maintained by a department independent of the pit department.

(3) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(4) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(5) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Bill acceptor canister release keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(3) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(4) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(5) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(p) *Table game drop box storage rack keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys, with the exception of the count team.

(q) *Bill acceptor canister storage rack keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys, with the exception of the count team.

(r) *Table game drop box contents keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(3) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(4) Only count team members shall be allowed access to table game drop box contents keys during the count process.

(s) *Bill acceptor canister contents keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(3) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, one of whom must be a supervisor. The reason for access shall be documented with the signatures of all participants and observers.

(4) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(t) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(u) *Equipment standards for gaming machine count.*

(1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (*e.g.*, weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person or persons performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply, with procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

§ 542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?

(a) *Internal audit personnel.* (1) For Tier A gaming operations, a separate internal audit department must be maintained. Alternatively, designating personnel (who are independent with respect to the departments/procedures being examined) to perform internal audit work satisfies the requirements of this paragraph.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits.* (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following shall be reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, unannounced testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept currency or coin(s) and issue cash-out tickets or gaming machines that do not accept currency or coin(s) and do not return currency or coin(s);

(viii) Cage and credit procedures including all cage, credit, and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(2) In addition to the observation and examinations performed under paragraph (b)(1) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six (6) months following the date of notification.

(3) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the American Institute of Certified Public Accountants guide.

(c) *Documentation.* (1) Documentation (*e.g.*, checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section, including all instances of noncompliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request.

(2) Such audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(e) *Material exceptions.* All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception.

(3) Such management responses shall be included in the internal audit report that will be delivered to management, the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

§ 542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?

(a) Tier A gaming operations must, at a minimum, maintain and operate an unstaffed surveillance system in a

secured location whereby the areas under surveillance are continually recorded.

(b) The entrance to the secured location shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to the secured location shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be approved by the Tribal gaming regulatory authority.

(d) The surveillance system shall include date and time generators that possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(e) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(f) Each camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with, or disabled by customers or employees.

(g) Each camera required by the standards in this section shall possess the capability of having its picture recorded. The surveillance system shall include sufficient numbers of recorders to simultaneously record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(h) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered. The Tribal gaming regulatory authority shall be notified of any camera(s) that has malfunctioned for more than twenty-four (24) hours.

(1) In the event of a dedicated camera malfunction, the gaming operation and/or the surveillance department shall, upon identification of the malfunction, provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(i) *Bingo.* The surveillance system shall record the bingo ball drawing device, the game board, and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(j) *Card games.* The surveillance system shall record the general activities in each card room and be capable of identifying the employees performing the different functions.

(k) *Keno.* The surveillance system shall record the keno ball-drawing device, the general activities in each keno game area, and be capable of identifying the employees performing the different functions.

(l) *Table games.* (1) *Operations with four (4) or more table games.* Except as otherwise provided in paragraphs (l)(3), (l)(4), and (l)(5) of this section, the surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify customers and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games.* The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (l)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps.* All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette.* All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel.* All big wheel games shall have one (1) dedicated camera viewing the wheel.

(m) *Progressive table games.* (1) Progressive table games with a progressive jackpot of $25,000 or more shall be recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(2) [Reserved]

(n) *Gaming machines.* (1) Except as otherwise provided in paragraphs (n)(2) and (n)(3) of this section, gaming machines offering a payout of more than $250,000 shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* In-house progressive gaming machines offering a base payout amount (jackpot reset amount) of more than $100,000 shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of more than $1.5 million and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (n)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(o) *Currency and coin.* The surveillance system shall record a general overview of all areas where currency or coin may be stored or counted.

(p) *Video recording and/or digital record retention.* (1) All video recordings and/or digital records of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of thirty (30) days.

(3) Duly authenticated copies of video recordings and/or digital records shall be provided to the Commission upon request.

(q) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance

with the storage, identification, and retention standards required in this section.

(r) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

§ 542.30 What is a Tier B gaming operation?

A Tier B gaming operation is one with gross gaming revenues of more than $5 million but not more than $15 million.

§ 542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by a person independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two persons, at least one of whom is independent of the pit shift being dropped.

(5) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(6) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(c) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of two employees.

(i) The count shall be viewed live, or on video recording and/or digital record, within seven (7) days by an employee independent of the count.

(ii) [Reserved]

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count, shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, a dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(d) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change, unless the count team only has two (2) members in which case the initials of only one (1) verifying count team member is required.

(5) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided the count is monitored in its entirety by a person independent of the count.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(9) Foreign currency exchange forms (if applicable) removed from the table game drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(10) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count

team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(e) *Gaming machine bill acceptor drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(4) The bill acceptor canisters shall be removed by a person independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two persons, at least one of who is independent of the gaming machine department.

(5) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Canisters, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to surveillance, provided that the count is monitored in its entirety by a person independent of the count.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) Authorized personnel in an emergency for the resolution of a problem.

(12) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(g) *Gaming machine coin drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin in order that surveillance may monitor the activities.

(4) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(5) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such drop proceeds. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(6) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed. If the gaming

machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(7) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(8) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(h) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of two employees.

(i) The count shall be viewed either live, or on video recording and/or digital record within seven (7) days by an employee independent of the count.

(ii) [Reserved]

(2) At no time during the weigh/count shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(i) If the gaming machine count is conducted with a continuous mechanical count meter that is not reset during the count and is verified in writing by at least two employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, unless they are non-supervisory gaming machine employees and perform the laborer function only (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor). A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all count documentation.

(i) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.13(m)(3);

(B) Components of the on-the-floor drop system shall include, but not be limited to, a weigh scale, a laptop computer through which weigh/count applications are operated, a security camera available for the mobile scale system, and a VCR to be housed within the video compartment of the mobile scale. The system may include a mule cart used for mobile weigh scale system locomotion.

(C) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(D) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(E) Prior to the drop, a videotape shall be inserted into the VCR used to record the drop in conjunction with the security camera system and the VCR shall be activated;

(F) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(G) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(H) An observer independent of the weigh/drop/count teams (independent observer) shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(I) Physical custody of the key(s) needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(J) The mule key (if applicable), the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(K) A person independent of the weigh/drop/count teams shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(L) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(M) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count; and

(N) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function, which involves the recording of the gaming machine count; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor shall not perform the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Drawing a single line through the error on the gaming machine document,

writing the correct figure above the original figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(2) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction, and the count team employees attesting to the correction.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts before the reconciliation of the weigh to the wrap.

(8) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(9) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or a person independent of the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) Variances. Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh/count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team, and the cage/vault functions on a timely basis. The results of such investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Security of the coin room inventory during the gaming machine coin count and wrap.* (1) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (j)(1)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (j)(1)(ii)(A) of this section shall be recorded on a summary report(s) that evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(iii) The functions described in paragraph (j)(1)(ii)(A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (j)(1)(ii)(E).

(2) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison, and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(k) *Transfers during the gaming machine coin count and wrap.* (1) Transfers may be permitted during the count and wrap only if permitted under the internal control standards approved by the Tribal gaming regulatory authority.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) that shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by a person independent of the count team who is responsible for authorizing the transfer.

(l) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance

observes the person throughout the period the keys are checked out.

(m) *Table game drop box key control standards.* (1) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(2) The involvement of at least two persons independent of the cage department shall be required to access stored empty table game drop boxes.

(3) The release keys shall be separately keyed from the contents keys.

(4) At least two count team members are required to be present at the time count room and other count keys are issued for the count.

(5) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(6) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(n) *Table game drop box release keys.* (1) The table game drop box release keys shall be maintained by a department independent of the pit department.

(2) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(3) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(4) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Bill acceptor canister release keys.* (1) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(2) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(3) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(4) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(p) *Table game drop box storage rack keys.* Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys with the exception of the count team.

(q) *Bill acceptor canister storage rack keys.* Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys with the exception of the count team.

(r) *Table game drop box contents keys.* (1) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(2) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only count team members shall be allowed access to table game drop box contents keys during the count process.

(s) *Bill acceptor canister contents keys.* (1) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(2) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, one of whom must be a supervisor. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(t) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(u) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person or persons performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine before the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

§ 542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?

(a) *Internal audit personnel.* (1) For Tier B gaming operations, a separate internal audit department must be maintained. Alternatively, designating personnel (who are independent with respect to the departments/procedures being examined) to perform internal

audit work satisfies the requirements of this paragraph.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits.* (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following shall be reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, unannounced testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept currency or coin(s) and issue cash-out tickets or gaming machines that do not accept currency or coin(s) and do not return currency or coin(s);

(viii) Cage and credit procedures including all cage, credit, and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(2) In addition to the observation and examinations performed under paragraph (b)(1) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six (6) months following the date of notification.

(3) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the American Institute of Certified Public Accountants guide.

(c) *Documentation.* (1) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section, including all instances of noncompliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request.

(2) Such audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(e) *Material exceptions.* All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception.

(3) Such management responses shall be included in the internal audit report that will be delivered to management, the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

§ 542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?

(a) The surveillance system shall be maintained and operated from a staffed surveillance room and shall provide surveillance over gaming areas.

(b) The entrance to the surveillance room shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to the surveillance room shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be approved by the Tribal gaming regulatory authority. The surveillance department shall maintain a sign-in log of other authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) The surveillance system shall include date and time generators that possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(f) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(g) Each camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with, or disabled by customers or employees.

(h) Each camera required by the standards in this section shall possess the capability of having its picture

displayed on a monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(i) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered. The Tribal gaming regulatory authority shall be notified of any camera(s) that has malfunctioned for more than twenty-four (24) hours.

(1) In the event of a dedicated camera malfunction, the gaming operation and/or surveillance department shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(j) *Bingo.* (1) The surveillance system shall possess the capability to monitor the bingo ball drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record the game board and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(k) *Card games.* The surveillance system shall monitor and record general activities in each card room with sufficient clarity to identify the employees performing the different functions.

(l) *Progressive card games.* (1) Progressive card games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the posted jackpot amount.

(2) [Reserved]

(m) *Keno.* (1) The surveillance system shall possess the capability to monitor the keno ball-drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record general activities in each keno game area with sufficient clarity to identify the employees performing the different functions.

(n) *Pari-mutuel.* The surveillance system shall monitor and record general activities in the pari-mutuel area, to include the ticket writer and cashier areas, with sufficient clarity to identify the employees performing the different functions.

(o) *Table games.* (1) *Operations with four (4) or more table games.* Except as otherwise provided in paragraphs (o)(3), (o)(4), and (o)(5) of this section, the surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify customers and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games.* The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (o)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps.* All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette.* All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel.* All big wheel games shall have one (1) dedicated camera viewing the wheel.

(p) *Progressive table games.* (1) Progressive table games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(2) [Reserved]

(q) *Gaming machines.* (1) Except as otherwise provided in paragraphs (q)(2) and (q)(3) of this section, gaming machines offering a payout of more than $250,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine, and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* In-house progressive gaming machines offering a base payout amount (jackpot reset amount) of more than $100,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of more than $1.5 million and monitored by an independent vendor utilizing an on-line progressive computer system shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (q)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(r) *Cage and vault.* (1) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to identify employees within the cage and customers and employees at the counter areas.

(2) Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area.

(3) The surveillance system shall provide an overview of cash transactions. This overview should include the customer, the employee, and the surrounding area.

(s) *Fills and credits.* (1) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity

to identify the chip values and the amounts on the fill and credit slips.

(2) Controls provided by a computerized fill and credit system may be deemed an adequate alternative to viewing the fill and credit slips.

(t) *Currency and coin.* (1) The surveillance system shall monitor and record with sufficient clarity all areas where currency or coin may be stored or counted.

(2) The surveillance system shall provide for:

(i) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(ii) Monitoring and recording of the table game drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(iii) Monitoring and recording of all areas where coin may be stored or counted, including the hard count room, all doors to the hard count room, all scales and wrapping machines, and all areas where uncounted coin may be stored during the drop and count process.

(iv) Monitoring and recording of soft count room, including all doors to the room, all table game drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored and recorded by a dedicated camera during the soft count.

(v) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(u) Change booths. The surveillance system shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(v) *Video recording and/or digital record retention.* (1) All video recordings and/or digital records of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of thirty (30) days.

(3) Duly authenticated copies of video recordings and/or digital records shall be provided to the Commission upon request.

(w) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(x) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

(y) *Surveillance log.* (1) Surveillance personnel shall maintain a log of all surveillance activities.

(2) Such log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department.

(3) At a minimum, the following information shall be recorded in a surveillance log:

(i) Date;

(ii) Time commenced and terminated;

(iii) Activity observed or performed; and

(iv) The name or license credential number of each person who initiates, performs, or supervises the surveillance.

(4) Surveillance personnel shall also record a summary of the results of the surveillance of any suspicious activity. This summary may be maintained in a separate log.

§ 542.40 What is a Tier C gaming operation?

A Tier C gaming operation is one with annual gross gaming revenues of more than $15 million.

§ 542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Table game drop standards.*

(1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by a person independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two persons, at least one of whom is independent of the pit shift being dropped.

(5) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(6) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(c) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of three employees.

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count, shall there be fewer than three employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same three persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than three persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, an accounting representative may be used if there is an independent audit of all soft count documentation.

(d) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers,

supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided the count is monitored in its entirety by a person independent of the count.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(9) Foreign currency exchange forms (if applicable) removed from the table game drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(10) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers department. Alternatively, it may be adequately secured (*e.g.*, locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(e) *Gaming machine bill acceptor drop standards.* (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(4) The bill acceptor canisters shall be removed by a person independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two persons, at least one of who is independent of the gaming machine department.

(5) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Canisters, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided that the count is monitored in its entirety by a person independent of the count.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash equivalents that were counted shall be

turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) Authorized personnel in an emergency for the resolution of a problem.

(12) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(g) *Gaming machine coin drop standards.* (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin in order that surveillance may monitor the activities.

(4) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(5) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such drop proceeds. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(6) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(7) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(8) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(h) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of three employees.

(2) At no time during the weigh/count shall there be fewer than three employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(i) If the gaming machine count is conducted with a continuous mechanical count meter that is not reset during the count and is verified in writing by at least three employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same three persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than three persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, unless they are non-supervisory gaming machine employees and perform the laborer function only (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor). A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all count documentation.

(i) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.13(m)(3);

(B) Components of the on-the-floor drop system shall include, but not be limited to, a weigh scale, a laptop computer through which weigh/count applications are operated, a security camera available for the mobile scale system, and a VCR to be housed within the video compartment of the mobile scale. The system may include a mule cart used for mobile weigh scale system locomotion.

(C) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(D) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(E) Prior to the drop, a videotape shall be inserted into the VCR used to record the drop in conjunction with the security camera system and the VCR shall be activated;

(F) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(G) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(H) An observer independent of the weigh/drop/count teams (independent observer) shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(I) Physical custody of the key(s) needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(J) The mule key (if applicable), the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(K) A person independent of the weigh/drop/count teams shall be required to accompany these keys while

they are checked out, and observe each time the laptop compartment is opened;

(L) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(M) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count; and

(N) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function, which involves the recording of the gaming machine count; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor shall not perform the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Drawing a single line through the error on the gaming machine document, writing the correct figure above the original figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(*2*) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction, and the count team employees attesting to the correction.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts before the reconciliation of the weigh to the wrap.

(8) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(9) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or a person independent of the cashier's department. Alternatively, it may be adequately secured (*e.g.*, locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) Variances. Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (*e.g.*, zero for weigh/count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team, and the cage/vault functions on a timely basis. The results of such investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Security of the count room inventory during the gaming machine coin count and wrap.* (1) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (j)(1)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (j)(1)(ii)(A) of this section shall be recorded on a summary report(s) that evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers, and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(2) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the

following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(k) *Transfers during the gaming machine coin count and wrap.* (1) Transfers may be permitted during the count and wrap only if permitted under the internal control standards approved by the Tribal gaming regulatory authority.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) that shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by a person independent of the count team who is responsible for authorizing the transfer.

(l) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance observes the person throughout the period the keys are checked out.

(m) *Table game drop box key control standards.* (1) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(2) The involvement of at least two persons independent of the cage department shall be required to access stored empty table game drop boxes.

(3) The release keys shall be separately keyed from the contents keys.

(4) At least three (two for table game drop box keys in operations with three tables or fewer) count team members are required to be present at the time count room and other count keys are issued for the count.

(5) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(6) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(n) *Table game drop box release keys.* (1) The table game drop box release keys shall be maintained by a department independent of the pit department.

(2) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(3) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(4) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Bill acceptor canister release keys.* (1) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(2) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(3) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(4) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(p) *Table game drop box storage rack keys.* (1) A person independent of the pit department shall be required to accompany the table game drop box storage rack keys and observe each time table game drop boxes are removed from or placed in storage racks.

(2) Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys with the exception of the count team.

(q) *Bill acceptor canister storage rack keys.* (1) A person independent of the gaming machine department shall be required to accompany the bill acceptor canister storage rack keys and observe each time canisters are removed from or placed in storage racks.

(2) Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys with the exception of the count team.

(r) *Table game drop box contents keys.* (1) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(2) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only count team members shall be allowed access to table game drop box content keys during the count process.

(s) *Bill acceptor canister contents keys.* (1) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(2) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, one of whom must be a supervisor. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(t) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(u) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person or persons performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine before the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

§ 542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?

(a) *Internal audit personnel.* (1) For Tier C gaming operations, a separate internal audit department shall be maintained whose primary function is performing internal audit work and that is independent with respect to the departments subject to audit.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits.* (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following shall be reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, unannounced testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept currency or coin(s) and issue cash-out tickets or gaming machines that do not accept currency or coin(s) and do not return currency or coin(s);

(viii) Cage and credit procedures including all cage, credit, and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(2) In addition to the observation and examinations performed under paragraph (b)(1) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six (6) months following the date of notification.

(3) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the American Institute of Certified Public Accountants guide.

(c) *Documentation.* (1) Documentation (*e.g.*, checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section, including all instances of noncompliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request.

(2) Such audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(e) *Material exceptions.* All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception.

(3) Such management responses shall be included in the internal audit report that will be delivered to management, the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

§ 542.43 What are the minimum internal control standards for surveillance for a Tier C gaming operation?

(a) The surveillance system shall be maintained and operated from a staffed surveillance room and shall provide surveillance over gaming areas.

(b) The entrance to the surveillance room shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to the surveillance room shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be approved by the Tribal gaming regulatory authority. The surveillance department shall maintain a sign-in log of other authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) In the event of power loss to the surveillance system, an auxiliary or backup power source shall be available and capable of providing immediate restoration of power to all elements of the surveillance system that enable surveillance personnel to observe the table games remaining open for play and all areas covered by dedicated cameras. Auxiliary or backup power sources such as a UPS System, backup generator, or an alternate utility supplier, satisfy this requirement.

(f) The surveillance system shall include date and time generators that possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(g) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(h) Each camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with, or disabled by customers or employees.

(i) Each camera required by the standards in this section shall possess the capability of having its picture displayed on a monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(j) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered. The Tribal gaming regulatory authority shall be notified of any camera(s) that has malfunctioned for more than twenty-four (24) hours.

(1) In the event of a dedicated camera malfunction, the gaming operation and/or the surveillance department shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(k) *Bingo.* (1) The surveillance system shall possess the capability to monitor the bingo ball drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record the game board and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(l) *Card games.* The surveillance system shall monitor and record general activities in each card room with sufficient clarity to identify the employees performing the different functions.

(m) *Progressive card games.* (1) Progressive card games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the posted jackpot amount.

(2) [Reserved]

(n) *Keno.* (1) The surveillance system shall possess the capability to monitor the keno ball-drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record general activities in each keno game area with sufficient clarity to identify the employees performing the different functions.

(o) *Pari-mutuel.* The surveillance system shall monitor and record general activities in the pari-mutuel area, to include the ticket writer and cashier areas, with sufficient clarity to identify the employees performing the different functions.

(p) *Table games.* (1) *Operations with four (4) or more table games.* Except as otherwise provided in paragraphs (p)(3), (p)(4), and (p)(5) of this section, the surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify customers and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games.* The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (p)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps.* All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette.* All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel.* All big wheel games shall have one (1) dedicated camera viewing the wheel.

(q) *Progressive table games.* (1) Progressive table games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(2) [Reserved]

(r) *Gaming machines.* (1) Except as otherwise provided in paragraphs (r)(2) and (r)(3) of this section, gaming machines offering a payout of more than $250,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine, and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* In-house progressive gaming machines offering a base payout amount (jackpot reset amount) of more than $100,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of more than $1.5 million and monitored by an independent vendor utilizing an on-line progressive computer system shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (r)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(s) *Cage and vault.* (1) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to identify employees within the cage and customers and employees at the counter areas.

(2) Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area.

(3) The surveillance system shall provide an overview of cash transactions. This overview should include the customer, the employee, and the surrounding area.

(t) *Fills and credits.* (1) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the chip values and the amounts on the fill and credit slips.

(2) Controls provided by a computerized fill and credit system maybe deemed an adequate alternative to viewing the fill and credit slips.

(u) *Currency and coin.* (1) The surveillance system shall monitor and record with sufficient clarity all areas where currency or coin may be stored or counted.

(2) Audio capability of the soft count room shall also be maintained.

(3) The surveillance system shall provide for:

(i) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(ii) Monitoring and recording of the table game drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(iii) Monitoring and recording of all areas where coin may be stored or counted, including the hard count room, all doors to the hard count room, all scales and wrapping machines, and all areas where uncounted coin may be stored during the drop and count process.

(iv) Monitoring and recording of soft count room, including all doors to the room, all table game drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored and recorded by a dedicated camera during the soft count.

(v) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(v) *Change booths.* The surveillance system shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(w) *Video recording and/or digital record retention.*

(1) All video recordings and/or digital records of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of thirty (30) days.

(3) Duly authenticated copies of video recordings and/or digital records shall be provided to the Commission upon request.

(x) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(y) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

(z) *Surveillance log.* (1) Surveillance personnel shall maintain a log of all surveillance activities.

(2) Such log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department.

(3) At a minimum, the following information shall be recorded in a surveillance log:

(i) Date;

(ii) Time commenced and terminated;

(iii) Activity observed or performed; and

(iv) The name or license credential number of each person who initiates, performs, or supervises the surveillance.

(4) Surveillance personnel shall also record a summary of the results of the surveillance of any suspicious activity. This summary may be maintained in a separate log.

Signed at Washington, DC, this 17th day of June, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

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GAMING ORDINANCE

OF THE

HANNAHVILLE INDIAN COMMUNITY

POTAWATOMIS OF MICHIGAN

Hannahville Indian Community
N14911 Hannahville B-1 Road
Wilson, Michigan 49896

GAMING ORDINANCE
OF THE
HANNAHVILLE INDIAN COMMUNITY POTAWATOMIS OF MICHIGAN

Tribal Ordinance 05-15-00-A
As Amended

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GAMING ORDINANCE
OF THE
HANNAHVILLE INDIAN COMMUNITY POTAWATOMIS OF MICHIGAN

JUL 26 2000

A law to authorize, license and regulate certain forms of gaming, within the jurisdiction of the Hannahville Indian Community Potawatomis of Michigan.

Section 1. Findings, Intent and Policy.

1.1 Findings. The Hannahville Indian Community Tribal Council on behalf of the Hannahville Indian Community finds that:

(A) Tribal regulation and control of gaming activity within the jurisdiction of the Hannahville Indian Community is essential for the protection of public health and welfare, and the interests of the Tribe and the residents and visitors to the tribal community.

(B) The Hannahville Indian Community has the legal authority to license and regulate any gaming activity within the jurisdiction of the Hannahville Indian Community, which is not specifically prohibited by federal law.

(C) Properly licensed and regulated gaming enterprises are in conformance with announced federal policy promoting Indian self-government and Indian tribal economic self-sufficiency.

(D) It is essential that the Tribe through its Tribal Council regulate gaming in a manner commensurate with applicable federal and tribal law and policy.

(E) The present needs of the Hannahville Indian Community include increased employment, job and skills training, housing, health care, nutrition, educational opportunities, social services and community and economic development, needs which are not adequately addressed by present tribal, federal and state programs.

(F) Tribal operation and licensing of gaming activity is a legitimate means of generating revenue to address the above described needs.

(G) The Tribe is vigorously pursuing its goal of self-sufficiency and self-determination through the development of tribal businesses and enterprises. Because the Hannahville Indian Community lacks income generating natural resources, the Tribe must rely on tribal business development to raise the funds necessary to expand its social, health and education programs, increase employment and improve its on-reservation economy. This effort has recently become of increased importance as a result of cutbacks in federal and state funding and the increased costs of self-government. It is, therefore, essential that the Tribe develop new and expanded sources of revenue to support its ever-increasing governmental needs and to provide much needed employment and training for tribal members.

(H) As a result, the adoption of the following new and expanded gaming laws is in the best interest of the Hannahville Indian Community.

1.2 Intent. The Hannahville Indian Community Tribal Council, on behalf of the Hannahville Indian Community, declares that the intent of this Ordinance is to:

(A) Regulate, control, and license the operation of all gaming within the jurisdiction of the Hannahville Indian Community.

(B) Make clear and explicit that a tribal license to operate a gaming enterprise is a revocable privilege, not a right or property interest.

(C) Ensure that the operation of tribally-regulated gaming will continue as a means of generating tribal revenue.

(D) Ensure that gaming is conducted fairly and honestly by both operators and players, and that it remain free from corrupt, incompetent, unconscionable and dishonest persons and practices.

(E) Promote and strengthen tribal economic development and self-determination and enhance employment opportunities for its members.

(F) Ensure that all gaming revenue is used for the benefit of the Tribe and its community.

(G) Ensure that the Tribe provides a fair and impartial forum for the resolution of all gaming disputes.

(H) Ensure that tribal gaming laws are strictly and fairly enforced upon all people involved in gaming activity within the jurisdiction of the Hannahville Indian Community.

1.3 Policy.

(A) **Hannahville Indian Community Policy of Self-Government.** The Tribe is firmly committed to the principle of tribal self-government. Consistent with federal policy, the Hannahville Indian Community tribal government provides a wide range of public services on the Reservation, including general governmental services, the maintenance of peace and good order, the establishment of educational systems and programs, and the promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

(B) **Tribal Gaming Policy.** The establishment, promotion and operation of gaming is necessary and desirable, provided that such gaming is regulated and controlled by the Tribe pursuant to tribal and federal law and any Tribal-State compact entered pursuant to the Indian Gaming Regulatory Act, and that all proceeds of such gaming are used exclusively for the benefit of the Tribe as required by the Indian Gaming Regulatory Act and tribal law. When operated in accordance with the provisions of this Ordinance, such gaming will be conducive to the general welfare of all members of the tribe.

(C) **Tribal Regulatory Policy.** Comprehensive regulation of gaming activity on the reservation is essential to ensure the integrity of the games and to protect the interests of the Tribe. Effective regulatory oversight requires that there be a separation between the regulation and management of tribal gaming activities. This Ordinance places the regulation of the gaming operations of the Hannahville Indian Community within the Tribal Gaming Board of Directors and separates the regulatory function from the management of the gaming operations.

(D) **Protection of the Environment and Public Health and Safety.** Class II and III gaming facilities shall be constructed in a manner that adequately protects the environment and public health and safety.

Section 2. Definitions.

In this Ordinance, except where otherwise specifically provided or where the context otherwise requires, the following terms and expressions shall have the following meanings.

2.1 "Adjusted gross proceeds" means gross proceeds less all cash prizes or the aggregate price of merchandise prizes, except in the case of the games of draw poker and stud poker. Regarding games of draw poker and stud poker, "adjusted gross proceeds" means the time buy-ins or tournament fees collected by the gaming operator.

2.2 "Bingo" means the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of each card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip-jars, instant bingo and other games similar to bingo.

2.3 "Breakage" means the remainder by which the amount payable on each dollar wagered exceeds a multiple of ten cents, and in a minus pool, five cents.

2.4 "Capital cost" means any disbursement for personal property, the useful life of which is expected to extend beyond one year.

2.5 "Casino" means an establishment in which several gaming activities or enterprises are operated.

2.6 "Charitable gaming ticket" means any game piece used in the play of a paper pull tab game, or jar ticket game, or raffle.

2.7 "Cheating" means operating or playing in any game in a manner in violation of the written or commonly understood rules of the game, with the intent to create for himself or someone in privity with him an advantage over and above the chance of the game.

2.8 "Compact" means any gaming compact between the Tribe and the State of Michigan as authorized by the Indian Gaming Regulatory Act (IGRA), or by state or tribal law.

2.9 "Compensation" means all wages, salaries, bonuses, and all other forms of remuneration for services rendered.

2.10 "Contractual agreement" means any legally binding agreement made between an operator and another person for the purpose of conducting any form of lawful gaming activity, or providing goods or services to any lawful gaming activity or operation.

2.11 "Council" or "Tribal Council" means the governing body of the Hannahville Indian Community.

2.12 "Educational, charitable, patriotic, veterans, fraternal, religious, civic, or public-spirited uses" are:

(A) Uses benefiting an indefinite number of people by bringing them under the influence of educational or cultural programs.

(B) Uses otherwise lessening the burden of the Hannahville Indian Community tribal government.

(C) Uses benefiting one or more persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.

(D) Uses for community service projects which promote the common good, enhance the social and economic welfare of the community, and benefit an indefinite number of people.

2.13 "Eligible organization" means any nonprofit organization operated for educational, charitable, patriotic, veterans, fraternal, religious, civic, or public-spirited purposes, or for the relief of poverty, distress, or other condition on the Hannahville Indian Community lands.

2.14 "Equipment for games of chance" See "Gaming Apparatus."

2.15 "Exclusive license" means a license which precludes the Tribal Gaming Board of Directors from issuing to another a license for the same specific form of gaming during the life of the exclusive license. An applicant must demonstrate and the Board must find that the issuance of an exclusive license is in the economic interest and welfare of the Tribe.

2.16 "Games of chance" mean any game or activity which falls within the broad definition of gaming or gaming activity.

2.17 "Gaming" or "gaming activity" means any activity, operation or game in which any valuable consideration is wagered upon the outcome and which is determined in whole or in part by chance, skill, speed, strength or endurance, or any combination of strength, skill, speed or endurance, and in which something of value is awarded to a person or persons so wagering.

2.18 "Gaming apparatus or gaming equipment" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gaming activity, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of any gaming establishment.

2.19 "Gaming employee" means an employee of any tribal gaming establishment.

2.20 "Gaming establishment" means any location or structure, stationary or movable, where gaming is permitted, promoted, performed, conducted, or operated. Gaming establishment does not include the site of a fair, carnival, exposition, or similar occasion.

2.21 "Gross proceeds" means all money collected or received from any gaming activity.

2.22 "Indian Gaming Regulatory Act" or "IGRA" means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. §§2701, *et seq*. (1988), as amended.

2.23 "Immediate Family" means, with respect to the person under consideration, a husband, wife, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

2.24 "In privity with" means a relationship involving one who acts jointly with another or as an accessory before the fact to an act committed by the other or as a co-conspirator with the other.

2.25 "IRS" means the United States Internal Revenue Service.

2.26 "Key employee" means:

(A) Any person involved in gaming under this Ordinance and who comes within or who performs one or more of the following functions or descriptions:

(1) Bingo caller;

(2) Counting room supervisor;

(3) Chief of security;

(4) Custodian of gaming supplies or cash;

(5) Floor manager;

(6) Pit boss;

(7) Dealer;

(8) Croupier;

(9) Approver of credit;

(10) Custodian of gaming devices including persons with access to cash and accounting records within such devices; or

(11) Tribal employee or other person with access to financial or accounting offices.

(B) If not otherwise included, any other person whose total cash compensation derived from gaming subject to this Ordinance is in excess of $50,000 per year; or,

(C) If not otherwise included, the four most highly compensated persons in any gaming activity subject to this Ordinance; or

(D) Any employee whom the Gaming Board may, by written notice, classify as a key employee.

2.27 "License" means the official, legal, and revocable permission granted by the Gaming Board of Directors to an applicant to conduct a gaming activity on the tribal lands of the Hannahville Indian Community or the license issued to a qualified employee of a tribal gaming establishment.

2.28 "Lotto" means a form of gaming in which the proceeds derived from the sale of tickets or chances are pooled and such proceeds or parts thereof are allotted by chance to one or more chance takers or ticket purchasers. The amount of cash prizes or winnings are determined by the gaming operator conducting the "lottery" and a progressive pool is permitted. Tele-lottery means that the drawing is televised for use in a cable television broadcast.

2.29 "National Indian Gaming Commission" or "Commission" means the National Indian Gaming Commission established by the Indian Gaming Regulatory Act.

2.30 "Net Revenues" means adjusted gross revenues less (a) amounts paid out as, or paid for prizes; and (b) total gaming related operating expenses, excluding management fees.

2.31 "Operator" means a person who has obtained a gaming license under this Ordinance or who is otherwise permitted by this Ordinance to perform, promote, conduct, or operate any lawful gaming activity on tribal lands at a gaming establishment.

2.32 "Ordinance" means the Hannahville Indian Community Gaming Ordinance as amended.

2.33 "Participate" or "Participation" or "Participating" in any gaming activity means to operate, direct, finance or in any way assist in the establishment of or operation of any class of gaming on any site at which such gaming is being conducted, directly or indirectly, whether at the site in person or off the Reservation.

2.34 "Person" means any individual, partnership, joint venture, corporation, joint stock company, company, firm, association, trust, estate, club, business trust, municipal corporation, society, receiver, assignee, trustee in bankruptcy, political entity, and any owner, director, officer or employee of any such entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Tribe, any governmental entity of the Tribe, or any of the above listed forms of business entities that are wholly owned or operated by the Tribe; provided, however, that the term does not include the federal government and any agency thereof.

2.35 "Player" means a person participating in any game, but does not include a gaming operator, or any assistant of an operator.

2.36 "Primary Management Official" means

(A) The person having management responsibility for a management contract;

(B) Any person who has authority:

(1) To hire and fire gaming employees; or

(2) To set up working policy for a gaming enterprise; or

(C) The chief financial officer or other person who has financial management responsibility for a gaming activity.

2.37 "Progressive gaming" means any game in which a cash prize which, not being won by any player during any game, is retained and further monetarily enhanced by the operator or eligible organization, and offered as a prize to players in the next game.

2.38 "Pull-tabs punchboards and tip jars" means any disposable card, board, ticket or display which accords the player an opportunity to win something of value by opening, pulling, detaching or otherwise removing or uncovering tabs or covers from the card, board, ticket or display to reveal a set of numbers, letters, symbols, configurations, or combinations thereof which have been previously specified as a winning combination.

2.39 "Raffle" means any gaming in which each player buys a ticket for a chance to win a prize with the winner determined by a random method. "Raffle" does not include a slot machine.

2.40 "Reservation" means all lands within the original confines of the Hannahville Indian Community, reserved to the Tribe by purchase pursuant to the Act of June 30, 1913 (38 Stat 102), and other lands added thereto by Executive Order, federal statute or other legal action.

2.41 "State" means the State of Michigan.

2.42 "Gaming Board" means the Hannahville Indian Community Tribal Gaming Board of Directors described in Section 4 of this Ordinance.

2.43 "Tribal Court" means the Tribal Court of the Hannahville Indian Community.

2.44 "Tribe" means the Hannahville Indian Community Potawatomis of Michigan.

2.45 "Twenty-one", also known as "blackjack," means a card game played by a maximum of seven players and one dealer where each player plays his hand against the dealer's hand with the object of obtaining a higher total card value than the dealer by reaching 21 or as close to 21 as possible without exceeding that count. The cards have the following value:

(A) Aces count either one or 11, at the player's option.

(B) Kings, queens, and jacks each have a count of ten.

(C) All other cards are counted at their face value.

2.46 "Wager" means the bet made or consideration or value given by a player in any game.

2.47 "Wagering Office" means any location within tribal lands at which wagers are placed or accepted by an operator.

Section 3. General Provisions.

3.1 Authority and Sovereign Powers and Responsibilities. This Ordinance is enacted pursuant to the inherent sovereign powers of the Tribe and the powers expressly delegated to the Hannahville Indian Community Tribal Council in Article V of the Tribal Constitution.

3.2 Hannahville Indian Community's Tribal Policy of Self-Government. The Tribe is firmly committed to the principal of tribal self-government. Consistent with federal policy, tribal government provides a wide range of public services on the Reservation, including general governmental services, the maintenance of peace and good order, the establishment of educational systems and programs, and the promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

3.3 Application of Federal Policy. In 1970, President Nixon announced that it was the policy of the United States government to promote self-determination for Indian tribes. At the heart of this policy is a commitment by the federal government to foster and encourage tribal self-government, economic development and self-sufficiency. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2203, 25 U.S.C. §§ 450-450n. In 1983, President Reagan reaffirmed that commitment in his Indian Policy Statement, encouraged tribes to reduce their dependence on federal funds by generating more of their own revenues, and pledged to assist tribes in that endeavor.

In 1988 the federal commitment to promote tribal economic development, tribal self-sufficiency, and strong tribal government was expressly legislated in the IGRA, which recognized the inherent sovereign right of tribes to operate and their exclusive right to regulate on Indian lands gaming which is not specifically prohibited by federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming, and provided a federal statutory basis for operation and regulation of Indian gaming.

The federal commitment was furthered in 1988 by passage of the Indian Gaming Regulatory Act ("IGRA"). Public Law 100-497, 102 Stat. 2426, 25 U.S.C. §§2701, et seq. (1988), through which the federal government recognized the inherent sovereign right of tribes to conduct and regulate gaming on their reservations and preempted state authority in the area of Indian gaming.

3.4 Title, Repeal of Prior Laws, and Effect of Repeal. This Ordinance may be cited as the Hannahville Indian Community Gaming Ordinance. The Ordinance shall be appropriately inserted in the Hannahville Indian Community Tribal Code of the Hannahville Indian Community.

All titles, chapters, and sections of the Tribal Gaming Ordinance of the Hannahville Indian Community which pertain to gaming, and are in effect as of the date that this Ordinance becomes operative, are hereby repealed, and all other laws, or parts thereof, inconsistent with the provisions of this Ordinance are hereby repealed.

Repeal of this Ordinance or any portion thereof shall not have the effect of reviving any prior tribal law, Ordinance, or Resolution theretofore repealed or suspended.

3.5 Classes of Gaming. There are three classes of gaming on Indian lands under this Ordinance. Class I, Class II and Class III are the three classes of gaming that are authorized by the Hannahville Indian Community through this Ordinance. These three classes of gaming may only be conducted on "Indian lands" as defined by the Indian Gaming Regulatory Act at 25 U.S.C. § 2701(5). These games are clearly defined as:

(A) "Class I Gaming" means social gaming solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with tribal ceremonies or celebrations.

(B) "Class II Gaming" means

(1) The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith), which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played at the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo; and

(2) All card games operated by the Tribe prior to May 1, 1988.

(3) All other card games explicitly authorized or not explicitly prohibited by the laws of the State and which are played at any location in the State if played in conformity with State laws and regulations regarding hours or periods of operation of such card games or limitations on wagers or pot size in such card games.

(4) The term "Class II Gaming" does not include any banking card games that were not operated by the Tribe prior to May 1, 1988; or any electronic or electromechanical facsimiles of any game of chance or slot machine of any kind.

(C) "Class III Gaming" means all forms of gaming that are not Class I or Class II gaming.

3.6 Construction. In construing the provisions of this Ordinance, unless the context otherwise requires, the following rules shall apply:

(A) This Ordinance shall be liberally construed to affect its purpose and to promote substantial justice.

(B) Words in the present tense include the future and past tenses.

(C) Words in the singular number include the plural, and words in the plural number include the singular.

(D) Words of the masculine gender or neuter include masculine and feminine genders and the neuter.

3.7 Savings Clause. If any section of this Ordinance is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

Section 4. Tribal Gaming Board of Directors (the Board).

4.1 Establishment. The Hannahville Indian Community Tribal Council hereby charters, creates and establishes the Hannahville Indian Community Tribal Gaming Board of Directors as a governmental subdivision of the Tribe whose powers include the regulation of all gaming operations located on the lands of the Hannahville Indian Community. The Hannahville Indian Community Tribal Gaming Board of Directors may be referred to in this Ordinance as the Tribal Gaming Board.

4.2 Location and Place of Business. The Tribal Gaming Board shall be a resident of and maintain its headquarters, principal place of business and office on the lands of the Hannahville Indian Community. The Tribal Gaming Board may, however, establish other places of business in such other locations as the Tribal Gaming Board may from time to time determine to be in the best interest of the Tribe.

4.3 Duration. The Tribal Gaming Board shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council pursuant to Tribal law.

4.4 Attributes. As a governmental subdivision of the Tribe, the Tribal Gaming Board has been delegated the right to exercise one or more of the substantial governmental functions of the Tribe including regulation of tribal gaming pursuant to the IGRA and tribal law. It is the purpose and intent of the Tribal Council in creating the Tribal Gaming Board that the operations of the Tribal Gaming Board be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members, and the residents of the Hannahville Indian Community. In carrying out its purposes under this Ordinance, the Tribal Gaming Board shall function as an independent regulatory arm of the Tribe. Notwithstanding any authority delegated to the Tribal Gaming Board under this Ordinance, the Tribe reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe or on behalf of the Tribal Gaming Board, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Tribal Gaming Board.

4.5 Recognition as a Political Subdivision of the Tribe. The Tribe, on behalf of the Tribal Gaming Board, shall take all necessary steps to acquire recognition of the Tribal Gaming Board as a political subdivision of the Tribe, recognized by all branches of the United States Government as having been delegated the right to exercise one or more substantial governmental functions of the Hannahville Indian Community.

4.6 Sovereign Immunity of the Tribal Gaming Board. The Tribal Gaming Board is hereby clothed with all the privileges and immunities of the Tribe. Except as provided in section 4.7, nothing in this Ordinance nor any action of the Tribe or the Tribal Gaming Board shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribal Gaming Board, or to be a consent of the Tribe or the Tribal Gaming Board to the jurisdiction of the United States or of any state or any other tribe with regard to the business or affairs of the Tribe or the Tribal Gaming Board nor consent to any cause of action, case, or controversy, nor to the levy of any judgment, lien or attachment upon any property of the Tribe or the Tribal Gaming Board, or to be a consent of the Tribe or the Tribal Gaming Board to suit in respect to any Indian land, or to be a consent of the Tribe or the Tribal Gaming Board to the alienation, attachment, or encumbrance of any such land.

4.7 Waiver of Sovereign Immunity of the Tribal Gaming Board. Sovereign immunity of the Tribal Gaming Board may be waived only by express resolutions of both the Board and the Tribal Council after consultation with its attorneys. All waivers of sovereign immunity must be preserved by resolutions of the Tribal Gaming Board and the Tribal Council of continuing force and effect. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Tribal Gaming Board. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Tribal Gaming Board subject thereto, court having jurisdiction pursuant thereto and law applicable thereto. Neither the power to sue and be sued provided in Subsection 4.18(Y), nor any express waiver of sovereign immunity by resolution of the Tribal Gaming Board shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribal Gaming Board other than property specifically pledged or assigned, or a consent to suit in respect of any land within the exterior boundaries of the Hannahville Indian Community or a consent to the alienation, attachment or encumbrance of any such land.

4.8 Sovereign Immunity of the Tribe. All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the Tribal Gaming Board are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance nor any action of the Tribal Gaming Board shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe, or to be a consent of the Tribe to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Tribal Gaming Board or the Tribe, or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe; or to be a consent to suit in respect to any Indian land, or to be a consent to the alienation, attachment or encumbrance of any such land.

4.9 Credit of the Tribe or Tribal Gaming Board. Nothing in this Ordinance nor any activity of the Tribal Gaming Board shall implicate or any way involve the credit of the Tribe or the Tribal Gaming Board.

4.10 Assets of the Tribal Gaming Board. The Tribal Gaming Board shall have only those assets specifically assigned to it by the Council or acquired in its name by the Tribe or by the Tribal Gaming Board on its own behalf. No activity of the Tribal Gaming Board nor any indebtedness incurred by it shall implicate or in any way involve or effect any assets of tribal members or the Tribe not assigned in writing to the Tribal Gaming Board.

4.11 Membership.

(A) **Number of Members of the Tribal Gaming Board of Directors.** The Tribal Gaming Board of Directors shall be comprised of seven (7) directors elected by the tribal membership at regularly scheduled tribal elections. No person may simultaneously sit on both the Tribal Council and the Tribal Gaming Board.

(B) **Qualification of Directors.** Each Director must be a member of the Tribe and reside on tribal lands. No member of the Tribal Gaming Board may work in a gaming facility operated on tribal lands while a member of the Tribal Gaming Board. All Tribal Gaming Board Directors are prohibited from playing games in a gaming facility operated on the lands of the Hannahville Indian Community.

(C) **Background Check.** Prior to the time that any Tribal Gaming Director takes office on the Board, the Tribe shall perform or arrange to have performed a comprehensive background check on each prospective member. No person shall serve as a Board member if:

(1) His prior activities, criminal record, if any, or reputation, habits or associations:

(a) Pose a threat to the public interest; or

(b) Threaten the effective regulation and control of gaming; or

(c) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming; or

(d) He or she has been convicted of or entered a plea of *no contest* to a felony, a gambling-related offense, or a misdemeanor involving fraud or misrepresentation.

(2) The Director or candidate for Director has been convicted of or entered a plea of *no contest* to any offense not specified in part (C)(1)(d) of this Section in any jurisdiction within the last five (5) years; this provision shall not apply if that person has been pardoned by the Governor of the State where the conviction occurred or if a tribal member has been determined by the Tribe to be a person who is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the Board Member be denied a position on the Board.

(3) He or any member of his immediate family has a financial interest in any gaming enterprise, activity or facility.

(4) Any tribal member who seeks office on the Tribal Gaming Board of Directors must have a completed background check and must be approved to sit on the Board before he or she may be placed upon the general election ballot for the Board.

(D) **Date of Appointment.** The members of the Tribal Gaming Board shall take office no later than ten (10) days after the most recent tribal election. All members of the Tribal Gaming Board shall sign a confidentiality agreement before taking office. Breach of the confidentiality agreement may result in removal from the Board pursuant to an action for removal under this Ordinance.

The Council's appointment of any Tribal Gaming Board member when a vacancy on the Board occurs shall be by resolution. The new Director appointed shall be that person who obtained the most votes among the remaining qualified candidates for the seat at the most recent Tribal Gaming Board election.

4.12 Term of Office. Each Board member shall serve a term of (2) years. Three (3) Directors shall have their terms expire in an odd numbered year and four (4) directors shall have their terms expire on

an even numbered year. At the expiration of a term, there shall be a general election held in conjunction with other tribal offices to fill any vacant seats.

4.13 Ex-Officio Members. Upon agreement between the Tribal Gaming Board and the Tribal Council, a person who may significantly increase the effectiveness of the Tribal Gaming Board may participate, without vote, in Tribal Gaming Board meetings.

4.14 Meetings.

(A) **Regular Meetings.** The Tribal Gaming Board shall hold at least two (2) regular monthly meetings which shall take place on the first and third Wednesday of each month, or as otherwise determined by the Tribal Gaming Board.

(B) **Special Meetings.** Special meetings may be called at the request of the Tribal Council, the Chairman or Vice Chairman of the Tribal Gaming Board or four (4) or more members of the Tribal Gaming Board with notice to all members properly given and with either the Board Chairperson or Vice Chairperson present.

(C) **Compensation of Directors.** An honorarium may be paid for attendance at each meeting.

(D) **Quorum.** A quorum for all meetings shall consist of four (4) members.

(E) **Voting.** All questions arising in connection with the action of the Tribal Gaming Board shall be decided by majority vote. The Chairman of the Tribal Gaming Board shall only be entitled to vote to break a tie.

4.15 Organization. The Tribal Gaming Board shall develop its own operating procedures and shall elect from within itself a Chairman to direct meetings, a reporter to be responsible for keeping Tribal Gaming Board minutes and transmitting to the Tribal Council a copy of those minutes not determined to be confidential, handling correspondence and reporting Tribal Gaming Board decisions and such other officers as it deems advisable.

4.16 Removal of Members or Vacancies.

(A) **Removal.** A Director may be removed by the Council for serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty or integrity of the Tribal Gaming Board or otherwise violates the letter or intent of this Ordinance. Except as provided below, no Director may be removed without notice and an opportunity for a hearing before the Council, and then only after the Director has been given written notice of the specific charges at least ten (10) days prior to such hearing. At any such hearing, the Director shall have the opportunity to be heard in person or by counsel and to present witnesses on his behalf. If the Council determines that immediate removal of a Director is necessary to protect the interests of the Tribe, the Council may immediately remove the Director temporarily, and the question of permanent removal shall be determined thereafter pursuant to Tribal Gaming Board hearing procedures. A written record of all removal proceedings together with the charges

and findings thereon shall be kept by the Tribal Secretary. The decision of the Council upon the removal of a Director shall be final.

(B) **Vacancies.** If any Director shall die, resign, be removed or for any reason be unable to serve as a Director, the Council shall declare his position vacant and shall appoint another person to fill the position by resolution. The terms of office of each person appointed to replace an initial Director shall be for the balance of any unexpired term for such position, provided, however, that any prospective appointee must meet the qualifications established by this Ordinance.

4.17 Conflict of Interest. No person shall serve as a Director if he or any member of his immediate family has a financial interest in any gaming enterprise, or if he has any business, personal or legal relationship which creates a conflict of interest with his duties and responsibilities as a Director.

4.18 Powers of the Tribal Gaming Board. In furtherance, but not in limitation, of the Tribal Gaming Board's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Tribal Gaming Board shall have and is authorized to exercise by majority vote, the following powers in addition to all powers already conferred by this Ordinance:

(A) To regulate all day-to-day gaming activity within the jurisdiction of the Tribe.

(B) To promote the full and proper enforcement of all tribal civil and criminal gaming laws and policies.

(C) **Repealed.**

(D) To enact and enforce such rules and regulations regarding its activities and governing its internal affairs as the Tribal Gaming Board may deem necessary and proper to effectuate the powers granted by this Ordinance and the powers granted and duties imposed by applicable law.

(E) To publish and distribute copies of this Ordinance and Tribal Gaming Board rules and any Council, Tribal Gaming Board or Tribal Court decisions regarding gaming matters.

(F) **Repealed.**

(G) To work with the staff of any tribal department, program, project, or operation and to cooperate with the Tribal Council or any Council Committee in regard to gaming issues.

(H) To arrange for and direct such inspections and investigations as it deems necessary to ensure compliance with this Ordinance and implementing regulations. In undertaking such investigations, the Tribal Gaming Board may request the assistance of tribal gaming staff, federal and local law enforcement officials, legal counsel and other third parties.

(I) To make or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any game or gaming activity operating, or suspected of operating, within the jurisdiction of the Tribe. In

undertaking such examination or investigation, the Tribal Gaming Board may request the assistance of tribal gaming staff, federal and local law officials, legal counsel, and other third parties.

(J) To maintain and keep current a record of new developments in the area of Indian gaming.

(K) To conduct gaming hearings, define terms used in this Ordinance or other tribal laws, to seek such assistance as necessary or proper. Any decision made outside the scope of the Tribal Gaming Board's authority may be appealed to the Tribal Court.

(L) To consider any gaming regulatory matter brought before it by any person, organization or business, and all regulatory matters referred to it by the Tribal Council.

(M) To obtain and publish a summary of federal revenue laws relating to gaming and to insure compliance with the same.

(N) To arrange for training of Tribal Gaming Board members, tribal employees and others in areas relating to the regulation or operation of gaming.

(O) To employ such advisors as it may deem necessary to enforce all applicable gaming regulatory laws.

(P) To make recommendations to the Council on the hiring of the general manager based upon the duties the Tribal Gaming Board has under tribal law.

(Q) To promulgate and interpret rules and regulations to implement and further the provisions of this Ordinance.

(R) To approve or disapprove any application for a tribal gaming license.

(S) To consult with and make recommendations to the Tribal Council regarding changes in tribal gaming laws and policies.

(T) Reserved for future use.

(U) When necessary or appropriate, to request the assistance and utilize the services of the courts, law enforcement and government officials and agencies, and private parties, in exercising its powers and carrying out its responsibilities.

(V) To examine under oath, orally or in writing, any person or agent, officer, or employee of any person, with respect to any matters related to this Ordinance.

(W) To delegate to an individual member of the Tribal Gaming Board or to the Tribal Gaming Board staff, such of its functions as may be necessary to administer these ordinances efficiently; and provided further, that the Tribal Gaming Board may not delegate its power to promulgate rules and regulations.

(X) To close permanently, after notice and a hearing, any game or games which are operating in violation of federal or tribal law.

(Y) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to the provisions of this Ordinance and other tribal laws relating to sovereign immunity; provided, that no suit shall be brought, nor immunity waived, by the Tribal Gaming Board without the prior explicit written approval of the Tribal Council.

(Z) To use the seal of the Hannahville Indian Community with the approval of the Tribal Council.

(AA) **Repealed.**

(AB) To approve or disapprove any lease, mortgage, pledge, exchange, sale, conveyance, or transfer of property that may be subject to federal or tribal law.

(AC) **Repealed.**

(AD) **Repealed.**

(AE) To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Tribal Gaming Board's authorized activities.

(AF) The Tribal Gaming Board may enlist the assistance of any entity or party necessary to carry out the provisions of this Ordinance.

(AG) **Repealed.**

(AH) **Repealed.**

(AI) **Repealed.**

(AJ) To establish and maintain such bank accounts as may be necessary or convenient.

(AK) To engage in any and all activities which directly or indirectly carry out the purposes of regulating gaming activity on the Hannahville Indian Reservation as set forth in this Ordinance and other applicable federal or tribal law.

(AL) **Repealed.**

(AM) To exercise all authority delegated to it or conferred upon it by law and to take all action which shall be reasonably necessary and proper for carrying into execution the foregoing powers and all of the powers vested in this Ordinance as permitted by the purposes and powers herein stated and which are deemed to be in the best interests of the Tribe, exercising prudent management and good business judgment, all in compliance with applicable law.

(AN) The foregoing powers (AB-AM) may be exercised without Tribal Council approval provided that function is regulatory in nature.

(AO) To require by regulation, the filing of any records, forms and reports, and all other information for implementation of this Ordinance relating to any gaming activity or operation or any investigation as required by tribal law and the IGRA.

(AP) The Tribal Gaming Board shall directly oversee all surveillance at all gaming operations. The Director of Surveillance shall prepare a weekly report for the Tribal Gaming Board. The Tribal Gaming Board shall employ an Internal Auditor who shall only report to the Tribal Gaming Board. Surveillance and the Internal Auditor shall be given direction to complete their assigned duties but only to the extent of the regulatory powers of the Tribal Gaming Board.

(AQ) The Tribal Gaming Board shall verify the quantities and destination of all documentation forms before use within a gaming facility. These forms include payout slips, chip transfer forms, cage accountability forms, bingo inventory forms, etc. The Tribal Gaming Board shall document and maintain records of all forms issued.

(AR) To provide for an internal system of record keeping with adequate safeguards for preserving confidentiality as deemed necessary by the Tribal Gaming Board. All applications, background investigations on primary management officials or key employees and Tribal Gaming Board decisions shall be retained in Tribal Gaming Board files for a period of at least three (3) years from the date of termination of employment or final decision by the Gaming Board.

(AS) To adopt a schedule of fees to be charged for gaming licenses issued pursuant to this Ordinance.

(AT) To adopt a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records.

(AU) To supervise, inspect and regulate all gaming activities within the jurisdiction of the Tribe.

(AV) To promote the full and proper enforcement of this Ordinance and other applicable law regarding gaming activities within the jurisdiction of the Tribe.

(AW) **Repealed.**

(AX) The Tribal Gaming Board shall do all background investigations for potential employees. Records of investigations shall be maintained with the Tribal Gaming Board for a minimum period of three (3) years following termination of employment. Any breach of confidentiality by a member of the Gaming Board, outside any conveyance of information authorized by law, shall result in removal from the Gaming Board pursuant to the rules governing removal of a Director contained within this Ordinance.

(AY) To compel obedience of its lawful orders by proceedings of mandamus or injunction or other proper proceedings in the name of the Tribe in Tribal Court or in any other court

having jurisdiction of the parties and of the subject matter; provided that no suit shall be brought by the Tribal Gaming Board without the prior explicit written approval of the Tribal Council after consultation with the Tribal attorneys.

(AZ) To discipline any licensee or other person participating in any gaming activity by ordering immediate compliance with this Ordinance or Tribal Gaming Board regulations and to issue an order of temporary suspension of any license issued under this Ordinance, whenever the Tribal Gaming Board is notified of a violation by any such person of this Ordinance or any other applicable law.

(BA) To issue an order of temporary closure of any gaming activity or operation in the event the Tribal Gaming Board determines that immediate closure is necessary to protect assets or interests of the Tribe, pursuant to Tribal Gaming Board regulations, or whenever the Tribal Gaming Board shall receive information from the National Indian Gaming Commission that a primary management official or key employee does not meet the standards for being licensed under the IGRA.

(BB) To become self-regulating, if the Tribal Council elects to do so, whenever the Tribe becomes eligible for a certificate of self-regulation under the IGRA.

(BC) To interact with other regulatory and law enforcement agencies regarding the regulation of gaming.

(BD) To provide independent information to the Tribal Council on the status of the Tribe's gaming activities. This report shall include a monthly report to the Tribal Council that informs the Council as to the health of the gaming operations from a regulatory perspective.

(BE) To approve and implement the Tribe's internal controls standards or procedures for the gaming operation.

(BF) To establish standards for and issue licenses or permits to persons or entities that deal with the gaming operation such as manufactures and suppliers of machines, equipment, supplies, and services.

4.19 Annual Budget. The Tribal Gaming Board shall prepare an annual operating budget for all Tribal Gaming Board activities and present it to the Tribal Council. The Gaming Board shall be funded annually by the Hannahville Indian Community to a level that allows it to adequately carry out its obligations under this Ordinance.

4.20 Tribal Gaming Board Regulations.

(A) Tribal Gaming Board regulations necessary to carry out the orderly performance of its duties and powers shall include, but shall not be limited to the following:

(1) Internal operational procedures of the Tribal Gaming Board and its staff;

(2) Interpretation and application of this Ordinance as may be necessary to carry out the Tribal Gaming Board's duties and exercise its powers;

(3) A regulatory system for all gaming activity, including accounting, contracting, management and supervision;

(4) The findings of any reports or other information required by or necessary to implement this Ordinance; and

(5) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Tribal Gaming Board authorized by this Ordinance.

(B) No regulation of the Tribal Gaming Board shall be of any force or effect unless it is adopted by the Tribal Gaming Board by a written resolution and filed for record in the Office of the Tribal Secretary and in the Office of the Clerk of the Tribal Court.

(C) The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all Tribal Gaming Board regulations adopted pursuant to this Ordinance. The Tribal Court may invalidate a Gaming Board Regulation that is not within the scope of authority of the Tribal Gaming Board.

4.21 Right of Entrance; Monthly Inspection. The Tribal Gaming Board and duly authorized officers and employees of the Tribal Gaming Board, during regular business hours, may enter upon any premises of any gaming operator or gaming establishment for the purpose of making inspections and examining the accounts, books, papers, and documents, of any such gaming operator or gaming establishment. Such gaming operator shall facilitate such inspection or examinations by giving every reasonable aid to the Tribal Gaming Board and to any properly authorized officers or employees.

A Director or a member of the Tribal Gaming Board's staff shall visit each tribally-owned or tribally-operated gaming establishment at least once every two weeks during normal business hours for the purpose of monitoring its operation. Such visits shall be unannounced.

4.22 Investigations. The Tribal Gaming Board, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any person who is subject to the provisions of this Ordinance. In conducting such investigation, the Tribal Gaming Board may proceed either with or without a hearing as it may deem best, but it shall make no order without affording any affected party notice and an opportunity for a hearing pursuant to Tribal Gaming Board regulations.

4.23 Hearings, Examiner. Pursuant to regulations, the Tribal Gaming Board may hold any hearing it deems to be reasonably required in administration of its powers and duties under this Ordinance. Whenever it shall appear to the satisfaction of the Tribal Gaming Board that all of the interested parties involved in any proposed hearing have agreed concerning the matter at hand, the Tribal Gaming Board may issue its order without a hearing.

The Tribal Gaming Board may designate one of its members to act as examiner for the purpose of holding any such hearing or the Tribal Gaming Board may appoint another person to act as examiner under

subsection 4.24 below. The Tribal Gaming Board shall provide reasonable notice and the right to present oral or written testimony to all people interested therein as determined by the Tribal Gaming Board.

4.24 Appointment of Examiner; Power of Examiner. The Tribal Gaming Board may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Tribal Gaming Board, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Director under this Ordinance with respect to any such hearing.

4.25 Tribal Gaming Board as the Final Authority on Gaming Regulation. The Tribal Council may not overturn a decision by the Tribal Gaming Board concerning a regulatory matter. The Tribal Gaming Board shall have the authority conveyed upon it by this Ordinance to interpret and enforce all applicable laws that effect the regulation of the gaming operations of the Hannahville Indian Community. Only the Tribal Court may reverse or remand a decision of the Tribal Gaming Board upon a petition to the Tribal Court and after a hearing. Only those decisions of the Tribal Gaming Board that are outside of the scope of authority of the Board may be reviewed.

4.26 Quarterly Report of Tribal General Manager Reports. The Tribal Gaming Board shall file a narrative quarterly regulatory report to the Council summarizing reports received from each manager of any tribally-owned or tribally-managed gaming establishment, provided that such information is not privileged, making such comments as it deems necessary to keep the Council fully informed as to the status of its various gaming operations.

Section 5. Gaming Enterprise Licenses.

5.1 Applicability. This Ordinance applies to all persons engaged in gaming within the jurisdiction of the Tribe. Any application for a license pursuant to this Ordinance and participation in any gaming activity within the jurisdiction of the Tribe shall be deemed to be a consent to the jurisdiction of the Tribe and the Tribal Court in all matters arising from the conduct of such gaming, and all matters arising under any of the provisions of this Ordinance or other tribal laws.

5.2 License Required. No person shall operate Class II or Class III gaming within the jurisdiction of the Tribe unless such gaming is licensed by the Tribe.

5.3 No License Requirement for Class I Gaming. A tribal license shall not be required for any Class I gaming activity or operation to the extent that it is not in competition with Tribal Gaming enterprises.

5.4 Types of Licenses. The Tribe shall issue each of the following types of gaming licenses:

(A) **Tribally-Owned or Tribally-Operated Class II.** This license shall be required of all tribally-owned or tribally-operated gaming enterprises operating one or more Class II games of chance.

(B) **Tribally-Owned or Tribally-Operated Class III.** This license shall be required for all tribally-owned or operated gaming enterprises operating any gaming other than Class I or Class II gaming.

5.5 Application Procedures.

(A) **Application for Gaming License.** For any proposed Class II or Class III gaming activity, the Council shall file with the Tribal Gaming Board an application for a tribally owned or tribally operated Class II or Class III gaming license, whichever is appropriate, which shall contain the name of the proposed enterprise, its location, and all other pertinent information required by this Ordinance and Tribal Gaming Board regulations.

(B) **Tribally-Owned and Tribally Operated Class III.** Before issuing a license to a tribally-owned or operated Class III gaming activity the Tribal Gaming Board shall:

(1) Review the proposed gaming activity to ensure that all criteria required by this Ordinance shall be met.

(2) Perform the necessary background checks on management contractors, primary management officials and key employees required by this Ordinance.

(3) Review and approve the accounting procedures to be used in such gaming activity.

(4) Take any additional steps necessary to ensure the integrity of such gaming activity.

(5) Review all aspects of the proposed gaming operation to ensure that it will be in compliance with the provisions of the applicable state/tribal compact.

5.6 Threshold Criteria Which a Potential Gaming Operator Must Meet. The Tribal Gaming Board shall issue the above license to any tribally-owned or tribally-operated Class II or Class III proposed gaming enterprise only if all of the following criteria are met:

(A) The proposed gaming activity or facility is to be located on land which was held in trust for the Tribe prior to October 17, 1988 or on trust lands which were located within or contiguous to the boundaries of the Reservation on October 17, 1988 or on lands taken into trust after October 17, 1988.

(B) The proposed gaming activity is to be played as Class II gaming as defined by this Ordinance and the IGRA or is Class III gaming authorized by a tribal-state gaming compact.

(C) The proposed gaming activity is authorized by a Tribal Council resolution.

(D) The Tribe will have the sole proprietary interest and the Tribe will have the exclusive responsibility for the conduct of the proposed gaming activity and if there is a management contract or other management agreement it must be consistent with tribal and federal law and properly approved by the Chairman of the Tribal Gaming Board subject to Tribal Council approval.

(E) The resolution authorizing the proposed gaming activity provides that:

(1) The revenues of the proposed gaming activity shall be audited annually and copies of those audits will be provided to the Tribal Gaming Board and the National Indian Gaming Commission.

(2) The proposed gaming activity shall comply with all IRS reporting and filing requirements.

(3) All of the proceeds of the proposed gaming activity shall be used for the purposes stated in subsection 9.2.

(4) All contracts for supplies services or concessions for an amount in excess of $25,000 annually, except contracts for legal and consulting services, shall be subject to an annual independent audit.

(5) The construction or maintenance of the gaming facility and the operation of the proposed gaming activity shall be conducted in a manner which the Tribal Gaming Board finds will adequately protect the environment and the public health and safety.

(6) The general manager, all primary management officials, and all key employees have passed the background investigations and obtained the tribal gaming employee licenses required by this Ordinance. Each application must state in writing that all future management officials and key employees will be required to pass background investigations and obtain a tribal gaming employee license.

(7) The Tribal Gaming Board shall have the authority to regulate the proposed gaming activity.

(8) The proposed gaming activity shall pay to the National Indian Gaming Commission such fees as federal law may require to be paid.

(9) If the gaming activity is Class III gaming, such gaming activity meets all other criteria established by the Tribal-State Gaming Compact.

5.7 License Application Fees. No application fee shall be required for a tribally-owned or tribally-operated Class II or Class III gaming enterprise.

5.8 License Tax. No annual license tax shall be required for a tribally-owned or tribally-operated Class II or Class III gaming operation.

5.9 Terms of License. A tribally-owned and tribally-operated Class II and Class III gaming license shall remain valid in perpetuity from the date of issuance unless revoked for good cause by action of the Tribal Gaming Board.

5.10 Posting of Licenses. Each gaming operator shall post his tribal gaming license in a conspicuous location at the gaming operator's gaming facility. If a gaming operator has more than one gaming facility, the gaming operator must obtain and post a separate license for each gaming facility. A gaming operator licensed to sell raffle tickets outside a gaming facility shall carry a copy of the gaming license under which such person is employed.

5.11 Gaming License Renewals. No renewal fee shall be required for a tribally-owned or tribally-operated Class II or Class III license in the event a gaming license is suspended or revoked by the Tribal Gaming Board. In order to obtain a renewed license, the operator shall submit a written renewal application to the Tribal Gaming Board on the form provided by the Tribal Gaming Board. No renewal application shall be approved unless all other provisions of this Ordinance have been complied with prior to application. All renewal applications submitted by a tribally-owned Class II or Class III gaming enterprise shall be approved within a reasonable time unless the Board determines, based on reasonable grounds, that the enterprise has been or will be operated in violation of tribal, federal or other applicable law or the terms of the tribal/state compact.

5.12 Form of Gaming License. Every gaming license issued by the Tribal Gaming Board shall include the name and address of the authorized licensee and the signature of an authorized officer of the Tribal Gaming Board.

5.13 Scope of Gaming License. A gaming license issued by the Tribal Gaming Board shall be effective only for the gaming activity and location specified in the application. Such license may be

transferred only upon prior approval of the Tribal Gaming Board upon written request that details the proposed new gaming activity, its location, and proposed gaming operator.

5.14 Annual Reports. Each gaming operator who possesses a Class II or Class III Tribal gaming license must file an annual report with the Tribal Gaming Board and the Tribal Council between the 15th and the last day of the final month ending the fiscal year as determined to be the gaming operation fiscal year by the Tribal Council. The report shall be submitted to the Tribal Gaming Board on the annual report form provided by the Tribal Gaming Board and shall include the following information:

(A) The name, address and telephone number of the gaming operator;

(B) The names, addresses and title of the current general manager and all assistant managers;

(C) A description of each gaming activity that it has operated and the total gross sales;

(D) A written copy of any changes the gaming operator proposes to initiate in its rules;

(E) A statement of the specific dates and times during which the gaming activity will be operated during the next reporting period;

(F) A statement of any changes in the primary management officials or key employees who will operate the gaming activity over the next reporting period;

(G) The names and addresses of any employees whom the Tribal Gaming Board may determine to be key employees during review of the report;

(H) Written proof that the gaming operator has paid to the National Indian Gaming Commission such fees as federal and tribal law may require it to pay, and will continue to do so;

(I) A sworn statement that the gaming operator has complied with the Internal Revenue Code and regulations, including written notice of customer winnings, and a statement that the gaming operator shall continue to obey all tribal and federal laws and shall hold the Tribal Gaming Board and the Tribe harmless for failure to do so;

(J) The description of any location at which the gaming activity has been conducted and any new location which is expected to be established during the next reporting period;

(K) The number of full-time equivalent persons, on an annualized basis, employed by the operation during the past twelve (12) months, together with a projection of the number of full-time equivalent persons who are expected to be employed during the next reporting period;

(L) The total gross revenue of the operator attributable directly or indirectly to tribally-licensed gaming activity over the proceeding twelve (12) months;

(M) A sworn statement that the gaming operator will continue to comply with all tribal and federal laws applicable to the operator's gaming operation;

(N) A sworn statement that the operator and all of its key employees and management contractors continue to consent to Tribal Court jurisdiction and service of process in all matters arising from the conduct of tribally-licensed gaming activity;

(O) The name, address and signature of the agent who will accept service of process on behalf of the operator, who must reside on the Reservation. The Chairman of the Tribal Gaming Board shall be designated, through this Ordinance, as the agent for service of any official determination, order, or notice of violation; and

(P) If the operator is a corporation, a copy of any amendment to its articles of incorporation, properly certified by the incorporating government, unless a current copy has already been filed with the Tribal Gaming Board.

5.15 Closure of a Tribal Licensed Gaming Activity. If the Tribal Gaming Board finds that any tribally owned gaming activity is operating in violation of this Ordinance or otherwise presents a threat to the public, the Tribal Gaming Board must immediately notify the Tribal Chairman and the Tribal Council. The Tribal Gaming Board shall give notice to the gaming operator of the problem so that the gaming operator may move into compliance with the law. In the event that the gaming operator disregards a notice of non-compliance, the Tribal Gaming Board shall follow the procedures in section 5.16 of this Ordinance. The Tribal Council, pursuant to its ownership and management authority, may close down any tribally owned or operated gaming activity temporarily or permanently at any time with or without cause.

5.16 Procedure to Remedy Gaming License Violation. If the Tribal Gaming Board finds that a tribally-owned or operated gaming activity is being operated in violation of this Ordinance or otherwise presents a threat to the Tribe or to the public, the Tribal Gaming Board shall immediately take all necessary steps to bring such activity into compliance, including, but not limited to, closing down such activity temporarily or permanently pursuant to enforcement procedures and regulations duly promulgated by the Tribal Gaming Board under this Ordinance. Nothing contained in this Section or in this Ordinance shall be construed as limiting, restraining or effecting a waiver of the Tribe or the Tribal Council's right and authority to take appropriate action to remedy any gaming violation pursuant to tribal and federal law.

Section 6. Gaming Employee Licenses.

6.1 Current and Valid Gaming Employee License Required. All employees of a Class II or Class III gaming enterprise must possess a current, valid gaming employee license. The Tribal Gaming Board and Tribal Council shall fully comply with 25 CFR parts 556 and 558 and all applicable federal and tribal laws in the licensing of key employees and primary management officials.

6.2 Application Procedure.

(A) Any person seeking a tribal gaming employee license shall submit an application to the Tribal Gaming Board on such form and in such manner as the Tribal Gaming Board may require.

(B) The application shall contain the following information:

(1) The applicant's full name, including all other names used (oral or written), current home and work addresses and telephone numbers, social security number, place of birth, date of birth, citizenship, driver's license number and gender, as well as the addresses of his or her personal residences over the past five years.

(2) The name, address and telephone number of the gaming enterprise and of the gaming operator for whom the applicant intends to work and the specific location in which the applicant will be employed.

(3) The name and job description of the position for which the applicant is applying.

(4) Each application must include the following false notice statement before an applicant may fill out that form:

A false statement on any part of your application may be grounds for not hiring you, or firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, section 1001).

In the event that existing employees required to be licensed under this Ordinance have filled out an application that did not contain a false notice statement, the Tribal Gaming Board shall notify in writing that the employee shall either complete a new application form that contains a notice requiring false statements or sign a statement that contains the notice regarding false statements.

(5) The names, current addresses and telephone numbers of three references who are not related to the applicant and who were acquainted with the applicant when the applicant was residing at each of the addresses listed in subsection 6.2(B)(1).

(6) Currently and for the previous five years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers.

(7) A description of any existing or previous employment relationship with an Indian Tribe, including the employee position held, name of the Tribe involved and name and address of a person who can attest to the accuracy of the information provided and any ownership interest in tribal enterprises currently or in the past.

(8) A description of any current or past non-employee business arrangement that the applicant has had with an Indian Tribe, including the name of the Tribe involved and the name and address of a person who can attest to the accuracy of the information provided.

(9) A statement as to whether the applicant has had any past employment with, or ownership interest in, any gaming business. If so, the applicant shall provide a written statement describing his or her position, the dates during which that position was held, a description of the applicant's ownership interest or job responsibilities and the name, address and phone number of the business, and a person who can attest to the accuracy of the information provided.

(10) A list of all gaming-related licenses the individual has applied for, whether or not those licenses were granted and the name and address and phone number of the regulatory agency involved.

(11) A list of all professional or business licenses the applicant has applied for, whether or not those licenses were granted and the name, address and phone number of the regulatory agency involved.

(12) A statement of all languages written or spoken.

(13) Written permission giving the Tribal Gaming Board or its designee the right to investigate the applicant's background, including his criminal record, civil and criminal judgments and credit history.

(14) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any.

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

(16) 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 (14) or (15) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(17) Any other information which might bring into question his fitness to serve as a primary management official or key employee of a licensed gaming operation.

(18) Each application shall be accompanied by a sworn statement that if the license is issued, the applicant will submit to the jurisdiction of the Tribe and the Tribal Court.

(19) Each application shall be accompanied by a photograph of the applicant taken within the last year.

(20) Each application shall be accompanied by a sworn statement that the applicant will abide by this Ordinance and all other applicable laws.

(21) Fingerprints such that National Criminal Information Center checks can be completed. The Hannahville Indian Community Tribal Police shall be the law enforcement agency that will take the fingerprints of all tribal gaming employees.

(22) Each application shall be accompanied by a written statement that the applicant has read, understands and approves of the following Privacy Act notice:

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 employed in a gaming operation. The information will be used 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 hiring or firing of an employee, the issuance 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 hire you in 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.

6.3 Review Procedure for Employee Gaming License Application, Initial Granting of a Gaming License, Suspension.

Before issuing a gaming employee license, the Tribal Gaming Board shall:

(A) Perform or arrange to have performed the necessary background investigation on the applicant required by this Ordinance. Such investigation shall include contacting each reference provided in the application and taking all appropriate steps to verify the accuracy of information contained in the application. There shall be a written report of the findings and conclusions of the investigation. The Tribal Gaming Board shall then review the findings and conclusions and make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation pursuant to part (C) of this subsection. The applicant shall be notified in writing of the Tribal Gaming Board's decision. The applicant has no right of appeal from the Tribal Gaming Board's eligibility decision.

(1) All background investigations must include a criminal history check against the Federal Bureau of Investigation criminal records. The applicant's fingerprints are taken by the Hannahville Tribal Police Department prior to employment within the gaming facility. These fingerprints are submitted to the National Indian Gaming Commission for a check of criminal history against the criminal history information maintained by the Federal Bureau of Investigation. The results of the criminal history check are forwarded back to the Hannahville Tribal Police Department by the National Indian Gaming Commission for a review of the applicant's criminal history.

(2) The Hannahville Police Department also takes the information from the employment application and the prospective employee's fingerprints and conducts a Tribal criminal history check based upon the information provided. The results of the criminal background check conducted against the Federal Bureau of Investigation records and the Tribal criminal history check are forwarded to the Tribal Gaming Board to determine whether an applicant may obtain a gaming license under the standards set out in Section 6.8 of this Ordinance.

(B) Prior to licensing a primary management official or key employee, the Tribe shall forward the information listed in Section 6.3(B)(1) & (2) to the National Indian Gaming Commission. The information listed in Section 6.3(B)(1) & (2) shall be forwarded to the National Indian Gaming Commission unless an alternative agreement is reached between the Tribe and the Commission. An applicant may be hired for a period of 90 days pending Commission approval of Licensure.

(1) Information forwarded to the Commission includes the complete application containing all the information contained in Section 6.2 of this Ordinance. An investigative report on each background investigation that shall include the following: steps taken in conducting a background investigation, results obtained, conclusions reached, and the basis for those conclusions. Also, an eligibility determination conducted by the Tribal Gaming Board as required under Section 6.8 of this Ordinance.

(2) If the Tribe does not license an applicant, the Tribe shall notify the National Indian Gaming Commission and shall forward copies of its eligibility determination and investigative report to the Commission.

(3) The Tribal Gaming Board shall comply with the procedures listed at 25 CFR 558.3 in submitting the applications and reports to the Commission.

(C) If the National Indian Gaming Commission notifies the Tribe, within its thirty (30) day review period, that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Tribe has provided an application and investigative report to the Commission pursuant to this Section of this Ordinance, the Tribe may go forward and issue a license to such applicant. In the alternative, if the Commission provides the Tribe with a statement of itemized objections based upon the application and investigative report submitted by the Tribe, the Tribe shall reconsider the application taking into consideration the objections itemized by the Commission. The Tribe shall make the final decision whether to issue a license to an applicant.

(D) If, after issuance of a gaming license, the National Indian Gaming Commission receives reliable information indicating that a key employee or primary management official is not eligible for employment under 25 CFR § 558.2, the Commission shall notify the Tribe of its findings. Upon receipt of such notification, the Tribe shall suspend such license and notify licensee in writing of the suspension and the proposed revocation. The Tribe shall notify the licensee of a time and place for a hearing on the proposed revocation. After the hearing, the Tribe shall decide to revoke or to reinstate a gaming license and shall notify the National Indian Gaming Commission of its decision.

(E) All applications, background checks and Board decisions shall be retained in the Board files for a period of at least three (3) years following termination of employment.

6.4 Scope of Gaming Employee License.

A gaming employee license shall be effective only for the person to whom it is issued and only with respect to the gaming facility specified in the application. Any such license may be transferred to a new gaming facility only upon prior approval of the Tribal Gaming Board, upon written request of the licensee identifying the proposed new gaming facility, its location, and the proposed gaming operator thereof.

6.5 Licensing Period. Any employee gaming license issued pursuant to this Ordinance shall be effective for a period of one (1) year from the date of issuance and shall state on its face the name of the employee, the location at which he is licensed to work, the date that the license became effective and the date that it expires.

6.6 Renewals. A holder of an employee gaming license shall apply to the Tribal Gaming Board for a renewal before his original license has expired, updating all information contained in the original application.

6.7 Requirement to Produce License Upon Request. Any person receiving an employee gaming license must carry that license upon his person in plain view during all working hours and must

produce that license upon the request of any law enforcement official with jurisdiction over the gaming activity or any agent of the Tribe, the Tribal Gaming Board or the National Indian Gaming Commission.

6.8 Qualifications for Key Employees and Primary Management Officials' Licenses; Permanent License Revocation: Employee Gaming License.

(A) **Qualifications for Licensure; Grounds for Permanent Revocation.** The Tribal Gaming Board may not hire nor license, or may permanently revoke any employee gaming license after notice and an opportunity for a hearing, for any of the following listed reasons. The Directors of the Tribal Gaming Board and the Director of Public Safety are the only "authorized tribal officials" who may conduct the inquiries required by this Section of this Ordinance and its subparts. The Tribal Gaming Board, voting with a quorum of members present, shall render the final decision as to an applicant's suitability to for licensure under this Ordinance. There is no appeal from an initial eligibility for licensure decision.

(1) The employee has omitted material information on his application.

(2) The employee has made material false statements on the application.

(3) The employee has participated in gaming activity that is not authorized by any tribal gaming license.

(4) The employee has attempted to bribe a Tribal Council member, Gaming Board Director or other person in an attempt to avoid or circumvent this Ordinance or any other applicable law.

(5) The employee has offered something of value or accepted a loan, financing or other thing of value from a Tribal Gaming Board member, a subordinate employee or any person participating in any gaming activity.

(6) The employee has knowingly promoted, played or participated in any gaming activity operated in violation of this Ordinance or any other applicable law.

(7) The employee has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of gaming activity.

(8) The employee has violated any provision of this Ordinance or the rules and regulations of the Tribal Gaming Board.

(9) The employee is under the age of 18.

(10) The employee has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation.

(11) The employee has been convicted of or entered a plea of guilty or no contest to any offense not specified in subparagraph (10) within the immediately preceding five (5) years; this provision shall not apply if that person has been pardoned by the

Governor of the State where the conviction occurred or, if a tribal member, has been determined by the Tribe to be a person who is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a license as a key employee or primary management official.

(12) The employee is determined by the Tribal Gaming Board, following an investigation and report by an "authorized tribal official" as defined in this Section of this Ordinance, to have participated in organized crime or unlawful gambling or whose prior activities, criminal record, reputation, habits, and/or 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 to the carrying on of the business and financial arrangements incidental to the conduct of gaming.

(13) The employee has failed to comply with any lawful order, inquiry or directive of the Tribal Gaming Board, the Tribal Council, or any administrative or judicial body of competent jurisdiction, arising from any gaming activity whether or not subject to this Ordinance.

(14) The employee has been convicted of, or has entered a plea of no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(15) The employee's employment has been terminated by the Tribe.

(B) **Procedure for Permanent Revocation.** Whenever it is brought to the attention of the Tribal Gaming Board that a person has violated any of the conditions in subsection 6.8(A)(1) through (15) or has failed to obtain a license, or has failed to comply with any of the conditions of his tribal gaming license or other applicable law, the Tribal Gaming Board or its designee may either undertake an investigation or serve upon such person or any agent of such person an order to show cause why the person's license should not be revoked or why the person should not be enjoined from conducting gaming activities within the jurisdiction of the Tribe. The Order shall state the grounds for which the revocation is sought and that the employee shall have an opportunity to present testimony and to cross-examine opposing witnesses, and to present any other evidence as to why a revocation order or injunction should not be issued. The hearing shall be set for not less than 10 working days nor more than 14 working days from the date of the notice unless there is an ongoing investigation or prosecution on charges or potential charges related to continued license eligibility. The hearing shall be governed in all respects in accordance with tribal law and Tribal Gaming Board regulations.

6.9 Temporary Suspension of Employee Gaming License.

(A) Any employee gaming license may be temporarily and immediately suspended by the Tribal Gaming Board, the Tribal Court or the Tribal Council or its designee for not more than 30 days if any of the following have occurred:

(1) The employee has been charged with a violation of any gaming law.

(2) The employee's continued employment in a gaming enterprise poses a threat to the general public.

(3) The employee has made a material false statement or material omission in his or her license application.

(4) The employee has participated in gaming activity unauthorized by his or her tribal gaming license.

(5) The employee has refused to comply with any lawful order, rule, or regulation of the Tribal Gaming Board, the Tribal Council, the Tribal Court or the National Indian Gaming Commission.

(B) **Procedure for Temporary Suspension**. Whenever it is brought to the attention of the Tribal Gaming Board that a person has violated any of the conditions in subsections 6.9(A)(1) through (5), or has failed to comply with any condition of his or her employee gaming license or of this Ordinance or other applicable law which constitutes a direct and immediate threat to the peace, safety, morals, or health or welfare of the Community, the Tribal Gaming Board or its designee shall issue a notice of temporary suspension of such person's employee gaming license, which shall be served upon the employee. The notice shall state the grounds upon which such temporary suspension is ordered and that the employee shall have an opportunity to present testimony and to cross-examine opposing witnesses, and to present any other evidence as to why suspension should not be ordered. The employee shall immediately cease and desist operating in his or her management position or in his or her capacity as a key employee upon receipt of the order, but such person may file a notice of appeal with the Tribal Gaming Board within five days of such receipt. Upon receipt of such notice of appeal, the Tribal Gaming Board shall hold a hearing on the order within fourteen (14) calendar days of its receipt of the appeal unless there is an ongoing investigation or prosecution on charges or potential charges related to continued license eligibility. At the hearing, the employee shall have the opportunity to present testimony and cross-examine witnesses, and present any other evidence as to why a temporary suspension order should not be issued. Such hearing shall be governed in all respects by tribal law and Tribal Gaming Board regulations.

Section 7. Provisions of General Applicability to All Gaming Operators.

7.1 Each Class II or Class III gaming activity within the jurisdiction of the Tribe shall be conducted only by a gaming operator who possesses a current and valid tribal gaming enterprise license.

7.2 Each tribal gaming license shall be applicable only to one gaming site and the gaming operator named on such license.

7.3 No tribal gaming license shall be sold, lent, assigned or otherwise transferred.

7.4 Each management and key employee of a licensed gaming operation shall possess a current and valid tribal gaming employee license.

7.5 A tribal gaming license shall be issued only to a person who qualifies therefore under the Ordinance, or to the Tribe or a tribal subdivision.

7.6 Each gaming operator shall have a copy of this Ordinance and regulations readily available for inspection by any person at each authorized gaming site.

7.7 No person under the age of 18 years shall be permitted to play any Class III game.

7.8 No person under the age of 18 years shall be permitted to remain in an area of any building in which a gaming activity is being conducted but may be permitted to pass through a gaming area to non-gaming areas.

7.9 A person under the age of 13 years may participate in gaming activity in private homes, purchase raffle tickets, attend sporting contests or ticket drawings, and stick game and other traditional gaming tournaments when operated as Class I gaming.

7.10 Each gaming operator shall post in a conspicuous location near where any gaming activity is being played, or shall otherwise provide the public with an explanation of the rules of play of every game he operates.

7.11 A gaming operator is prohibited from renting or lending gaming equipment to any person without the prior written approval of the Tribal Gaming Board.

7.12 A gaming operator is prohibited from exchanging pull-tabs, punch-boards, sports pools, and twenty-one boxes (shoes) without the approval of the Tribal Gaming Board. All other gaming equipment may be exchanged without prior approval. Any request for approval shall be made to the Tribal Gaming Board at least 5 days prior to the exchange.

7.13 Each gaming operator who anticipates the printing, manufacture, or construction of any equipment for gaming activity shall first notify the Tribal Gaming Board of his intention and shall have the finished product approved by the Tribal Gaming Board before it is placed in service.

7.14 Gaming chips and other tokens of value may be sold and redeemed only by the gaming operator and only for full value.

7.15 Every licensed gaming operation shall maintain and keep for not less than seven (7) years permanent books of accounts and records, including inventory records of gaming supplies, sufficient to establish the gross and net income, deductions, expenses, receipts and disbursements of the enterprise.

7.16 A gaming operator who conducts a gaming activity on premises or at a location in which he does not have a legal ownership interest shall file with the Tribal Gaming Board, prior to conducting any gaming activity at such premises, a written agreement, attested to by both the gaming operator and the owner of such site, setting forth the terms under which he is permitted the use of such site.

(A) Such agreement shall contain all of the following information:

(1) The name of the legal owner of the site. If the gaming operator is to be a sub-lessee, then the name of the lessee must also be included.

(2) The name and gaming license number of the gaming operator.

(3) The term of such use of the site.

(4) The monetary consideration to be paid for such use of the site, if any.

(5) A precise description of the premises.

(6) A prohibition of advertising of the gaming activity by the owner.

(7) The following provision:

"The (grantor/lessor) hereby agrees that neither (he/she), (his/her) spouse, nor any employee or agent of the (grantor/lessor) shall participate in the selling, distributing, conducting, assisting or participating in gaming activity at the site herein (granted/leased) without the prior written approval of the Tribal Gaming Board.

(B) Any rent or lease provision of such agreement shall include a fixed monthly rental dollar amount unless otherwise approved in writing by the Tribal Gaming Board.

(C) A graduated lease rate for use of the site is prohibited unless approved in writing by the Tribal Gaming Board.

(D) Other remuneration, in lieu of money, for use of the site is prohibited unless approved in writing by the Tribal Gaming Board.

(E) A percentage lease rate for use of the site is prohibited unless approved in writing by the Tribal Gaming Board.

(F) No game of chance shall be operated in conjunction with the conduct of the grantor's business operation unless approved in writing by the Tribal Gaming Board.

(G) Any re-negotiated agreement shall be submitted to the Tribal Gaming Board for approval prior to its effective date.

7.17 There shall be no sale of liquor at any gaming site without the prior approval of the Tribal Council.

7.18 Consideration for the chance to play in any gaming activity shall only be cash. No other form of consideration shall be allowed unless the Tribal Gaming Board gives prior written approval. Payroll checks, cashier's checks, traveler's checks, money orders, and certified checks may be cashed at the cashier's cage unless previously dishonored checks have been submitted.

7.19 Evidence of any win or loss incurred by a player must, upon request, be provided to such player in such form as will be acceptable to the IRS provided that the gaming operator is required to issue documentation on a particular transaction.

7.20 Each gaming operator shall pay all applicable fees and file all reports required by law within the time prescribed.

7.21 Each gaming operator shall respond immediately to and obey all inquiries, subpoenas or orders of the Tribal Gaming Board, the Tribal Council, the Tribal Court, or the National Indian Gaming Commission.

7.22 Each gaming operator shall prominently display at each gaming site a current, valid tribal gaming license.

7.23 Each gaming operator shall, at all times, maintain an orderly, clean, and neat gaming establishment, both inside and out.

7.24 Each gaming operator shall provide adequate security to protect the public before, during and after any gaming activity.

7.25 Each licensed gaming enterprise shall be subject to patrol by the tribal police force for the purpose of enforcing tribal law, and each gaming operator shall cooperate at all times with the tribal police force.

7.26 Each gaming operator shall make its premises and books and records available for inspection during normal business hours by the Tribal Gaming Board and the Tribal Council or their designee.

7.27 Reserved for future use.

7.28 No gaming operator may discriminate on the basis of sex, race, color, or creed in the conduct of any licensed gaming activity, except as allowed by law.

7.29 Each gaming operator shall keep accurate books and records of all moneys received and paid out and provide the Tribal Gaming Board or its designee with copies of or access to the same upon request.

7.30 All net proceeds of any gaming activity shall be used only in a manner prescribed by this Ordinance.

7.31 Every gaming operator shall comply with all applicable tribal and federal revenue reporting laws.

7.32 Each gaming operator shall immediately suspend any employee who is charged with an offense described in subsection 8.2 (A-AH) or any offense related to the sale, possession, manufacture and or transport of illegal drugs. The gaming operator shall also immediately notify the Tribal Gaming Board in writing of the name of the person and the pending charge and advise the Tribal Gaming Board of the outcome of the case. If the employee is convicted or pleads nolo contendere to the charge, his or her employment shall be terminated.

Section 8. Enforcement.

8.1 Jurisdiction. Except as provided in this Ordinance, in any tribal-state compact, and under the IGRA, the Tribal Court shall have jurisdiction over all violations of this Ordinance.

8.2 Prohibited Acts. In addition to other civil and criminal offenses provided for in this Ordinance, or under other applicable law the following acts are prohibited and subject any violator to the civil or criminal penalties specified herein:

(A) Operating or in any way participating in any on-reservation gaming activity which is not authorized by this Ordinance.

(B) Knowingly making a false statement in an application for employment with any gaming operator or with the Tribal Gaming Board.

(C) Knowingly making a false statement in connection with any contract to participate in any gaming activity.

(D) Attempting to bribe any person participating in any gaming activity.

(E) Offering or accepting a loan, financing or other thing of value between a Tribal Gaming Board Director or employee and any person participating in any gaming activity.

(F) Promoting or participating in any illegal gaming activity.

(G) Failing to keep sufficient books and records to substantiate receipts, disbursements and expenses incurred or paid from any gaming activity authorized pursuant to this Ordinance.

(H) Falsifying any books or records which relate to any transaction connected with any gaming activity pursuant to this Ordinance.

(I) Conducting or participating in any gaming activity which in any manner results in cheating or misrepresentation, or which allows any other disreputable tactics which detract from the fair nature and equal chance of participation between gaming players, or which otherwise creates an advantage over and above the chance of such gaming activity and which affects its outcome.

(J) To allow or participate in the sale of liquor at gaming sites when such sale is prohibited by tribal law.

(K) To accept consideration other than money or other approved consideration for the chance to play or participate in any gaming activity.

(L) To knowingly use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any cards, charitable gaming tickets or gaming equipment that has been marked or tampered with.

(M) To employ or possess on Hannahville Indian Community Reservation or trust lands any cheating device or to facilitate cheating in any gaming activity.

(N) To willfully use any fraudulent scheme or technique to change the odds of any game of chance.

(O) To solicit, directly or indirectly, or to use inside information on the nature or status of any gaming activity for the benefit of any person.

(P) To tamper with a gaming device or attempt to conspire to tamper or manipulate the outcome or the payoff of a gaming device, or otherwise interfere with the proper functioning of a gaming device.

(Q) To alter or counterfeit a gaming license.

(R) To aid, abet, or conspire with another person knowingly or knowingly to cause any person to violate any provision of this Ordinance or any rules and regulations adopted thereunder.

(S) To operate, use or make available to the public any illegal gaming device, apparatus, material, or equipment.

(T) To sell, hold out for sale or transport into or out of the jurisdiction of the Tribe any illegal gaming device, apparatus, material, or equipment.

(U) To assist or allow a person who is under age to participate in any gaming activity.

(V) To possess any illegal narcotics or controlled substances on any licensed gaming site.

(W) To steal or attempt to steal funds or other items of value from any gaming establishment or from the Tribal Gaming Board.

(X) To employ any person at a licensed gaming establishment whom the gaming operator knows has been convicted of a gaming crime or a crime of fraud.

(Y) To conspire with or induce any person to violate any of the provisions of this Ordinance or any tribal or federal law.

(Z) Reserved for future use.

(AA) No gaming operator or any of his employees or agents shall knowingly engage in any act, practice, or course of operation which could result in a fraud or deceit upon any person, enterprise or entity.

(AB) To knowingly use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any game, cards, or charitable gaming tickets that have been marked or tampered with.

(AC) To employ or have on the Reservation any device to facilitate cheating in any game of chance.

(AD) To use any fraudulent scheme or technique knowingly, or to solicit, provide, or receive inside information about any gaming activity with the intent of benefiting any person.

(AE) **Repealed.**

(AF) To aid, abet, or conspire with another person knowingly or to cause any person to violate any provision of this Ordinance or other applicable law.

(AG) To take, solicit or encourage any action which undermines the integrity of any game of chance.

(AH) No gaming operator shall employ any person who has been convicted of or entered a plea of no contest to a crime of theft, embezzlement, fraud, a gaming crime or any other crime which, if perpetrated on the operator's premises would threaten the fairness or integrity of the game or create a threat to the public, unless a current certificate of rehabilitation has been issued to that person.

8.3 Criminal Violation. Any Indian who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order or decision of the Tribal Gaming Board, shall be guilty of a crime and may be required to pay a fine not to exceed $5,000 and/or be incarcerated for a period not to exceed one (1) year. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. In addition, the defendant may be held liable in restitution for all damages reasonably proven in connection with the violation.

8.4 Civil Violation. Any non-Indian who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order of the Tribal Gaming Board, shall be liable for a civil fine not to exceed $5,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. The amount of any such civil fine may be recovered in a civil action in the Tribal Court. In addition, the defendant may be held liable in restitution for all damages reasonably proven in connection with the violation. If federal law is subsequently amended to allow prosecution of non-Indians by the Tribe, then section 8.3 shall apply to all persons without further amendment.

8.5 Cumulative Fines. All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

8.6 Purpose of Civil Penalties. The civil fines imposed under this Ordinance are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this Ordinance are also

intended to encourage all persons to comply with this Ordinance and Tribal Gaming Board regulations and not to punish such people for violation of such laws and regulations.

8.7 Civil Action for Penalties. In enforcing the civil infraction provisions of this Ordinance, the Tribal Gaming Board shall proceed, in the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Ordinance. The Tribal Gaming Board in such action shall have the burden of showing, by the preponderance of the evidence, that such person violated the applicable provision of this Ordinance.

8.8 Seizure and Forfeiture of Property. All property utilized in violation of this Ordinance shall be subject to seizure by order of the Tribal Court. Prejudgment attachment of property in lieu of cash bond shall also be allowed where necessary to secure the Court's jurisdiction and/or enforcement of an anticipated judgement. A hearing shall be held forthwith on any ex parte attachment procedures.

8.9 Reporting of Offenders. The Clerk of the Tribal Court shall, upon final conviction of any person under this subsection, report the name of the person convicted to the Tribal Gaming Board.

Section 9. Operation of Tribally-Owned or Tribally-Operated Games.

9.1 Management by a General Manager.

(A) The Tribal Council shall appoint one person who shall serve as General Manager at each of its tribally-owned or tribally-operated gaming establishments. The General Manager shall undergo a background check by the Tribal Gaming Board and shall obtain an employee gaming license. The Tribal Council shall be the direct supervisor of the General Manager. The Tribal Council shall retain the power to appoint, suspend, or dismiss the General Manager.

(B) The General Manager shall be responsible for managing and overseeing the day-to-day operations of the gaming operation. The General Manager shall have such authority as the Tribal Council may delegate. The General Manager shall propose to the Tribal Council an employee complaint process through the management up to the Tribal Council or a representative board of the Tribal Council.

(C) The General Manager shall provide a written monthly report to the Tribal Council and the Tribal Gaming Board which details the number of patrons served, the amount of income generated, the numbers of employees working at the establishment, a detailed description of any patron complaints and other problems experienced at the establishment, also a written statement of any changes in key employees or primary management officials and all bills which are thirty (30) days or more past due.

(D) The General Manager shall propose and the Tribal Gaming Board shall approve a patron's complaint process. Each tribally-owned and tribally-managed gaming establishment shall post at least one sign in each gaming room informing patrons that they may file any complaints that they have directly with the Tribal Gaming Board, and advising them of the Tribal Gaming Board's address and phone number.

(E) The General Manager shall be personally responsible for seeing that the gaming enterprise is managed in accordance with tribal and federal law and that the gaming activity complies with all IRS reporting requirements.

9.2 Use of Net Revenues of Tribally-Owned or Tribally-Operated Gaming Enterprises.

(A) All net proceeds of a tribally-owned or tribally-operated gaming enterprise shall be held in the name of the Tribe. Such net proceeds may only be expended by the Tribal Council by resolution and only for the following purposes:

(1) To fund tribal government operations or programs.

(2) To provide for the general welfare of the Tribe and its members.

(3) To promote tribal economic development.

(4) To donate to charitable organizations.

(5) To help to fund operations of local government agencies.

(B) If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only under the existing per capita ordinance that has been submitted to and approved by the Bureau of Indian Affairs or any subsequent per capita ordinance that may be approved.

9.3 Audit Requirements.

(A) The Tribal Council, Tribal Gaming Board and the General Manager of each tribally-owned or tribally-operated gaming establishment shall obtain an annual independent audit of each gaming enterprise. A copy of the audit shall be provided to the National Indian Gaming Commission.

(B) Each contract for supplies, services (other than legal and accounting services) or concessions for a contract amount in excess of $25,000.00 annually shall be subject to an independent audit. A copy of the audit will be provided to the Tribal Gaming Board, the Tribal Council and the National Indian Gaming Commission.

9.4 Management Contracts.

(A) Each management contract shall fully comply with and is subject to the prior approval of the National Indian Gaming Commission.

(B) Each management contract shall be approved by the Council with the advice and comment of the Tribal Gaming Board. Before giving final consideration to any proposed management contract the Council shall direct the Tribal Gaming Board to obtain the following information and submit it to the Council for review:

(1) Background information on the proposed management contractor including: its name, its address, the names and addresses of each person or entity having a direct financial interest or management responsibility for the proposed management contractor, and in the case of a corporation the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly ten (10) percent or more of its issued or outstanding stock. Background information shall fully comply with 25 CFR 537.1 et seq. and 25 USC §2706(b)(10), §2710(d)(9) and §2711 and other applicable law.

(2) A description of any previous experience that each person listed in subsection 9.4 (B)(1) above has had with other gaming contracts with Indian tribes and gaming activity or operation wherever located including the name and address of any tribal government or licensing agency with which such person has had a contract license, permit, or other agreement relating to gaming.

(3) A complete financial statement of each person listed in subsection 9.4(B)(1) above.

(4) The Tribal Gaming Board shall contact each of the tribal governments and licensing agencies in Subsection 9.4(B)(2) to determine the performance history of the proposed management contractor.

(5) The Tribal Gaming Board shall arrange to have each proposed management contractor investigated to learn of his personal attributes and to determine whether he has prior criminal records or any pending criminal charges.

(6) The Tribal Gaming Board shall obtain an independent verification of the completed financial statements of each such proposed management contractor.

(7) The Tribal Gaming Board shall undertake any additional steps it can to determine the character and reputation of each proposed management contractor.

(8) If the Tribal Gaming Board, after reviewing the above described information still desires to enter into a management contract with the proposed management contractor, such management contract shall be placed in writing and submitted to legal counsel for review before the Board approves it.

(C) Any management contract approved by the Council must include at a minimum the following with respect to the gaming enterprise to which the contract is applicable:

(1) A provision requiring a monthly financial accounting of the gaming enterprise's income and expenses. Such reports shall be prepared by an independent auditor who is mutually acceptable to the Tribe and the management contractor.

(2) A provision providing the Tribe absolute access to the daily operation of the gaming enterprise and to its books, and the Tribe's absolute right to verify the daily gross revenues of the gaming enterprise at any time.

(3) A provision guaranteeing the Tribe a minimum guaranteed payment which shall always take precedence over the management contractor's right to recoup development and construction costs.

(4) An agreed upon ceiling for the management contractor's development and construction costs.

(5) A provision that the contract shall not exceed seven (7) years.

(6) A provision for termination of the contract and the grounds for termination.

(D) If the Council is satisfied with the information it receives it shall submit its proposed contract along with all of the above described information to the Chairman of the National Indian Gaming Commission for approval. Any management contract shall comply with the requirements of 25 CFR part 531.1 et seq. and 25 USC §2706(b)(10), §2710(d)(9), and §2711 and other applicable laws.

(E) All persons who possess an ownership interest or management position in the proposed management contract shall apply for a gaming employee license under this Ordinance. No management contract shall be approved by the Tribal Gaming Board until all gaming employee license applications have been reviewed and the Tribal Gaming Board has submitted written findings on such application to the Council.

(F) If the Council is satisfied with the information it receives it shall submit the proposed contract along with all of the above described information to the Chairman of the National Indian Gaming Commission for approval.

9.5 Additional Requirements for Operation of Tribally-Owned or Tribally-Operated Games.

(A) Each tribally owned or tribally operated gaming facility shall carry sufficient liability insurance to protect the public in the event of an accident. The Tribal Council shall determine the amount of liability insurance required for each gaming facility.

(B) Each tribally owned or tribally operated gaming activity shall post the rules of play of each game in a conspicuous place where gaming is conducted and shall make written copies of such rules available to any member of the general public upon request.

Section 10. Authorized Games.

Consistent with applicable law, the Tribe authorizes the licensing of the following games of chance:

(A) Bingo, pull tabs, and other Class II games.

(B) Twenty-one or Blackjack.

(C) Poker.

(D) Red Dog.

(E) Big Six Wheel.

(F) All other games of chance that may be authorized under a tribal-state gaming compact with the State of Michigan pursuant to the IGRA.

Section 11. Patron Disputes

(A) Refusal to Pay Winnings
Whenever an operator refuses payment of alleged winnings to a patron, and the operator and the patron are unable to resolve the dispute to the satisfaction of the patron, and the dispute involves:

(1) At least Five Hundred Dollars ($500.00), the operator shall immediately notify the Gaming Board. The Gaming Board shall conduct whatever investigation it deems necessary and shall determine within ten (10) days of notification whether payment should be made; or

(2) Less than Five Hundred Dollars ($500.00), the operator shall inform the patron of his/her right to request that the Gaming Board conduct an investigation. The patron shall request an investigation within five (5) days of the payment refusal. Upon receipt of such request, the Gaming Board shall conduct whatever investigation it deems necessary and shall determine within seven (7) days whether payment should be made.

(B) Notice to Patrons
The Gaming Board shall mail written notice by certified mail, return receipt requested, to the operator and the patron of the decision resolving the dispute.

(C) Effective Date of Decision
The decision of the Gaming Board is effective on the date it is received by the aggrieved party, as reflected on the return receipt.

(D) Review of Decision
Within twenty (20) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Gaming Board requesting a review of the decision. The Gaming Board may set a hearing on the matter or may make a decision based upon the prior decision and other documentation provided to it by the patron and operator as part of the request for review. The Gaming Board shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in subsection (B) above. The decision of the Gaming Board shall be final and binding upon the patron and operator, and shall not be subject to judicial review, dispute resolution, or other legal action.

Section 12. Technical Standards for Electronic Games of Chance.

(A) Hardware and Software Requirements
Any electronic game of chance installed in a facility licensed by the Gaming Board shall meet the hardware and software technical standards of either the State of Nevada or the State of New Jersey.

(B) Certification
Each electronic game of chance, or a prototype thereof, shall be tested, approved and certified by a gaming test laboratory as meeting the requirements of section (A) prior to its installation in a facility licensed by the Gaming Board. The Gaming Board shall accept such certification from any laboratory operated by or under contract with the States of Nevada or New Jersey.

(C) Testing of Games of Chance
If required by the gaming test laboratory, the Gaming Board shall require the manufacturer or distributor of an electronic game of chance to transport not more than two (2) working models of such game and related equipment to a location designated by the laboratory for testing, examination and analysis. The manufacturer or distributor shall pay for any and all costs for the transportation, testing, examination and analysis. Said testing may include the entire dismantling of the electronic game of chance and related equipment, and some tests may result in damage or destruction to one or more electronic components of the devices. If required by the laboratory, the manufacturer shall provide specialized equipment or the services of an independent technical expert to assist with the testing, examination and analysis.

(D) Manufacturer/Distributor Certification of Conformity
The manufacturer or distributor of each electronic game of chance which is proposed to be installed in the facility licensed by the Gaming Board shall certify, in writing, that upon such installation, each electronic game of chance:

(1) conforms precisely to the exact specification of the electronic game of chance prototype tested and approved by the gaming test laboratory; and

(2) operates and plays in accordance with the technical standards adopted in section (A), above.

(E) Information on Each Game to be Maintained
Prior to installation of an electronic game of chance in a facility licensed by the Gaming Board, the manufacturer or distributor shall report to the Gaming Board the following information for each such game, including, but not limited to:

(1) the type of electronic game of chance;

(2) the game's serial number;

(3) the game's manufacturer;

(4) the person from whom the game was acquired, the means by which the game was transported into the State of Michigan, and the name and street address of any common carrier or other person transporting the game;

(5) the certification required under section (D), above;

(6) the Erasable Programmable Read Only Memory (EPROM) chip's identification number;

(7) the location in which the game will be placed; and

(8) the date of installation.

(F) Notification of Removal from Play

Upon removal of an electronic game of chance from a facility licensed by the Gaming Board, the operator shall report in writing to the Gaming Board the following:

(1) the date on which the game was removed;

(2) the game's destination; and

(3) the name of the person to whom the equipment is to be transferred, including the person's street address, business and home telephone numbers; the means by which the game is to be transported and the name and street address of any common carrier or other person transporting the game.

NATION-STATE GAMING COMPACT

BETWEEN THE

SENECA NATION OF INDIANS

AND THE

STATE OF NEW YORK

April 12, 2002

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NATION-STATE GAMING COMPACT
BETWEEN THE
SENECA NATION OF INDIANS
AND THE
STATE OF NEW YORK

This Compact is made and entered into between the Seneca Nation of Indians, a sovereign Indian nation ("Nation") and the State of New York ("State") pursuant to the provisions of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA").

WHEREAS, the Nation is a sovereign Indian nation recognized by the United States of America, possessing all sovereign rights and powers pertaining thereto; and

WHEREAS, the State is a state of the United States of America, possessing all sovereign rights and powers pertaining thereto.

NOW, THEREFORE, the NATION and the STATE, consistent with the Memorandum of Understanding between the State Governor and the President of the Seneca Nation of Indians executed on June 20th 2001, and in consideration of the undertakings and agreements hereinafter set forth, hereby enter into this Class III Gaming Compact.

1. DEFINITIONS.

For purposes of this Compact, including the Appendices:

(a) "Appendix" means an appendix to this Compact, all of which are incorporated by reference herein. "Appendices" means more than one Appendix.

(b) "Certified Mail" means certified or registered mail, Federal Express, United Parcel Service, Express Mail or any similar mail delivery service generating a return receipt or a signature of the recipient, confirming delivery of that mail. Certified Mail does not include electronic mail.

(c) "Class III Gaming" has the meaning ascribed to such term in 25 U.S.C. §2703(8).

(d) "Class III Gaming Employee" means an individual employee of the Nation Gaming Operation who renders Class III Gaming-related employee services in a Nation Gaming Facility.

(e) "Class III Gaming Employee License" means a license issued by the SGA to a Class III Gaming Employee pursuant to the procedures set forth in Appendix C.

(f) "Class III Gaming Key Employee" means a natural person employed by the Nation Gaming Operation in a supervisory capacity empowered to make discretionary decisions that affect gaming operations as determined by the SGA.

(g) "Class III Gaming Service Enterprise" means an entity or individual, other than a Class III Gaming Employee, that provides Class III Gaming services, Class III Gaming supplies or Class III Gaming equipment to a Nation Gaming Facility.

(h) "Class III Gaming Service Enterprise License" means a license issued by the SGA to a Class III Gaming Service Enterprise pursuant to the procedures set forth in Appendix D.

(i) "Class III Non-Gaming Employee" means an individual employee of the Nation Gaming Operation working in a Gaming Facility who is not a Class III Gaming Employee.

(j) "Class III Non-Gaming Employee License" means a license issued by the SGA to a Class III Gaming Employee pursuant to the procedures set forth in Appendix C.

(k) "Compact" means this Nation-State Gaming Compact between the Nation and the State and all Appendices attached hereto.

(l) "Effective Date" has the meaning set forth in Paragraph 4(a).

(m) "Gaming Device" means two categories of gaming devices: (i) 'slot machines' as that term is defined in Section 9(a) of Appendix A; and, (ii) 'video lottery games' as that term in defined in Section 9(a) of Appendix A.

(n) "Gaming Facility" means those portions of a structure in which the Nation conducts Class III Gaming pursuant to this Compact. For purposes of this definition, a Gaming Facility shall be deemed to include only those areas of a structure that the Nation uses for Class III Gaming operations. Notwithstanding the foregoing, no areas of a structure exclusively used for Class I or Class II gaming or for non-gaming activities shall be considered part of a Gaming Facility.

(o) "Immediate Family Member" means the spouse, parent, or child of a person, or a parent or child of the spouse of that person.

(p) "Licensing Review Commission" means the entity established to implement the appeal procedures set forth in Appendices C-E.

(q) "Material Breach" means a material, uncured breach of this Compact.

(r) "MOU" means the Memorandum of Understanding between the State Governor and the President of the Seneca Nation of Indians executed on June 20, 2001, incorporated by reference herein.

(s) "Nation" means the Seneca Nation of Indians, its authorized officials, agents or representatives acting in their official capacities.

(t) "Nation Gaming Operation" means the enterprise, business or entity operated or authorized by the Nation to operate or conduct any form of Class III Gaming on Nation lands pursuant to this Compact; provided, however, that this Compact shall apply to operations of such enterprise, business or activity only to the extent that such operations are directly related to Class III Gaming undertaken by the Nation pursuant to this Compact.

(u) "Nation Law Enforcement Agency" means the agency of the Nation established and maintained by the Nation pursuant to the Nation's sovereign powers to carry out law enforcement within the lands of the Nation.

(v) "Non-Class III Gaming Registration" means a registration issued by the SGA to an enterprise or other person pursuant to the procedures set forth in Appendix E.

(w) "Paragraph" means a numbered paragraph of this Compact.

(x) "Party" means either the Nation or the State.

(y) "Parties" means the Nation and the State.

(z) "Seneca Gaming Authority" or "SGA" means the entity established by the Nation responsible for regulating Class III Gaming undertaken by the Nation pursuant to this Compact.

(aa) "State" means the State of New York, acting through the Governor as chief executive officer and such other officials, agents or representatives that he or she has duly authorized, acting in their official capacities.

(bb) "State Gaming Officials" or "SGO" means the officials designated by the State to fulfill the State's responsibility to ensure Nation Gaming Operation and SGA compliance with the terms of this Compact.

(cc) "State Contribution" has the meaning set forth in Paragraph 12(b)(i).

2. NO NON-GAMING RELATED ISSUES.

Nothing in this Compact affects any matter not specifically addressed herein.

3. AUTHORIZED CLASS III GAMING.

The Nation shall conduct only those Class III Gaming games specifically listed in Appendix A, in accordance with the specifications set forth in Appendices A and B.

4. TERM OF COMPACT.

(a) Effective Date. This Compact shall be effective after publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. §2710(d)(3)(B), provided that the Compact has been executed and certified by the Governor of the State and by the Nation pursuant to a referendum vote authorizing such execution ("Effective Date").

(b) Termination Date. This Compact shall terminate on the fourteenth (14th) anniversary of the Effective Date, unless renewed pursuant to Paragraph 4(c) or terminated pursuant to Paragraph 4(d).

(c) Renewals.

(1) Unless either Party objects in writing delivered to the other Party no later than one hundred twenty (120) days prior to the expiration of the fourteen (14)-year term established pursuant to Paragraph 4(b), the term of this Compact shall be renewed automatically for an additional period of seven (7) years.

(2) In the event either Party does timely object to the automatic renewal of the term of this Compact, the Parties shall meet promptly following the receipt of such written objection and use their best efforts to address the objecting Party's concerns through frequent and regular good faith negotiations. In the event the objecting Party's concerns cannot be resolved within a period of one hundred twenty (120) days following the commencement of such negotiations, the Party may submit only the issue of the other Party's good faith in the renewal

negotiations to the Party Dispute Resolution provisions set forth in Paragraph 14; provided, however, that during the pendency of dispute resolution, the terms of this Compact shall remain in effect.

(d) Early Termination.

(1) Either Party may terminate this Compact at any time if any of the following occurs:

a. The IGRA is repealed;

b. The Nation adopts a referendum revoking the Nation's authority to conduct Class III Gaming; or,

c. The other Party commits a Material Breach.

(2) To effectuate an elective termination pursuant to this subparagraph, the terminating Party shall serve notice of such termination upon the other Party in accordance with Paragraph 17(c), which notice shall be effective no earlier than six (6) months following the date on which the other Party receives such notice.

5. NATION REGULATORY AUTHORITY.

(a) General Responsibility. The SGA shall have responsibility for the on-site regulation of Class III Gaming undertaken by the Nation pursuant to this Compact. The SGA's authority and responsibility shall be as set forth in this Compact and its Appendices.

(b) Specific Elements of SGA's Regulatory Responsibilities. The Nation shall ensure that the SGA regulates the Class III Gaming undertaken by the Nation pursuant to this Compact in a manner that ensures compliance with the provisions set forth in Appendix J.

(c) Inspectors. SGA shall employ inspectors who shall be present in all Gaming Facilities during all hours of operation and who shall be under the authority of the SGA and not the Nation Gaming Operation.

(d) Access. Such inspectors shall be afforded access to all areas of the Gaming Facilities during all hours of operation without notice.

(e) Investigations. SGA inspectors shall have authority to investigate any matter relating to the regulation of the Nation's Class III Gaming operations pursuant to this Compact.

(f) Provision of Reports; Process and Resolution of Disputes. The SGA shall cooperate with the SGO and shall make immediately available to the SGO all patron complaints, incident reports, gaming violations, surveillance logs, and security reports. If a report indicates that a complaint, violation or incident has not been resolved, the report shall state what

remedial steps have been or will be taken to resolve the matter. A follow-up report shall indicate the final disposition of the matter. If the SGO believes that the action or inaction taken by the SGA violates the provisions of this Compact or its Appendices, the Parties shall meet to settle the matter. If the Parties cannot agree, the Nation or the State may initiate the Party Dispute Resolution procedure set forth in Paragraph 14.

(g) Fines. The SGA shall be empowered by Nation regulation to impose fines and other appropriate sanctions on the Nation Gaming Operation and its employees, licensees and vendors within the jurisdiction of the Nation for violations of this Compact and its Appendices. The SGA shall immediately notify the State, in writing of any fine or sanction imposed pursuant to this subparagraph.

(h) Restriction on SGA. All SGA employees and officials, and Immediate Family Members of such employees and officials, shall have no financial interest in Class III Gaming undertaken by the Nation pursuant to this Compact, other than an interest that accrues solely by virtue of Nation citizenship. No SGA employee or official shall be employed by a person or entity required to be licensed pursuant to this Compact. This provision shall be in addition to, not in derogation of, any applicable Nation law regarding conflicts of interest.

(i) Identification Badges. The SGA shall issue color-coded identification badges to all SGO and other State personnel working at a Gaming Facility, which badges shall be worn by the SGO and other State personnel at all times when on the premises of the Gaming Facility. Such badges shall remain the property of SGA and must be returned at the conclusion of the official's work at the Gaming Facility.

6. STATE RESPONSIBILITY.

(a) Generally. The SGO shall have responsibility to ensure Nation compliance with the terms of this Compact.

(b) Officials. Those officials designated by the State to fulfill the role set forth in Paragraph 6(a) above shall collectively be known as the "SGO".

(c) Access. For purposes of fulfilling its responsibilities as set forth in Paragraph 6(a), SGO shall be afforded immediate, unfettered access to all areas of the Gaming Facilities during all hours of operation without notice. SGO shall be afforded full access to areas of the Gaming Facilities in which money is counted or kept only when accompanied by SGA personnel, or when SGA otherwise provides permission. The State shall not cause to be present at the Gaming Facilities more employees than are reasonably necessary to carry out its responsibilities under Paragraph 6(a).

(d) Notice of violations. The State shall promptly notify the Nation and the SGA of any alleged violations of this Compact with sufficient detail to allow the SGA to investigate and if necessary rectify the alleged violation.

(e) Conduct of State personnel. SGO shall take all reasonable measures to avoid interfering with the conduct of Class III Gaming and related activities and operations of the Nation Gaming Operation.

(f) Records Access. In fulfilling the State role under this Compact, SGO may request, and the SGA shall promptly provide during hours of operation, access to business and accounting records of its Class III Gaming activities; provided, however, that all records to which SGA provides access to SGO pursuant to this Paragraph 6(f) shall be subject to the provisions of Paragraph 15 (Confidentiality).

(g) Investigations. The SGO shall have the authority to investigate any alleged violations of this Compact. The SGA and the Nation Gaming Operation shall cooperate with the SGO in such investigations.

(h) Quarterly meetings. Representatives of SGA, the Nation Gaming Operation and SGO shall meet on a quarterly basis, unless otherwise agreed, to review past practices and examine methods to improve the regulatory and enforcement programs established pursuant to this Compact.

(i) Restriction on SGO. SGO, and Immediate Family Members of such SGO, shall have no financial interest in Class III Gaming undertaken by the Nation pursuant to this Compact, other than an interest that accrues under State law solely by virtue of being a citizen of the State, or such interest that accrues under Nation law solely by virtue of Nation citizenship. SGO, and any Immediate Family Members of such SGO, shall not be employed by a person or entity required to be licensed pursuant to this Compact. This provision shall be in addition to, and not in derogation of, any applicable State law regarding conflicts of interest.

(j) Cultural Exchange. The State agrees and understands that the Nation possesses its own unique social customs, traditions, laws, and history. In order to make SGO and State personnel working at, or in conjunction with, a Gaming Facility more aware of the Nation's culture, traditions, laws and history and for purposes of fostering an environment that is consistent therewith, the Nation may conduct periodic cultural seminars in a manner of its choosing for all such personnel. It shall be the policy of the Nation and the State that such employees attend such seminars.

(k) Office space, parking. The SGA shall provide reasonable on-site office space at each Gaming Facility for use by SGO and for State personnel working at a Gaming Facility pursuant to this Compact. SGO and State personnel on official business may park at the nearest available parking space at the Nation's Gaming Facilities. The Nation Gaming Operation shall reserve at each Gaming Facility two parking spaces immediately adjacent to an entrance (other than the front entrance) to the Gaming Facility for use by State personnel in undertaking their duties under this Compact.

7. LAW ENFORCEMENT MATTERS.

(a) Jurisdiction. Nothing in this Compact shall affect the law enforcement jurisdiction of the Nation or the State over the Nation's lands as provided by applicable law.

(b) Nation Gaming Operation security personnel. The Nation Gaming Operation shall provide security personnel to protect each Gaming Facility, its employees, patrons and their property.

8. ACCOUNTING STANDARDS AND AUDITING REQUIREMENTS.

(a) Books and records. The Nation Gaming Operation shall make and keep books and records that accurately and fairly reflect each day's transactions, including but not limited to receipt of funds, expenses, prize claims, prize disbursements or prizes liable to be paid, and other financial transactions of or related to the Nation's Gaming Facilities, so as to permit preparation of monthly and annual financial statements in conformity with Generally Accepted Accounting Principles as applied to the gaming industry and to maintain daily accountability. The Nation Gaming Operation's books and records shall be susceptible of an annual audit in accordance with this Compact, in accordance with Generally Accepted Accounting Principles. A chart of accounts, consistent with Appendix F shall be adopted.

(b) Additional reports and records related to financial transactions. Upon SGA's request, the Nation Gaming Operation shall contemporaneously submit to SGO copies of all reports, letters, and other documents relating to its Class III Gaming activities filed with the National Indian Gaming Commission pursuant to 25 C.F.R. § 571.13. SGO shall maintain as strictly confidential all such reports, letters and documents in accordance with Paragraph 16.

(c) Class III Gaming accounting and auditing procedures.

(1) The Nation Gaming Operation shall, at its own expense, cause the annual financial statements of the Gaming Facilities to be audited in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry by a certified public accountant. Such audit may be conducted in conjunction with any other independent audit of the Nation, provided that the requirements of this Paragraph are met, and provided further that, the information in the audit not related to Class III Gaming shall not be requested by the SGO or provided by the SGA.

(2) A copy of the current audited financial statement as it relates to the Nation's Class III Gaming activities, together with the report thereon of the Nation's independent auditor, shall be submitted on an annual basis to SGA not later than one hundred twenty (120) days following the end of the accounting period under review. Upon request by SGO, SGA shall promptly provide a copy of such current report to SGO.

(3) Subject to the limitations set forth in Paragraph 8(c)(1) above, the Nation Gaming Operation shall require its independent auditor to render:

a. A report on the material weaknesses, if any, in accounting and internal controls.

b. A report expressing the opinion of the independent auditor based on his or her examination of the financial statements, on the extent to which the Nation's Class III Gaming activities have followed in all material respects during the period covered by the examination, the system of accounting and internal controls adopted by the Nation. The independent auditor shall also make recommendations in writing regarding improvements in the system of accounting and internal controls as required by the National Indian Gaming Commission.

(4) The Nation's independent auditor shall retain a copy of each audit report, together with copies of all engagement letters, management letters, supporting and subsidiary documents, and other work papers in connection therewith, for a period of not less than three (3) years.

(5) The Nation Gaming Operation shall submit a copy of the reports required by Paragraph 8(c)(3) to SGA not later than one hundred twenty (120) days following the end of the accounting period under review or within thirty (30) days of receipt, whichever is earlier. Upon request by SGO, SGA shall promptly provide a copy of such current report to SGO.

(6) Nothing herein shall be construed to affect the right of the SGO to request audits from SGA for the purpose of confirming compliance by the Nation Gaming Operation with the provisions of this Compact. All documents, materials, books and records reviewed and/or copied for purpose of such audits shall be confidential in accordance with Paragraph 15 of this Compact. SGO shall bear the cost of such "additional audits" and such costs shall not be deemed "reimbursable expenses" for purposes of Paragraph 13.

9. PERSONAL INJURY REMEDIES FOR PATRONS; INSURANCE REQUIREMENTS.

(a) Insurance requirements. During the term of this Compact, the Nation shall require the Nation Gaming Operation to obtain and maintain public liability insurance insuring the Nation Gaming Operation, its agents and employees against claims, demands or liability for bodily injury and property damages by or to a visitor at the Gaming Facilities arising out of or relating to the operation of the Gaming Facilities. Such liability insurance shall provide coverage of no less than five million dollars ($5,000,000.00) per person and five million dollars ($5,000,000.00) per occurrence, and shall cover both negligent and intentional torts.

(b) Claims procedures. The Nation agrees that it will establish procedures applicable to the Gaming Facilities to govern the resolution of claims against the Nation Gaming Operation, its employees and agents that are covered by the insurance required pursuant to Paragraph 9(a). The procedures that the Nation will establish are set forth in Appendix H. It is understood that the Nation's agreement to this provision is not intended to and does not constitute a waiver of its sovereign immunity from suit with respect to any such claim.

10. INTEGRITY OF GAMING DEVICES.

(a) Designation of independent gaming test laboratory. The Nation Gaming Operation shall propose to the State, with supporting documentation, an independent gaming test laboratory that is competent and qualified to conduct scientific tests and evaluations of Gaming Devices and to otherwise perform the functions set out in the Paragraph 10. The selection of the independent gaming test laboratory is subject to this consent of the State, but the State shall not unreasonably withhold its consent if the independent gaming test laboratory holds a license in good standing in New Jersey, Nevada or Mississippi. If, at any time, any of the independent gaming test laboratory's licenses are suspended, terminated or subject to disciplinary action, the independent test laboratory shall discontinue its responsibility under this Paragraph 10 and the Nation Gaming Operation shall propose a new independent gaming test laboratory as provided herein.

(b) Testing and approval of Gaming Devices. The Nation Gaming Operation may not acquire or expose for play any Gaming Device unless:

(1) The manufacturer or distributor that sells, leases or distributes such Gaming Devices has obtained a Class III Gaming Service Enterprise License from the SGA; and

(2) The Gaming Devices, or a prototype thereof, have been tested, approved and certified by the independent gaming test laboratory as meeting the requirements specified by this Compact, in accordance with the following process.

(3) The Nation Gaming Operation shall provide, or require that the manufacturer provide, to the independent gaming test laboratory two (2) copies of each Gaming Device's illustrations, schematics, block diagrams, technical and operation manuals, program object and source codes, hexadecimal dumps (the complied computer program represented in base 16 format), if any, and any other information requested by the independent gaming test laboratory. Upon consent of the manufacturer, the SGA shall also make all such materials available to the SGO, upon request, subject to Paragraph 15.

(4) If requested by the independent gaming test laboratory, the Nation Gaming Operation shall require the manufacturer to transport not more than two (2) working models of a Gaming Device to a location designated by the laboratory

for testing, examination or analysis. The independent gaming test laboratory shall provide to the Nation Gaming Operation and to the SGO a report that contains findings, conclusions and a certification that the Gaming Devices conform or fail to conform to the requirements specified by this Compact. If the independent gaming test laboratory determines that such Gaming Device fails to conform to such requirements, and if modifications can be made that would bring the Gaming Device into compliance, the report may contain recommendations for such modifications.

(5) The manufacturer or distributor shall assemble and install all Gaming Devices in a manner approved by the independent gaming test laboratory.

(c) Modifications of Gaming Devices.

(1) No modification to the assembly or operations of any Gaming Device may be made after testing and certification unless the independent gaming test laboratory certifies to the SGA that the Gaming Device as modified conforms to the requirements specified by this Compact. All such proposed modifications shall be described in a written request made to SGA and the independent gaming test laboratory and promptly disclosed to the SGO. The request shall contain information describing the modification and the reason(s) therefor, and shall provide all documentation required by the independent gaming test laboratory. In emergency situations in which modifications are necessary to preserve the integrity of a Gaming Device, the independent gaming test laboratory is authorized to grant temporary certification of the modifications of up to thirty (30) days pending compliance with this Paragraph 10.

(2) With respect to any modifications proposed to a Gaming Device, the Nation Gaming Operation shall advise the SGO in writing of any such modification no less than ten (10) days prior to implementing the modification, and the SGO shall have the right to request that the SGA seek prompt testing and certification of the modification. However, the Nation Gaming Operation shall not be precluded from implementing such modification prior to any such request. The modification shall be withdrawn if the independent gaming test laboratory concludes that the modified Gaming Device fails to conform to the requirements specified by this Compact.

(d) Conformity to technical standards. Before exposing a Gaming Device for play, the Nation Gaming Operation must first obtain and submit to the SGA a written certification from the manufacturer or distributor that upon installation each such Gaming Device placed at the Nation's Gaming Facilities: conforms precisely to the exact specification of the Gaming Device tested and approved by the independent gaming test laboratory; and operates and plays in accordance with the requirements specified in this Compact. SGA shall promptly provide a copy of such certification to SGO.

(e) Ex parte communication. Neither Party shall communicate with the independent gaming test laboratory, whether in writing, or by telephone or otherwise, concerning the approval of the Gaming Devices without providing the other Party with a reasonable opportunity to participate in or respond to such communication, provided that disclosures of information under Paragraph 10(b)(3) above may not be made to SGO without the prior consent of the manufacturer. The Nation Gaming Operation, SGA and the SGO, except as provided by Paragraph 10(b)(3) above, shall ensure that copies of all written communications sent to or received from the independent gaming test laboratory are provided immediately to the other Party.

(f) Payment of independent gaming test laboratory fees. The Nation Gaming Operation shall be responsible for the payment of all original independent gaming test laboratory fees and costs, and fees for modifications made at SGA's request, in connection with the duties described in this Paragraph. SGO shall bear the cost of any duplicate or "random" testing initiated at the request of SGO. SGA shall provide to the SGO copies of all independent gaming test laboratory invoices and payments by the Nation Gaming Operation, which shall have the right to audit such fees.

(g) Independent gaming test laboratory duty of loyalty. The Nation Gaming Operation shall inform the independent gaming test laboratory in writing that, irrespective of the source of its fees, the independent gaming test laboratory's duty of loyalty and reporting requirements run equally to the Nation Gaming Operation, SGA and to the SGO.

11. SITES FOR GAMING FACILITIES.

(a) Subject to the provisions of this Paragraph 11, the Nation may establish Gaming Facilities:

(1) in Niagara County, at the location in the City of Niagara Falls indicated on the map of downtown Niagara Falls attached as Appendix I, or at such other site as may be determined by the Nation in the event the foregoing site is unavailable to the Nation for any reason; and

(2) in Erie County, at a location in the City of Buffalo to be determined by the Nation, or at such other site as may be determined by the Nation in the event a site in the City of Buffalo is rejected by the Nation for any reason; and

(3) on current Nation reservation territory, at such time and at such location as may be determined by the Nation.

(b) With respect to the sites referenced in subparagraphs 11(a)(1) and 11(a)(2):

(1) The sites shall be utilized for gaming and commercial activities traditionally associated with the operation or conduct of a casino facility;

(2) The State agrees to assist the Nation in acquiring the site set forth in Appendix I within the limits of the Seneca Settlement Act funds that the Nation has committed to the acquisition of such site;

a. No later than thirty (30) days after the execution of this Compact by both Parties, the State, through the Empire State Development Corporation ("ESDC") or otherwise, shall transfer fee title to the Niagara Falls Convention Center and such other property as the State may own within the boundaries of the parcel identified in Appendix I in fee simple to the Nation in consideration of a payment from the Nation of one dollar ($1.00) in funds appropriated by the Seneca Settlement Act;

b. The Nation shall lease back to the State the Niagara Falls Convention Center building for a period of twenty-one (21) years for an annual lease payment of one dollar ($1.00);

c. The State, in turn, shall lease to the Nation the Niagara Falls Convention Center building for a period of twenty one (21) years for an annual lease payment of one dollar ($1.00) until such time as the Nation constructs and begins operation of a permanent Gaming Facility in the Niagara Falls, at which time the Nation shall pay to the State the balance, as of July 1, 2002, of the general obligation bonds pledged in connection with the Niagara Falls Convention Center; and,

d. The State shall assist the Nation in whatever manner appropriate, including the exercise of the power of eminent domain, to obtain the remaining lands described in Appendix I on the best economic terms possible. In the event the State does obtain all or part of the lands described in Appendix I through exercise of the power of eminent domain, it shall promptly convey such lands to the Nation at a price equal to the cost of acquisition.

(3) The State shall support the Nation in its use of the procedure set forth in the Seneca Settlement Act, 25 U.S.C. §1774f(c), to acquire restricted fee status for the site described in Appendix I and any other site chosen by the Nation pursuant to Paragraphs 11(a)(1) and 11(a)(2), to which the State has agreed, such agreement not to be unreasonably withheld. For purposes of such support from the State, the State shall assist the Nation directly with the Department of the Interior, either in writing or in person, as the Parties deem appropriate and necessary to obtain expeditious action on the Nation's notifications under section 1774f(c) of the Seneca Settlement Act and on any other application made by the Nation to obtain requisite approvals.

(4) The Nation agrees that it will use all but five million dollars ($5,000,000.00) of the funds remaining from amounts appropriated by the Seneca Settlement Act to acquire the parcels in the City of Niagara Falls and the City of Buffalo.

(c) The Nation agrees that it will dedicate Seneca Settlement Act funds remaining after the acquisition of the sites referenced in Paragraph 11(a)(1) and 11(a)(2) to the acquisition of parcels to meet the housing needs of the Nation's members. Unless otherwise agreed by the Parties, such housing parcels shall be physically and immediately contiguous and adjacent to either: (i) an existing reservation of the Nation, or (ii) the sites referenced in Paragraph 11(a)(1) and 11(a)(2) if actually acquired. The State shall support the Nation in development of such housing projects and shall support any notification made by the Nation under section 1774f of the Seneca Settlement Act for a housing development for Nation members.

(d) The Parties agree that host municipalities should be compensated to be able to adjust to the economic development expected to result from the Gaming Facilities authorized under this Compact. Consistent with this goal, the State shall reach financial agreements with the host municipal governments, and any payments made pursuant to such agreements shall be made by the State.

12. EXCLUSIVITY AND STATE CONTRIBUTION.

(a) Exclusivity.

(1) Subject to subparagraphs 12(a)(2) and 12(a)(3), the Nation shall have total exclusivity with respect to the installation and operation of, and no person or entity other than the Nation shall be permitted to install or operate, Gaming Devices, including slot machines, within the geographic area defined by: (i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York; (ii) to the north, the border between New York and Canada; (iii) to the south, the Pennsylvania border with New York; and (iv) to the west, the border between New York and Canada and the border between Pennsylvania and New York.

(2) In the event the Tuscarora Indian Nation or the Tonawanda Band of Seneca Indians initiate negotiations with the State to establish a Class III Gaming compact, the State may agree to include Gaming Devices in any such compact that permits gaming facilities within the geographical area of exclusivity set forth in Paragraph 12(a)(1) without causing a breach of this Paragraph 12; (i) provided, however, that in no event shall the State permit another Indian nation to establish a Class III Gaming facility within a twenty five (25) mile radius of any Gaming Facility site authorized under this Compact unless such facility is to be established on federally recognized Indian lands existing as of the Effective Date of this Compact.

(3) The exclusivity granted under Paragraph 12(a)(1) shall cease to apply with respect to any one of the sites authorized under this Compact: (i) if the Nation fails to commence construction on such site with thirty six (36) months of the Effective Date; or (ii) if the Nation fails to commence Class III Gaming operations on such site within sixty (60) months of the Effective Date.

(4) With the exception of a violation of the proviso set forth in Paragraph 12(a)(2)(i), the Nation's obligation to pay and the State's right to receive the State Contribution from the operation and conduct of a particular category of Gaming Device as defined in Paragraph 1(m) shall cease immediately in the event of a breach by the State of the exclusivity provisions set forth in this Paragraph 12(a) only as to that particular category of Gaming Device for which exclusivity no longer exists.

(5) With respect to a violation of the proviso set forth in Paragraph 12(a)(2)(i), the Nation's obligation to pay and the State's right to receive the State Contribution shall cease immediately as to all categories of Gaming Devices.

(b) State Contribution.

(1) In consideration of the exclusivity granted by the State pursuant to Paragraph 12(a), the Nation agrees to contribute to the State a portion of the proceeds from the operation and conduct of each category of Gaming Device for which exclusivity exists, based on the net drop of such machines (money dropped into machines, after payout but before expense) and totaled on a cumulative quarterly basis to be adjusted annually at the end of the relevant fiscal year, in accordance with the sliding scale set forth below ("State Contribution"):

Years 1-4

18%, with "Year 1" commencing on the date on which the first Gaming Facility established pursuant to this Compact begins operation, and with Payments during this initial period are to be made on an annual basis.

Years 5-7

22%, with payments during this period to be made on a semi-annual basis.

Years 8-14

25%, with payments during this period to be made on a quarterly basis.

(2) In the event the States reaches a compact with another Indian tribe regarding Gaming Devices of a like kind that has State contribution provisions that are more favorable to the Indian tribe than those set forth herein, the terms of such other compact shall be automatically applicable to this Compact at the Nation's option.

(3) Any dispute regarding a payment by the Nation of the State Contribution must be raised within one (1) year of the receipt by the State of the audited financial statements required pursuant to Paragraph 8(c)(2).

13. REIMBURSEMENT FOR STATE COSTS OF OVERSIGHT.

Pursuant to Section 2710(d)(3)(c)(iii) of the IGRA, the Nation shall reimburse the State for certain costs associated with the oversight of this Compact, as set forth in Appendix G.

14. PARTY DISPUTE RESOLUTION.

(a) Purpose. The Nation and the State intend to resolve disputes in a manner that will foster a spirit of cooperation and efficiency in the administration of and compliance by each Party with the provisions of this Compact.

(b) Negotiation. In the event of any dispute, claim, question, or disagreement arising from or relating to this Compact or the breach hereof, the Parties shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, either Party may provide written notice of a claim to the other. Upon receipt of such written notice, the Parties shall then meet within fourteen (14) days, shall negotiate in good faith and shall attempt to reach a just and equitable solution satisfactory to both Parties.

(c) Method of dispute resolution. If the Parties do not reach such solution within a period of thirty (30) days after such meeting, or if the Parties fail to meet and thirty (30) days pass after the written notice of a claim is received, then, upon notice by either Party to the other, either Party may submit the dispute, claim, question, or disagreement to binding arbitration.

(d) Arbitration notice. The notice for arbitration shall specify with particularity the nature of the dispute, the particular provision of the Compact at issue and the proposed relief sought by the Party demanding arbitration; provided, however, that neither Party may seek monetary damages for any alleged dispute, claim, question or disagreement.

(e) Selection of arbitrators. Each Party shall select one arbitrator and the two arbitrators shall select the third.

(f) Procedures for arbitration. Arbitration under this Paragraph shall be conducted in accordance with the rules of the American Arbitration Association or such other rules as the Parties may mutually agree.

(g) Arbitration costs. The cost of the arbitration shall be shared equally by the Parties, but the Parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration.

(h) Remedies. The arbitrators shall exempt the Nation from the payment of the State Contribution for any breach of the State's commitments to exclusivity as set forth in Paragraph 12(a). For Material Breaches, the arbitrators may impose as a remedy only specific performance or termination of the Compact. For all other breaches other than

Material Breaches, the arbitrators may impose as a remedy only specific performance. In no event shall monetary damages, other than specific performance, be available as a remedy to either Party for any alleged breaches of this Compact, including Material Breaches. An arbitration award against the Nation for specific performance that entails the payment of money to the State shall be satisfied solely and exclusively from the revenues of the Nation's Class III Gaming Facilities operated pursuant to this compact. Either Party may apply to the arbitrators seeking injunctive relief for an alleged violation of this Compact, and with respect to the relevant site, until the arbitration award is rendered or the controversy is otherwise resolved.

(i) Arbitration decision. The decision of the arbitrators shall be final, binding and non-appealable. Failure to comply with the arbitration award within the time specified therein for compliance, or should a time not be specified, then forty-five (45) days from the date on which the arbitration award is rendered, shall be deemed a breach of the Compact. The prevailing party in an arbitration proceeding may bring an action solely and exclusively in the U.S. District Court for the Western District of New York to enforce the arbitration award and the Parties agree to waive their sovereign immunity solely and exclusively for the strictly limited purpose of such an enforcement action in such court and for no other purpose.

15. CONFIDENTIALITY.

(a) Purpose. The confidentiality provisions of this Paragraph 15 are necessary to ensure ongoing and candid disclosure of information by the Parties to each other as required by this Compact.

(b) Nation disclosure. The Nation agrees that the Nation Gaming Operation will provide promptly records and information relating to its Class III Gaming operations to the SGO solely for oversight of the State Contribution on the condition that the State agrees that the access to and use of such documents and information is strictly limited to this purpose. The State shall maintain all such documents and information strictly confidential. The State shall promptly provide to the SGA any records or information relevant to SGA's responsibilities under this Compact.

(c) Nation records. All records of the Nation Gaming Operation that are provided to the State under this Compact, and all information contained in such records, are confidential and proprietary information of the Nation. All such records, and copies of such records, shall remain the property of the Nation, irrespective of their location. All Nation records used by the State shall be returned to the Nation after the State's use of said records has ended.

(d) State records. All records of the State that are provided to the Nation under this Compact, and all information contained in such records, are confidential and proprietary information of the State. All such records, and copies of such records, shall remain the property of the State, irrespective of their location. All State records used by the Nation shall be returned to the State after the Nation's use of said records has ended.

(e) Non-disclosure. The Nation and the State agree that all records of the Nation received by the State are exempt from disclosure under the New York Freedom of Information Law (Public Officers Law, sec. 84 *et seq.*). This Compact, as provided for under IGRA, establishes the federal legal standards for matters pertaining to Class III Gaming by the Nation and therefore preempts any State records law, including the New York Freedom of Information Law, with respect to records and information provided in accordance with this Compact. The State shall legally defend against disclosure under any applicable law of information provided by the Nation pursuant to this Compact.

(f) Limited exceptions to policy of non-disclosure. The State may not disclose any records or documents provided by the Nation's Gaming Operation or SGA under this Compact; provided, however, that disclosure to a Nation, federal or state criminal agency pursuant to a duly authorized warrant of the U.S. District Court in the context of an ongoing criminal investigation may be made without the prior written consent of the Nation.

(g) Notice to Nation. Notwithstanding Paragraph 15(e) above, the State shall provide prompt notice to the Nation's Gaming Operation of any other request or proposed form of order relating to the disclosure of records provided by the Nation under this Compact. Except where ordered by a duly authorized U.S. District Court warrant, the State shall not disclose any such records, to a court or otherwise, without first providing the Nation with an opportunity to challenge the request for the records and to seek judicial relief to prevent disclosure.

16. AMENDMENT AND MODIFICATION.

(a) Amendment and modification. The provisions of this Paragraph 16 shall govern the amendment and modification of this Compact. The Compact and its Appendices may be amended or modified by written agreement of the Nation and the State.

(b) Compact revisions. A request to amend or modify the Compact by either Party shall be in writing, specifying the manner in which the Party requests the Compact to be amended or modified, the reason(s) therefor, and the proposed language. Representatives of the Parties shall meet within thirty (30) days of the request and shall expeditiously and in good faith negotiate whether and on what terms and conditions the Compact will be amended or modified. A request by the Nation to amend or modify any provision of the Compact shall be deemed a request to enter into negotiations for the purpose of entering into a Nation-State Compact subject to the provisions of 25 U.S.C. §2710(d); provided, however, that neither such request nor such negotiations shall be deemed to amend or modify the terms or effectiveness of this Compact unless, and then only to the extent that, modifications or amendments are agreed in writing by the Parties; provided, further, that any impasse in such negotiations shall not operate to terminate or invalidate this Compact.

(c) Appendices provisions.

(1) Automatic amendments. If the State (i) makes lawful a Class III Gaming game not authorized to be conducted for any purpose by any person, organization or entity on the Effective Date of this Compact and the SGO adopts specifications for such game, or (ii) enters into a compact with any Indian tribe or nation governing the conduct of Class III Gaming game not authorized to be conducted by the Nation Gaming Operations under this Compact, and setting forth specifications for such game, then the State shall give the Nation Gaming Operation written notice of such action within thirty (30) days, identifying the game and its specifications. If the Nation Gaming Operation accepts such game and its specifications, it shall notify the State in writing and a corresponding amendment shall be made to the appropriate appendices hereunder to authorize the Nation Gaming Operation to conduct such games. If the Nation Gaming Operation submits its own specifications for such game, the State shall within thirty (30) days notify the Nation Gaming Operation that it has accepted or rejected the Nation Gaming Operation's proposed specifications. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the Nation Gaming Operation's proposed specifications, amendments and modifications shall be made to the appropriate Appendices. If the State rejects the Nation Gaming Operation's proposed specifications, the Nation may commence arbitration as specified in this Compact solely on the issue of the State's good faith in its consideration of the Nation Gaming Operation's proposed specifications.

(2) Other amendments. The Nation Gaming Operation may make a request to amend or modify specifications for a currently approved game by submitting proposed amended or modified specifications in writing to the State. The State shall within thirty (30) days notify the Nation Gaming Operation that it has accepted or rejected the Nation Gaming Operation's proposed specifications. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the Nation Gaming Operation's proposed specifications, the appropriate amendments and modifications shall be made to Appendices. If the State rejects the Nation Gaming Operation's proposed specifications, the Nation may commence arbitration as specified in this Compact on the issue of the State's good faith in its consideration of the Nation Gaming Operation's proposed specifications.

(3) Except as provided in Paragraphs 16(c)(1) and 16(c)(2) above, if a Party seeks to amend or modify a provision of any of the Appendices to this Compact, it shall notify the other Party in writing. The Party receiving such notice shall within thirty (30) days notify the Party requesting the amendment or modification that it accepts or rejects the proposed amendment or modification. If the proposed amendment or modification is accepted, it shall be effective upon the written acceptance of the other Party. If the proposed amendment or modification is rejected, the Party proposing it may commence arbitration as specified in this

Compact on the issue of the State's good faith in considering the Nation's proposed amendment or modification.

17. MISCELLANEOUS.

(a) Calculation of time. In computing any period of time prescribed by this Compact or any laws, rules or regulations of the Nation, the day of the event from which the designated period of time begins to run shall not be included. A calendar day includes the time from midnight to eleven fifty-nine and fifty-nine seconds past meridian. Periods of less than ten (10) days shall be construed as business days. Periods of eleven (11) days or more shall be construed as calendar days.

(b) Severability.

(1) Except for Paragraph 3, if any Paragraph or provision of this Compact is held invalid by a federal court, or its application to a particular activity is held invalid, it is the intent of the Parties that the remaining Paragraphs and provisions, and the remaining applications of such Paragraphs and provisions, shall remain in full force and effect.

(2) Application of the provisions of Paragraph 12(a)(4), terminating the State Contribution in the event of the State's breach of its exclusivity obligation under Paragraph 12(a), shall not affect the validity of any other provision of this Compact.

(c) Official notices and communications.

All notices and communications required or authorized to be served in accordance with this Compact shall be served by Certified Mail at each of the following addresses:

Seneca Nation of Indians

Nation President
Seneca Nation of Indians
P.O. Box 231
Salamanca, New York 14779

Nation President
Seneca Nation of Indians
Route 438
Irving, New York 14081

Seneca Gaming Agency

State of New York

Governor
State of New York
The Capitol
Albany, New York 12224

State Gaming Officials

New York State Wagering Board
1 Watervliet Avenue Extension, Suite 2
Albany, New York 12206

or to such other address or addresses as either the Nation or the State may from time to time designate in writing.

(d) Further assurances. The Parties shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary to implement the intent and the terms and conditions of this Compact. Without limitation of the foregoing, consistent with the MOU, the Parties will jointly seek, in a timely manner, any further ratification of this Compact that may be required.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated below.

DATE: 8-18-00

PRESIDENT
SENECA NATION OF INDIANS

GOVERNOR
STATE OF NEW YORK

INDIAN TRIBE - STATE OF ARIZONA GAMING COMPACT

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THE [redacted] INDIAN COMMUNITY- STATE OF ARIZONA GAMING COMPACT

This Compact is entered into by and between the [redacted] Indian Community ("Tribe") and the State of Arizona ("State"), in accordance with the Indian Gaming Regulatory Act of 1988 for the purposes of governing Class III Gaming Activities conducted within the territorial jurisdiction of the Tribe.

DECLARATION OF POLICY AND PURPOSE

WHEREAS, the Tribe and the State are separate sovereigns, and each recognizes and respects the laws and authority of the other sovereign; and

WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168 (the "Act") which requires a tribal-state compact negotiated between a tribe and a state in order to conduct Class III Gaming Activities on the Indian Lands of a tribe; and

WHEREAS, the purpose of the Act is to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; and

WHEREAS, the Tribe is a federally recognized Indian Tribe and exercises governmental power over Indian Lands which are located within the exterior boundaries of the State, and within which the Gaming Activities regulated hereunder shall take place; and

WHEREAS, the Tribe and the State have negotiated the terms and conditions of this Compact to provide a regulatory framework for the operation of certain Class III Gaming which is intended to (a) ensure the fair and honest operation of such Gaming Activities; (b) maintain the integrity of all activities conducted in regard to such Gaming Activities; and (c) protect the public health, welfare and safety; and

WHEREAS, the Tribe and the State have agreed to enter into this Compact, which includes provisions intended to enhance the regulation and integrity of gaming, consistent with the provisions of Title 5, Chapter 6 of the Arizona Revised Statutes.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the Tribe and the State agree as follows:

SECTION 1. TITLE

This document shall be referred to as "The [redacted] Indian Community - State of Arizona Gaming Compact."

SECTION 2. DEFINITIONS

For purposes of this Compact and its appendices:

(a) "Act" means the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168.

(b) "Applicant" means any Person who has applied for a license or certification under the

provisions of this Compact, or employment with a Gaming Facility Operator, or approval of any act or transaction for which approval is required or permitted under the provisions of this Compact.

(c) "Application" means a request for the issuance of a license or certification or for employment by a Gaming Facility Operator, or for approval of any act or transaction for which approval is required or permitted under the provisions of this Compact.

(d) "Class I Gaming" means all forms of gaming defined as Class I in section 4(6) of the Act, 25 U.S.C. § 2703(6).

(e) "Class II Gaming" means all forms of gaming defined as Class II in section 4(7) of the Act, 25 U.S.C. § 2703(7).

(f) "Class III Gaming" means all forms of gaming as defined in section 4(8) of the Act, 25 U.S.C. § 2703(8).

(g) "Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.

(h) "Compact" means [redacted] Indian Community-State of Arizona Gaming Compact.

(i) "Distributor" means a Person who distributes Class III Gaming Devices and/or component parts thereof.

(j) "Enrolled Tribal Member" means a person who has been enrolled in the Tribe and whose name appears in the Tribal membership roll and who meets the written criteria for membership.

(k) "Gaming Activity" means all forms of Class III Gaming owned and operated by the Tribe and conducted within the Indian Lands of the Tribe.

(l) "Gaming Device" means a mechanical device, an electro-mechanical device or a device controlled by an electronic microprocessor or another manner, whether that device constitutes Class II Gaming or Class III Gaming, that allows a player or players to play games of chance, whether or not the outcome also is affected in some part by skill, and whether the device accepts coins, tokens, bills, coupons, ticket vouchers, pull tabs, smart cards, electronic in-house accounting system credits or other similar forms of consideration and, through the application of chance, allows a player to become entitled to a prize, which may be collected through the dispensing of coins, tokens, bills, coupons, ticket vouchers, smart cards, electronic in-house accounting system credits or other similar forms of value. Gaming Device does not include any of the following:

(1) Those technological aids for bingo games that function only as electronic substitutes for bingo cards.

(2) Devices that issue and validate paper lottery products and that are directly operated only by Arizona State Lottery licensed retailers and their employees.

(3) Devices that are operated directly by a lottery player and that dispense paper lottery tickets, if the devices do not identify winning or losing lottery tickets, display lottery winnings or disburse lottery winnings.

(4) Devices that are operated directly by a lottery player and that validate paper lottery tickets for a game that does not have a predetermined number of winning tickets, if:

(A) The devices do not allow interactive gaming;

(B) The devices do not allow a lottery player to play the lottery for immediate payment or reward;

(C) The devices do not disburse lottery winnings; and

(D) The devices are not Video Lottery Terminals.

(5) Player Activated Lottery Terminals.

(m) "Gaming Employee" means any person employed as a Primary Management Official or Key Employee of a Gaming Operation of the Tribe and any person employed in the operation or management of a Gaming Operation, including, but not limited to, any person whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public.

(n) "Gaming Facility" means the buildings or structures in which Class III Gaming, as authorized by this Compact, is conducted.

(o) "Gaming Facility Operator" means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe may from time to time designate by written notice to the State as the wholly-owned Tribal entity having full authority and responsibility for the operation and management of Class III Gaming Activities.

(p) "Gaming Operation" means any Gaming Activity conducted within any Gaming Facilities.

(q) "Gaming Ordinance" means any duly enacted ordinance of the Tribe which governs the conduct of Gaming Activities by the Tribe, all amendments thereto, and all regulations promulgated thereunder.

(r) "Gaming Services" means the providing of any goods or services, except for legal services, to the Tribe in connection with the operation of Class III Gaming in a Gaming Facility, including but not limited to equipment, transportation, food, linens, janitorial supplies, maintenance, or security services for the Gaming Facility, in an amount in excess of $10,000 in any single month.

(s) "Indian Lands" means lands as defined in 25 U.S.C. § 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

(t) "Interactive Terminal" or "Video Lottery Terminal" means an on-line computer or data-processing terminal capable of providing a source of both input and a video display output for the computer system to which it is connected, in which a player is playing against the algorithm of the terminal so that the player is playing directly against the terminal for immediate payment and is immediately rewarded or penalized based on the outcome, and which dispenses a paper receipt which can be redeemed by the player for the player's winnings.

(u) "Keno" means a house banking game in which a player selects from one to twenty numbers on a card that contains the numbers one through eighty; the house randomly draws twenty numbers; players win if the numbers they select correspond to the numbers drawn by the house, and the house pays all winners, if any, and collects from all losers.

(v) "Key Employee" means a Gaming Employee who performs one or more of the following functions:

(1) Counting room supervisor;
(2) Chief of security;
(3) Custodian of gaming supplies or cash;
(4) Floor manager; or
(5) Custodian of Gaming Devices including persons with access to cash and accounting records within such devices; or,

if not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or, if not otherwise included, the four most highly compensated persons in the Gaming Operation.

(w) "License" means an approval issued by the Tribal Gaming Office to any natural person or entity to be involved in the Gaming Operation or in the providing of Gaming Services to the Tribe.

(x) "Licensee" means any natural person or entity who has been licensed by the Tribal Gaming Office to be involved in the Gaming Operation or in the providing of Gaming Services to the Tribe.

(y) "Lotto" is the generic name for a type of on-line lottery game operated by the State of Arizona in which a player selects a group of numbers from a larger field of numbers and wins by matching specific numbers subsequently drawn.

(z) "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

(aa) "Management Contractor" means a natural person or entity that has entered into a Management Contract with the Tribe or a Gaming Facility Operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

(bb) "Manufacturer" means a natural person or entity that manufactures Gaming Devices and/or component parts thereof as defined by this Compact for use or play in the Gaming Facilities.

(cc) "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When "Person" is used to designate the violator or offender of any law, it includes a corporation, partnership or any association of Persons.

(dd) [intentionally omitted]

(ee) "Principal" means with respect to any Person:

(1) Each of its officers and directors;
(2) Each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer or general manager;
(3) Each of its owners or partners, if an unincorporated business;
(4) Each of its shareholders who own more than ten (10) percent of the shares of the corporation, if a corporation;

(5) Each Person other than a banking institution who has provided financing for the entity constituting more than ten (10) percent of the total financing of the entity; and
(6) Each of the beneficiaries, or trustees of a trust.

(ff) "Primary Management Official" means the Person having management responsibilities under a Management Contract; or any Person who has authority to hire and fire employees or to set up working policy for a Gaming Operation; or the chief financial officer or other Person who has

financial management responsibility for a Gaming Operation.

(gg) "State" means the State of Arizona, its authorized officials, agents and representatives.

(hh) "State Certification" means the process utilized by the State Gaming Agency to ensure that all Persons required to be certified are qualified to hold such certification in accordance with the provisions of this Compact.

(ii) "State Gaming Agency" means the agency of the State which the Governor may from time to time designate by written notice to the Tribe as the single State agency which shall act on behalf of the State under this Compact.

(jj) "Tribal Gaming Office" means the department, agency or commission designated by action of the Tribal Legislative Council as the Tribal entity which shall exercise the civil regulatory authority of the Tribe over Class III Gaming Activities by the Tribe.

(kk) "Tribal Police Department" means the police force of the Tribe established and maintained or contracted for by the Tribe pursuant to the Tribe's powers of self-government to carry out law enforcement by the Tribe.

(ll) "Tribe" means the [redacted] Indian Community, and its authorized officials, agents and representatives.

(mm) "Additional Gaming Devices" means the number of Additional Gaming Devices allocated to the Tribe in column (2) of the Tribe's row in the Table.

(nn) "Card Game Table" means a single table at which the Tribe conducts the card game of poker or blackjack.

(oo) "Class II Gaming Device" means a Gaming Device which, if operated on Indian Lands by an Indian tribe, would be Class II Gaming.

(pp) "Class III Gaming Device" means a Gaming Device which, if operated on Indian Lands by an Indian tribe, would be Class III Gaming.

(qq) "Class III Net Win" means gross gaming revenue, which is the difference between gaming wins and losses, before deducting costs and expenses.

(rr) "CPI Adjustment Rate" shall mean the quotient obtained as follows: the CPI Index for the sixtieth (60th) calendar month of the applicable five-year period for which the Wager limitations are being adjusted shall be divided by the CPI Index for the calendar month in which the Effective Date occurs. The CPI Index for the numerator and the denominator shall have the same base year. If the CPI Index is no longer published, or if the format of the CPI Index has changed so that this calculation is no longer possible, then another substantially comparable index shall be substituted in the formula by agreement of the Tribe and the State so that the economic effect of this calculation is preserved. If the parties cannot agree on the substitute index, the substitute index shall be determined by arbitration in accordance with Section 15.

(ss) "CPI Index" means the "United States City Average (All Urban Consumers) — All Items (1982-1984 = 100)" index of the Consumer Price Index published by the Bureau of Labor Statistics, United States Department of Labor.

(tt) "CPR" means the CPR Institute for Dispute Resolution.

(uu) "Current Gaming Device Allocation" means the number of Class III Gaming Devices allocated to the Tribe in column (1) of the Tribe's row in the Table as adjusted under Section 3(c)(4).

(vv) "Effective Date" means the day this Compact goes into effect after all of the following events have occurred:

(1) It is executed on behalf of the State and the Tribe;
(2) It is approved by the Secretary of the Interior;
(3) Notice of the Secretary of the Interior's approval is published in the Federal Register pursuant to the Act; and
(4) Each Indian tribe with a Gaming Facility in Maricopa, Pima or Pinal Counties has entered into a new Compact as defined in A.R.S. § 5-601.02(I)(6), each of which has been approved by the Secretary of the Interior, and notice of the Secretary of the Interior's approval has been published in the Federal Register pursuant to the Act, unless the Governor of the State waives the requirements of this Section 2(vv)(4).

(ww) "Forbearance Agreement" means an agreement between the State and an Indian tribe in which the Indian tribe that is transferring some or all of its Gaming Device Operating Rights waives its rights to put such Gaming Device Operating Rights into play during the term of a Transfer Agreement.

(xx) "Gaming Device Operating Right" means the authorization of an Indian tribe to operate Class III Gaming Devices pursuant to the terms of a new Compact as defined in A.R.S. § 5-601.02(I)(6).

(yy) "Maximum Devices Per Gaming Facility" means the total number of Class III Gaming Devices that the Tribe may operate within a single Gaming Facility.

(zz) "Multi-Station Device" means an electronic Class III Gaming Device that incorporates more than one Player Station and contains one central processing unit which operates the game software, including a single random number generator that determines the outcome of all games at all Player Stations for that Class III Gaming Device.

(aaa) "Player Activated Lottery Terminal" means an on-line computer system that is player activated, but that does not provide the player with interactive gaming, and that uses the terminal for dispensing purposes only, in which:

(1) The terminal algorithm is used for the random generation of numbers;
(2) The tickets dispensed by the terminal do not allow the player the means to play directly against the terminal;
(3) The player uses the dispensed ticket to participate in an off-site random drawing; and
(4) The player's ability to play against the terminal for immediate payment or reward is eliminated.

(bbb) "Player Station" means a terminal of a Multi-Station Device through which the player plays an electronic game of chance simultaneously with other players at other Player Stations of that Multi-Station Device, and which:

(1) Has no means to individually determine game outcome;
(2) Cannot be disconnected from the Gaming Device central processing unit that determines the game outcomes for all Player Stations without rendering that terminal inoperable; and
(3) Does not separately contain a random number generator or other means to

individually determine the game outcome.

(ccc) "Population Adjustment Rate" means the quotient obtained as follows: the State Population for the calendar year immediately preceding the calendar year in which the sixtieth (60th) calendar month of the applicable five-year period for which the applicable figure or amount is being adjusted occurs divided by the State Population for the calendar year immediately preceding the calendar year in which the Effective Date occurs. If the State Population is no longer published or calculated by the Arizona Department of Economic Security, then another substantially comparable agency of the State shall be substituted by agreement of the Tribe and the State so that the effect of this calculation is preserved. If the parties cannot agree on the substitute agency of the State to provide the State Population, the substitute agency or Person shall be determined by arbitration in accordance with Section 15.

(ddd) "Previous Gaming Facility Allocation" means the number of facilities allocated to the Tribe in column (3) of the Tribe's row in the Table.

(eee) "Revised Gaming Facility Allocation" means the number of facilities allocated to the Tribe in column (4) of the Tribe's row in the Table or by Section 3(c)(6).

(fff) "Rules" means the CPR Rules for Non-Administered Arbitration (2000 rev.).

(ggg) "State Population" means the population of the State as determined using the most recent estimates published by the Arizona Department of Economic Security.

(hhh) "Table" means the Gaming Device Allocation Table set out at Section 3(c)(5).

(iii) "Transfer Agreement" means a written agreement authorizing the transfer of Gaming Device Operating Rights between the Tribe and another Indian tribe.

(jjj) "Transfer Notice" means a written notice that the Tribe must provide to the State Gaming Agency of its intent to acquire or transfer Gaming Device Operating Rights pursuant to a Transfer Agreement.

(kkk) "Wager" means:

(1) In the case of a Gaming Device, the sum of money placed into the Gaming Device in cash, or cash equivalent, by the player which will allow activation of the next random play of the Gaming Device.

(2) In the case of poker, the sum of money placed into the pot and onto the Card Game Table by the player in cash, or cash equivalent, which entitles the player to an initial deal of cards, a subsequent deal of a card or cards, or which is required to be placed into the pot and onto the Card Game Table by the player entitling the player to continue in the game.

(3) In the case of blackjack, the sum of money in cash, or cash equivalent, placed onto the Card Game Table by the player entitling the player to an initial deal of cards and to all subsequent cards requested by the player.

SECTION 3. NATURE, SIZE AND CONDUCT OF CLASS III GAMING

(a) Authorized Class III Gaming Activities. Subject to the terms and conditions of this Compact, the Tribe is authorized to operate the following Gaming Activities: (1) Class III Gaming

Devices, (2) blackjack, (3) jackpot poker, (4) Keno, (5) lottery, (6) off-track pari-mutuel wagering, (7) pari-mutuel wagering on horse racing, and (8) pari-mutuel wagering on dog racing.

(b) Appendices Governing Gaming.

(1) Technical standards for Gaming Devices. The Tribe may only operate Class III Gaming Devices, including Multi-Station Devices, which comply with the technical standards set forth in Appendix A to this Compact. The Tribal Gaming Office shall require each licensed and certified Manufacturer and Distributor to verify under oath, on forms provided by the Tribal Gaming Office, that the Class III Gaming Devices manufactured or distributed by them for use or play at the Gaming Facilities meet the requirements of this Section 3(b)(1) and Appendix A. The Tribal Gaming Office and the State Gaming Agency by mutual agreement may require the testing of any Class III Gaming Device to ensure compliance with the requirements of this Section 3(b)(1) and Appendix A. Any such testing shall be at the expense of the licensed Manufacturer or Distributor.

(2) Operational standards for blackjack and jackpot poker. The Tribe shall conduct blackjack and jackpot poker in accordance with Appendix F(1) and Appendix F(2).

(3) Additional appendices.

(A) Except as provided in Sections 3(b)(1) and (2), the Tribe may not conduct any Gaming Activities authorized in this Compact without a mutually agreed-upon appendix setting forth the operational standards, specifications, regulations and any limitations governing such Gaming Activities. For purposes of this subsection, promotional activity conducted as a lottery is a Gaming Activity for which an appendix shall be required. Any disputes regarding the contents of such appendices shall be resolved in the manner set forth in Section 15.

(B) The Gaming Facility Operator shall conduct its Gaming Activities under an internal control system that implements the minimum internal control standards of the Commission as set forth in 25 C.F.R. part 542 as published in 64 Fed. Reg. 590 (Jan. 5, 1999) as may be amended from time to time, without regard to the Commission's authority to promulgate the standards. This requirement is met through compliance with Section 11.

(C) The Tribal Gaming Office and the State Gaming Agency may agree to amend the appendices to this Compact and may enter into additional appendices in order to continue efficient regulation and address future circumstances. A change in an appendix or the addition of a new appendix shall not be considered an amendment to this Compact.

(4) Security and surveillance requirements. The Tribe shall comply with the security and surveillance requirements set forth in Appendix C to this Compact.

(A) If the Gaming Facility Operator operates the surveillance system, the manager of the surveillance department may report to management of the Gaming Facility Operator regarding administrative and daily matters, but must report to a Person or Persons independent of the management of the Gaming Facility Operator (e.g., the Gaming Facility Operator's management board or a committee thereof, the Tribe's council or a committee thereof, or the Tribe's chairperson, president, or governor) regarding matters of policy, purpose,

responsibility, authority, and integrity of casino management.

(B) If the Tribal Gaming Office operates the surveillance system, the manager of its surveillance department must report directly to the executive director of the Tribal Gaming Office.

(5) On-line electronic game management system. Each Gaming Facility must have an on-line electronic game management system that meets the requirements of Appendix A.

(A) If the Tribe is Ak-Chin Indian Community, Ft. McDowell Yavapai Nation, Gila River Indian Community, Pascua Yaqui Tribe, Salt River Pima-Maricopa Indian Community, or Tohono O'odham Nation, then the Gaming Facility Operator shall provide the State Gaming Agency with real time read-only electronic access to the on-line electronic game management system for each Gaming Facility of the Tribe that is located within forty (40) miles of a municipality with a population of more than four hundred thousand (400,000), to provide the State Gaming Agency a more effective and efficient means of regulating Gaming Devices and tracking revenues.

(i) The State Gaming Agency's real time read-only electronic access shall be limited to the following data maintained by the on-line electronic game management system, provided that the data is available in real-time and providing real-time access does not result in the loss of accumulation of data elements: coin in; coin out; drop (bills and coins); individual bills denomination; vouchers; theoretical hold; variances; jackpots; machine fills; ticket in; ticket out; slot door opening; drop door opening; cash box opening; ticket in opening; ticket out opening; and no-communication. If providing this data in real-time would result in the loss of accumulation of data elements, the Gaming Facility Operator must provide the State Gaming Agency with access to the data via end-of-day reports containing the required data.

(ii) The State Gaming Agency shall phase in the system to provide it with real time read-only access to the on-line electronic game management system over a three-year period. The State Gaming Agency shall pay the cost of:

a. Constructing and maintaining a dedicated telecommunications connection between the Gaming Facility Operator's server room and the State Gaming Agency's offices;

b. Obtaining, installing, and maintaining any hardware or software necessary to interface between the Gaming Facility Operator's on-line electronic game management system and the dedicated telecommunications connection; and

c. Obtaining, installing, and maintaining any hardware or software required in the State Gaming Agency's offices.

(iii) The State Gaming Agency's dedicated telecommunications connection from its offices to each Gaming Facility must meet accepted industry standards for security sufficient to minimize the possibility of any third-party intercepting any data transmitted from the Gaming Facility

Operator's on-line electronic game management system over the connection. The State Gaming Agency's system security policy must meet accepted industry standards to assure that data received from the Gaming Facility Operator's on-line electronic game management system will not be accessible to unauthorized Persons or entities.

(B) The State Gaming Agency (and its officers, employees, and agents) are prohibited from:

(i) Using any information obtained from the Gaming Facility Operator's on-line electronic game management system for any purpose other than to carry out its duties under this Compact; and

(ii) Disclosing any information obtained from the Gaming Facility Operator's on-line electronic game management system to any Person outside the State Gaming Agency, except as provided in Section 7(b) and Section 12(c).

(c) Number of Gaming Device Operating Rights and Number of Gaming Facilities.

(1) Number of Gaming Devices. The Tribe's Gaming Device Operating Rights are equal to the sum of its Current Gaming Device Allocation, plus any rights to operate Additional Gaming Devices acquired by the Tribe in accordance with and subject to the provisions of Section 3(d). The Tribe may operate one Class III Gaming Device for each of the Tribe's Gaming Device Operating Rights.

(2) Class II Gaming Devices. The Tribe may operate up to forty (40) Class II Gaming Devices in a Gaming Facility without acquiring Gaming Device Operating Rights under Section 3(d), but such Class II Gaming Devices shall be counted against the Tribe's number of Additional Gaming Devices. Each Class II Gaming Device in excess of forty (40) that the Tribe operates within its Indian Lands shall be counted against the Tribe's Current Gaming Device Allocation.

(3) Number of Gaming Facilities and Maximum Devices Per Gaming Facility. The Tribe may operate Gaming Devices in the number of Gaming Facilities in column (3) or (4) of the Tribe's row in the Table, whichever is lower, but shall not operate more than its Maximum Devices Per Gaming Facility in any one Gaming Facility. The Maximum Devices Per Gaming Facility for the Tribe is the sum of the Tribe's Current Gaming Device Allocation (including automatic periodic increases under Section 3(c)(4)), plus the Tribe's Additional Gaming Devices, except if the Tribe is Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Pascua Yaqui Tribe, Tohono O'odham Nation, or Navajo Nation, then the Maximum Devices Per Gaming Facility is the same number as the Maximum Devices Per Gaming Facility for Ak-Chin Indian Community and Ft. McDowell Yavapai Nation. If the Tribe is the Tohono O'odham Nation, and if the Tribe operates four (4) Gaming Facilities, then at least one of the four (4) Gaming Facilities shall: a) be at least fifty (50) miles from the existing Gaming Facilities of the Tribe in the Tucson metropolitan area as of the Effective Date; b) have no more than six hundred forty-five (645) Gaming Devices; and c) have no more than seventy-five (75) Card Game Tables.

(4) Periodic increase. During the term of this Compact, the Tribe's Current Gaming Device Allocation shall be automatically increased (but not decreased), without the need to amend this Compact on each five-year anniversary of the Effective Date, to

the number equal to the Current Gaming Device Allocation specified in the Table multiplied by the Population Adjustment Rate (with any fractions rounded up to the next whole number).

(5) Gaming Device Allocation Table.

Listed Tribe	(1) Current Gaming Device Allocation	(2) Additional Gaming Devices	(3) Previous Gaming Facility Allocation	(4) Revised Gaming Facility Allocation
The Cocopah Indian Tribe	475	170	2	2
Fort Mojave Indian Tribe	475	370	2	2
Quechan Tribe	475	370	2	2
Tonto Apache Tribe	475	170	2	1
Yavapai-Apache Nation	475	370	2	1
Yavapai-Prescott Tribe	475	370	2	2
Colorado River Indian Tribes	475	370	2	2
San Carlos Apache Tribe	900	230	3	2
White Mountain Apache Tribe	900	40	3	2
Ak-Chin Indian Community	475	523	2	1
Fort McDowell Yavapai Nation	475	523	2	1
Salt River Pima-Maricopa Indian Community	700	830	3	2
Gila River Indian Community	1400	1020	4	3
Pascua Yaqui Tribe	900	670	3	2
Tohono O'odham Nation	1400	1020	4	4
Subtotal:	10,475		38	29
Non-gaming Tribes (as of 5/1/02):				
Havasupai Tribe	475		2	
Hualapai Tribe	475		2	
Kaibab-Paiute Tribe	475		2	
Hopi Tribe	900		3	
Navajo Nation	2400		4	
San Juan Southern Paiute Tribe	475		2	
Subtotal:	5,200		15	
State total:	15,675		53	

(6) If the Tribe is not listed on the Table, the Tribe's Current Gaming Device Allocation shall be four hundred seventy-five (475) Gaming Devices and the Tribe's Revised Gaming Facility Allocation shall be two (2) Gaming Facilities.

(7) Multi-Station Devices. No more than two and one-half percent (2.5%) of the Gaming Devices in a Gaming Facility (rounded off to the nearest whole number) may be Multi-Station Devices.

(d) Transfer of Gaming Device Operating Rights.

(1) Transfer requirements. During the term of this Compact, the Tribe may enter into a Transfer Agreement with one or more Indian tribes to acquire Gaming Device Operating Rights up to the Tribe's number of Additional Gaming

Devices or to transfer some or all of the Tribe's Gaming Device Operating Rights up to the Tribe's Current Gaming Device Allocation, except that if the Tribe is Navajo Nation, then the Tribe may transfer only up to 1400 Gaming Devices of its Current Gaming Device Allocation. The Tribe's acquisition or transfer of Gaming Device Operating Rights is subject to the following conditions:

(A) Gaming Compact. Each Indian tribe that is a party to a Transfer Agreement must have a valid and effective new Compact as defined in A.R.S. § 5-601.02(I)(6) that contains a provision substantially similar to this Section 3(d) permitting transfers of the Indian tribe's Gaming Device Operating Rights.

(B) Forbearance Agreement. If the Tribe enters into a Transfer Agreement to transfer some or all of its Gaming Device Operating Rights the Tribe shall also execute a Forbearance Agreement with the State. The Forbearance Agreement shall include:

(i) A waiver of all rights of the Tribe to put into play or operate the number of Gaming Device Operating Rights transferred during the term of the Transfer Agreement;

(ii) An agreement by the Tribe to reduce its Gaming Facility allocation during the term of the Transfer Agreement as follows:

Number of transferred Gaming Device Operating Rights	Reductions in Gaming Facility Allocation
1- 475	1
476 - 1020	2
1021 - 1400	3

a. If the Tribe's number under column (4) of the Table is lower than the Tribe's number under column (3), then the Tribe shall be credited for the reduction, if the Tribe enters into a Transfer Agreement.

b. The numbers in the column under number of transferred Gaming Device Operating Rights shall be increased on each five-year anniversary of the Effective Date by multiplying each such number, other than one (1), by the Population Adjustment Rate.

c. Reductions in the Gaming Facility allocation will be based on the cumulative total number of Gaming Device Operating Rights transferred by the Tribe under all Transfer Agreements that are in effect.

d. If the Tribe is the Navajo Nation, then the Tribe's

Gaming Facility allocation shall be two (2), even if the Tribe transfers up to 1400 Gaming Device Operating Rights.

(C) Gaming Facility not required. The Tribe may transfer unused Gaming Device Operating Rights whether or not it has a Gaming Facility Allocation.

(D) Current operation. The Tribe must operate Gaming Devices at least equal to its Current Gaming Device Allocation before, or simultaneously with, the Tribe acquiring the right to operate Additional Gaming Devices by a Transfer Agreement. The Tribe is not required to utilize any Gaming Device Operating Rights it acquires, or to utilize them prior to acquiring Additional Gaming Device Operating Rights.

(E) Transfer of acquired Gaming Device Operating Rights prohibited. The Tribe shall not at any time simultaneously acquire Gaming Device Operating Rights and transfer Gaming Device Operating Rights pursuant to Transfer Agreements.

(2) Transfer Agreements. Transfers of Gaming Device Operating Rights may be made pursuant to a Transfer Agreement between two Indian tribes. A Transfer Agreement must include the following provisions:

(A) Number. The number of Gaming Device Operating Rights transferred and acquired.

(B) Term. The duration of the Transfer Agreement.

(C) Consideration. The consideration to be paid by the Indian tribe acquiring the Gaming Device Operating Rights to the Indian tribe transferring the Gaming Device Operating Rights and the method of payment.

(D) Dispute resolution. The dispute resolution and enforcement procedures, including a provision for the State to receive notice of any such proceeding.

(E) Notice. A procedure to provide quarterly notice to the State Gaming Agency of payments made and received, and to provide timely notice of disputes, revocation, amendment, and termination.

(3) Transfer Notice. At least thirty (30) days prior to the execution of a Transfer Agreement, the Tribe must send to the State Gaming Agency a Transfer Notice of its intent to acquire or transfer Gaming Device Operating Rights. The Transfer Notice shall include a copy of the proposed Transfer Agreement, the proposed Forbearance Agreement and a copy of the Tribal resolution authorizing the acquisition or transfer.

(4) State Gaming Agency denial of transfer. The State Gaming Agency may deny a transfer as set forth in a Transfer Notice only if: (i) the proposed transfer violates the conditions set forth in Section 3(d)(1), or (ii) the proposed Transfer Agreement does not contain the minimum requirements listed in Section 3(d)(2). The State Gaming Agency's denial of a proposed transfer must be in

writing, must include the specific reason(s) for the denial (including copies of all documentation relied upon by the State Gaming Agency to the extent allowed by State law), and must be received by the Tribe within thirty (30) days of the State Gaming Agency's receipt of the Transfer Notice. If the Tribe disputes the State Gaming Agency's denial of a proposed transfer, the Tribe shall have the right to have such dispute resolved pursuant to Section 15.

(5) Effective date of transfer. If the Tribe does not receive a notice of denial of the transfer from the State Gaming Agency within the time period specified above, the proposed Transfer Agreement shall become effective on the later of the thirty-first (31st) day following the State Gaming Agency's receipt of the Transfer Notice or the date set forth in the Transfer Agreement.

(6) Use of brokers. The Tribe shall not contract with any Person to act as a broker in connection with a Transfer Agreement. No Person shall be paid a percentage fee or a commission as a result of a Transfer Agreement, nor shall any Person receive a share of any financial interest in the Transfer Agreement or the proceeds generated by the Transfer Agreement. Any Person acting as a broker in connection with a Transfer Agreement is providing Gaming Services.

(7) Revenue from Transfer Agreements. The Tribe agrees that: (i) all proceeds received by the Tribe as a transferor under a Transfer Agreement are net revenues from Tribal gaming as defined by the Act and that such proceeds shall be used for the purposes permitted under the Act; and (ii) the Tribe shall include the proceeds in an annual audit and shall make available to the State that portion of the audit addressing proceeds from Transfer Agreements.

(8) Agreed upon procedures report. The Tribe agrees to provide to the State Gaming Agency, either separately or with the other party to the Transfer Agreement, an agreed upon procedures report from an independent Certified Public Accountant. The procedures to be examined and reported upon are whether payments made under the Transfer Agreement were made in the proper amount, made at the proper time, and deposited in an account of the Indian tribe transferring Gaming Device Operating Rights.

(9) State payment. Proceeds received by the Tribe as a transferor under a Transfer Agreement from the transfer of Gaming Device Operating Rights are not subject to any payment to the State under this Compact or otherwise.

(10) Compact enforcement; effect on Transfer Agreements. If the Tribe acquires Gaming Device Operating Rights under a Transfer Agreement, no dispute between the State and the other party to the Transfer Agreement shall affect the Tribe's rights under the Transfer Agreement or the Tribe's obligations to make the payments required under the Transfer Agreement. If the Tribe transfers Gaming Device Operating Rights under a Transfer Agreement, no dispute between the State and the other party to the Transfer Agreement shall affect the Tribe's rights under the Transfer Agreement or the obligations of the other party to the Transfer Agreement to make the payments required under the Transfer Agreement. These provisions shall not apply to a dispute among the State and both parties to a Transfer Agreement regarding the validity of a Transfer Agreement or to a dispute between the parties to a Transfer Agreement regarding a breach of the Transfer Agreement.

(11) Access to records regarding Transfer Agreement. The State Gaming Agency

shall have access to all records of the Tribe directly relating to Transfer Agreements and Forbearance Agreements under Section 7(b).

(12) Transfer and acquisition of pooled Gaming Devices.

(A) The Tribe is authorized to join with other Indian tribes to periodically establish a pool to collect Gaming Device Operating Rights from Indian tribes that desire to transfer Gaming Device Operating Rights and transfer them to Indian tribes that desire to acquire Gaming Device Operating Rights. If the Tribe is operating all of its Current Gaming Device Allocation and, after making reasonable efforts to do so, the Tribe is not able to acquire Additional Gaming Devices pursuant to an agreement described in section 3(d)(2), the Tribe may acquire Additional Gaming Devices up to the number specified in the Table for the Tribe from a transfer pool under procedures agreed to by Indian tribes participating in the transfer pool and the State.

(B) The Tribe and the State are authorized to establish a pooling mechanism, under procedures agreed to by the Tribe and the State, by which the rights to operate Gaming Devices that are not in operation may be acquired by an Indian tribe through an agreement with the State. If the Tribe is operating all of its Current Gaming Device Allocation and, after making reasonable efforts to do so, the Tribe is not able to acquire Additional Gaming Devices pursuant to an agreement described in Section 3(d)(2) or from any transfer pool established pursuant to Section 3(d)(12)(A) within 90 days after the opening of a transfer pool established pursuant to Section 3(d)(12)(A), the Tribe may acquire Additional Gaming Devices from the State up to the number specified in the Table for the Tribe at a price that is at least one hundred percent (100%) of the highest price paid to date for the transfer of at least one hundred (100) Gaming Device Operating Rights for a term of at least five (5) years. The monies paid by an Indian tribe to acquire Additional Gaming Devices under an agreement pursuant to this Section 3(d)(12)(B) shall benefit Indian tribes that have the right to operate Gaming Devices that are eligible to be transferred and are not in operation. The State shall provide Indian tribes that are eligible to enter into an agreement with the State pursuant to this Section 3(d)(12)(B) the opportunity to participate in the pool pursuant to the procedures agreed to by the Tribe and the State.

(C) Prior to agreeing to any procedures with any Indian tribe pursuant to Sections 3(d)(12)(A) or (B), the State shall provide notice to the Tribe of the proposed procedures.

(e) Number of Card Game Tables.

(1) Number of Card Game Tables; number of players per game. Subject to the terms and conditions of this Compact, the Tribe is authorized to operate up to seventy-five (75) Card Game Tables within each Gaming Facility that is located more than forty (40) miles from any municipality with a population of more than four hundred thousand (400,000) Persons; and up to one hundred (100) Card Game Tables within each Gaming Facility that is located within forty (40) miles of a municipality with a population of more than four hundred thousand (400,000) Persons. Each blackjack table shall be limited to no more than

seven (7) available player positions plus the dealer. Each poker table shall be limited to no more than ten (10) available player positions plus the dealer. The Tribe agrees that it will not operate card games outside of a Gaming Facility.

(2) Periodic increases in the number of Card Game Tables. The number of Card Game Tables that the Tribe is authorized to operate in each Gaming Facility shall be automatically increased (but not decreased), without the need to amend this Compact on each five-year anniversary of the Effective Date, to the number that is equal to the number of Card Game Tables the Tribe is authorized to operate in each Gaming Facility set forth in Section 3(e)(1) multiplied by the applicable Population Adjustment Rate (with any fraction rounded up to the next whole number).

(f) Number of Keno Games. Subject to the terms and conditions of this Compact, the Tribe is authorized to operate no more than two (2) Keno games per Gaming Facility.

(g) Inter-Tribal Parity Provisions.

(1) Gaming Devices. Except as provided in Section 3(g)(5), if, during the term of this Compact:

(A) An Indian tribe listed on the Table is authorized or permitted to operate in the State:

(i) More Class III Gaming Devices than the total number of that Indian Tribe's Current Gaming Device Allocation in column (1) of the Table, plus the number of that Indian Tribe's Additional Gaming Devices in column (2) of the Table; or

(ii) More Class III Gaming Devices than that Indian Tribe's Current Gaming Device Allocation in column (1) of the Table without acquiring Gaming Device Operating Rights pursuant to and in accordance with Section 3(d); or

(iii) More Class III Gaming Devices within a single Gaming Facility than that Indian Tribe's Maximum Devices Per Gaming Facility (as adjusted in accordance with Section 3(c)(3); or

(B) Any Indian tribe not listed on the Table is authorized or permitted after the Effective Date to operate in the State more than four hundred seventy-five (475) Class III Gaming Devices, or more than five hundred twenty-three (523) Additional Gaming Devices under terms other than Section 3(d); then

(C) The following remedies shall be available to the Tribe to elect, as the Tribe may determine in its sole discretion, from time to time:

(i) The Tribe shall automatically be entitled to a greater number of Gaming Device Operating Rights, without the need to amend this Compact and without the need to acquire any Gaming Device Operating Rights under Section 3(d). The greater number of Gaming Device Operating Rights is the product of a ratio (which is the total number of Class III Gaming Devices the

other Indian tribe is in fact authorized or permitted to operate following the occurrence of any of the events specified in subsections (A) or (B) of this Section 3(g)(1) divided by the total number assigned to the other Indian tribe under column (1) plus column (2) of the Table multiplied by the total number assigned to the Tribe in column (1) plus column (2) of the Table. If the Tribe is not listed on the tTble, then the ratio described in the previous sentence is multiplied by the Tribe's total number of Gaming Devices authorized in the Compact; and

(ii) The Tribe shall automatically be entitled to immediately reduce its obligations to make contributions to the State under Section 12. Instead of the amounts payable under Section 12(b), the Tribe shall make quarterly contributions to the State equal to seventy-five hundredths of one percent (.75%) of its Class III Net Win for the prior quarter. This remedy will not be available after any Indian tribe with a new Compact as defined in A.R.S. § 5-601.02(I)(6) enters its final renewal period as described in Section 23(b)(3).

(2) Contribution terms. If, during the term of this Compact any other Indian tribe is authorized or permitted to operate Gaming Devices in the State and the terms of the other Indian tribe's obligation to make contributions to the State are more favorable to the other Indian tribe than the obligation of the Tribe to make contributions to the State under the terms of Section 12, then the Tribe may elect to have Section 12 automatically amended to conform to those more favorable terms.

(3) Additional Class III Gaming. Except as provided in Section 3(g)(5), if during the term of this Compact, any Indian tribe is authorized to operate:

(A) A form of Class III Gaming in the State that is not listed in Section 3(a), then the Tribe shall be entitled to operate the additional form of gaming that the other Indian tribe is authorized to operate, without the need to amend this Compact.

(B) Blackjack on more Card Game Tables per Gaming Facility than authorized under this Compact, then the Tribe shall be entitled to operate blackjack on the additional number of Card Game Tables that the other Indian tribe is authorized to operate, without the need to amend this Compact.

(4) Wager limits. Except as provided in Section 3(g)(5), if, during the term of this Compact, any Indian tribe is authorized or permitted to operate in the State any Class III Gaming Devices or Card Game Tables with higher Wager limits than the Wager limits specified in Section 3, then the Tribe is also authorized to operate its Gaming Devices and/or Card Game Tables with the same higher Wager limits, without the need to amend this Compact.

(5) Exceptions. The provisions of Section 3(g) shall not be triggered:

(A) By the automatic periodic increases in: (i) the Current Gaming Device Allocation provided in Section 3(c)(4), or the resulting increase in the

Maximum Device Per Gaming Facility; (ii) the number of authorized Card Game Tables provided in Section 3(e)(2); or (iii) the authorized Wager limits for Gaming Devices or Card Game Tables provided in Section 3(m)(4);

(B) If the State enters into a compact with an Indian tribe listed as a non-gaming tribe on the Table that provides a number of Additional Gaming Devices that is no greater than the largest number of Additional Gaming Devices shown on the Table for another Indian tribe with the same Current Gaming Device Allocation as shown on the Table for such non-gaming tribe; or

(C) By the provisions of a pre-existing compact as defined in A.R.S. § 5-601.02(I)(5).

(h) Additional Gaming Due to Changes in State Law with Respect to Persons Other Than Indian Tribes.

(1) If, on or after May 1, 2002, State law changes or is interpreted in a final judgment of a court of competent jurisdiction or in a final order of a State administrative agency to permit either a Person or entity other than an Indian tribe to operate Gaming Devices; any form of Class III Gaming (including Video Lottery Terminals) that is not authorized under this Compact, other than gambling that is lawful on May 1, 2002 pursuant to A.R.S. § 13-3302; or poker, other than poker that is lawful on May 1, 2002 pursuant to A.R.S. § 13-3302, then, upon the effective date of such State law, final judgment, or final order:

(A) The Tribe shall be authorized under this Compact to operate Class III Gaming Devices without limitations on the number of Gaming Devices, the number of Gaming Facilities, or the Maximum Gaming Devices Per Gaming Facility, and without the need to amend this Compact;

(B) The Tribe shall be authorized under this Compact to operate table games, without limitations on the number of Card Game Tables, on Wagers, or on the types of games, and without the need to amend this Compact, subject to the provisions of Section 3(b)(3); and

(C) In addition to Sections 3(h)(1)(A) and (B), the Tribe's obligation under Section 12 to make contributions to the State shall be immediately reduced. Instead of the amounts payable under Section 12(b), the Tribe shall make quarterly contributions to the State equal to seventy-five hundredths of one percent (.75%) of its Class III Net Win for the prior quarter.

(2) The provisions of this Section 3(h) shall not apply to casino nights operated by non-profit or charitable organizations pursuant to and qualified under A.R.S. § 13-3302(B); to social gambling as defined in A.R.S. § 13-3301(7); to any paper product lottery games, including ticket dispensing devices of the nature used prior to May 1, 2002, by the Arizona lottery; or to low-wager, non-banked recreational pools or similar activities operated by and on the premises of retailers licensed under Title 4, Arizona Revised Statutes, as may be authorized by State law.

(i) Notice. Prior to the Tribe obtaining rights under Sections 3(g) or (h), either the Tribe

or the State must first give written notice to the other describing the facts which the Tribe or the State contend either do or may satisfy the elements of Sections 3(g) or (h). The receiving party shall serve a written response on the other party within thirty (30) days of receipt of the notice. If the parties do not agree on whether Sections 3(g) or (h) have been triggered, the dispute may be submitted to dispute resolution under Section 15 by either the Tribe or the State.

(j) Location of Gaming Facility.

(1) All Gaming Facilities shall be located on the Indian Lands of the Tribe. All Gaming Facilities of the Tribe shall be located not less than one and one-half (1½) miles apart unless the configuration of the Indian Lands of the Tribe makes this requirement impracticable. The Tribe shall notify the State Gaming Agency of the physical location of any Gaming Facility a minimum of thirty (30) days prior to commencing Gaming Activities at such location. Gaming Activity on lands acquired after the enactment of the Act on October 17, 1988 shall be authorized only in accordance with 25 U.S.C. § 2719.

(2) Notice to surrounding communities. The Tribe shall notify surrounding communities regarding new or substantial modifications to Gaming Facilities and shall develop procedures for consultation with surrounding communities regarding new or substantial modifications to Gaming Facilities.

(k) Financial Services in Gaming Facilities. The Tribe shall enact a Tribal ordinance establishing responsible restrictions on the provision of financial services at Gaming Facilities. At a minimum, the ordinance shall prohibit:

(1) Locating an automatic teller machine ("ATM") adjacent to, or in close proximity to, any Gaming Device;

(2) Locating in a Gaming Facility an ATM that accepts electronic benefit transfer cards issued pursuant to a state or federal program that is intended to provide for needy families or individuals;

(3) Accepting checks or other non-cash items issued pursuant to a state or federal program that is intended to provide for needy families or individuals; and

(4) The Gaming Facility Operator from extending credit to any patron of a Gaming Facility for Gaming Activities.

(l) Forms of Payment for Wagers. All payment for Wagers made for Gaming Activities conducted by the Tribe on its Indian Lands, including the purchase of tokens for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. ATMs may be installed at a Gaming Facility.

(m) Wager Limitations.

(1) For Gaming Devices. The maximum Wager authorized for any single play of a Gaming Device is twenty five dollars ($25.00).

(2) For blackjack. The maximum Wager authorized for any single initial Wager on a hand of blackjack by each individual player shall be (A) five hundred dollars ($500.00) at up to ten (10) Card Game Tables per Gaming Facility, and (B) two hundred and fifty dollars ($250.00) for all other Card Game Tables in a Gaming Facility. The foregoing maximum Wager limits shall apply to each subsequent

Wager that an individual player shall be entitled to make on the same hand as the result of "splits" and/or "doubling down" during the play of such hand.

(3) For poker. The Wager limits for a hand of poker shall be (A) $75.00/$150.00 at up to ten (10) Card Game Tables per Gaming Facility, and (B) $20.00/$40.00 for all other Card Game Tables in a Gaming Facility.

(4) Periodic increases in Wager limitations. During the term of this Compact, the Wager limitations set forth in this Section 3(m) shall each be automatically increased (but not decreased) without the need to amend this Compact on each five-year anniversary of the Effective Date to an amount equal to the Wager limitations specified in Sections 3(m)(1), (2) and (3) multiplied by the CPI Adjustment Rate (with all amounts rounded up to the next whole dollar). The Tribe will notify the State Gaming Agency of such Wager limitation adjustments as soon as reasonably possible after the CPI Adjustment Rate has been determined.

(n) Hours of Operation. The Tribe may establish by ordinance or regulation the permissible hours and days of operation of Gaming Activities; provided, however, that with respect to the sale of liquor the Tribe shall comply with all applicable State liquor laws at all Gaming Facilities.

(o) Ownership of Gaming Facilities and Gaming Activities. The Tribe shall have the sole proprietary interest in the Gaming Facilities and Gaming Activities. This provision shall not be construed to prevent the Tribe from granting security interests or other financial accommodations to secured parties, lenders, or others, or to prevent the Tribe from entering into leases or financing arrangements.

(p) Prohibited Activities. Any Class III Gaming not specifically authorized in this Section 3 is prohibited. Except as provided herein, nothing in this Compact is intended to prohibit otherwise lawful and authorized Class II Gaming upon the Tribe's Indian Lands or within the Gaming Facilities.

(q) Operation as Part of a Network. Gaming Devices authorized pursuant to this Compact may be operated to offer an aggregate prize or prizes as part of a network, including a network:

(1) With the Gaming Devices of other Indian tribes located within the State that have entered into tribal-state gaming compacts with the State, or

(2) Beyond the State pursuant to a mutually-agreed appendix containing technical standards for wide area networks.

(r) Prohibition on Firearms. The possession of firearms by any Person within a Gaming Facility shall be strictly prohibited. This prohibition shall not apply to certified law enforcement officers authorized to be on the premises as well as any private security service retained to provide security at a Gaming Facility, or armored car services.

(s) Financing. Any third-party financing extended or guaranteed for the Gaming Operation and Gaming Facilities shall be disclosed to the State Gaming Agency, and any Person extending such financing shall be required to be licensed by the Tribe and annually certified by the State Gaming Agency, unless said Person is an agency of the United States or a lending institution licensed and regulated by the State or the United States.

(t) Record-Keeping. The Gaming Facility Operator or the Tribal Gaming Office, whichever conducts surveillance, shall maintain the following logs as written or computerized records which shall be available for inspection by the State Gaming Agency in accordance with Section 7(b):

a surveillance log recording all material surveillance activities in the monitoring room of the Gaming Facilities; and a security log recording all unusual occurrences investigated by the Tribal Gaming Office. The Gaming Facility Operator or the Tribal Gaming Office, whichever conducts surveillance, shall retain video recordings made in accordance with Appendix C for at least seven (7) days from the date of original recording.

(u) Barred Persons. The Tribal Gaming Office shall establish a list of Persons barred from the Gaming Facilities because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of the Gaming Activities of the Tribe. The Tribal Gaming Office shall employ its best efforts to exclude Persons on such list from entry into its Gaming Facilities. To the extent not previously provided, the Tribal Gaming Office shall send a copy of its list on a monthly basis to the State Gaming Agency, along with detailed information regarding why the Person has been barred and the barred Person's photograph, driver's license information, and/or fingerprints, to the extent these items are in the possession of the Tribal Gaming Office. The State Gaming Agency will establish a list which will contain the names, and to the extent available, photographs of, and other relevant information regarding, Persons whose reputations, conduct, or criminal history is such that their presence within a Gaming Facility may pose a threat to the public health, safety, or welfare. Such Persons will be barred from all tribal Gaming Facilities within the State. The Tribe agrees that the State Gaming Agency may disseminate this list, which shall contain detailed information about why each Person is barred, to all other tribal gaming offices.

(v) Problem Gambling.

(1) Signage. At all public entrances and exits of each Gaming Facility, the Gaming Facility Operator shall post signs stating that help is available if a Person has a problem with gambling and, at a minimum, provide the Statewide toll free crisis hotline telephone number established by the Arizona State Lottery Commission.

(2) Self-exclusion. The State Gaming Agency and the Tribe shall comply with the following provisions:

(A) The State Gaming Agency shall establish a list of Persons who, by acknowledging in a manner to be established by the State Gaming Agency that they are problem gamblers, voluntarily seek to exclude themselves from Gaming Facilities. The State Gaming Agency shall establish procedures for the placement on and removal from the list of self-excluded Persons. No Person other than the Person seeking voluntary self-exclusion shall be allowed to include any Person's name on the self-exclusion list of the State Gaming Agency.

(B) The Tribe shall establish procedures for advising Persons who inquire about self-exclusion about the State Gaming Agency's procedures.

(C) The State Gaming Agency shall compile identifying information concerning self-excluded Persons. Such information shall contain, at a minimum, the full name and any aliases of the Person, a photograph of the Person, the social security or driver's license number of the Person, and the mailing address of the Person.

(D) The State Gaming Agency shall, on a monthly basis, provide the compiled information to the Tribal Gaming Office. The Tribe shall treat the information received from the State Gaming Agency under this Section as confidential and such information shall not be disclosed

except to the Gaming Facility Operator and other tribal gaming offices for inclusion on their lists, or to appropriate law enforcement agencies if needed in the conduct of an official investigation or unless ordered by a court of competent jurisdiction.

(E) The Tribal Gaming Office shall add the self-excluded Persons from the list provided by the State Gaming Agency to its own list of self-excluded Persons.

(F) The Tribal Gaming Office shall require the Gaming Facility Operator to remove all self-excluded Persons from all mailing lists and to revoke any slot or player's cards. The Tribal Gaming Office shall require the Gaming Facility Operator to take reasonable steps to ensure that cage personnel check a Person's identification against the State Gaming Agency's list of self-excluded Persons before allowing the Person to cash a check or complete a credit card cash advance transaction.

(G) The Tribal Gaming Office shall require the Gaming Facility Operator to take reasonable steps to identify self-excluded Persons who may be in a Gaming Facility and, once identified, promptly escort the self-excluded Person from the Gaming Facility.

(H) The Tribal Gaming Office shall prohibit the Gaming Facility Operator from paying any hand-paid jackpot to a Person who is on the Tribal or State Gaming Agency self-exclusion list. Any jackpot won by a Person on the self-exclusion list shall be donated by the Gaming Facility Operator to an Arizona-based non-profit charitable organization.

(I) Neither the Tribe, the Gaming Facility Operator, the Tribal Gaming Office, nor any employee thereof shall be liable to any self-excluded Person or to any other party in any proceeding and neither the Tribe, the Gaming Facility Operator, nor the Tribal Gaming Office shall be deemed to have waived its sovereign immunity with respect to any Person for any harm, monetary or otherwise, which may arise as a result of:

(i) The failure of the Gaming Facility Operator or the Tribal Gaming Office to withhold or restore gaming privileges from or to a self-excluded Person; or

(ii) Otherwise permitting a self-excluded Person to engage in Gaming Activity in a Gaming Facility while on the list of self-excluded Persons.

(J) Neither the Tribe, the Gaming Facility Operator, the Tribal Gaming Office, nor any employee thereof shall be liable to any self-excluded Person or to any other party in any proceeding, and neither the Tribe, the Gaming Facility Operator, nor the Tribal Gaming Office shall be deemed to have waived its sovereign immunity with respect to any Person for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of the identity of any self-excluded Person or Persons.

(K) Notwithstanding any other provision of this Compact, the State Gaming

Agency's list of self-excluded Persons shall not be open to public inspection.

(w) Restriction on Minors.

(1) Until May 31, 2003, no Person under 18 years of age shall be permitted to place any Wager, directly or indirectly, in any Gaming Activity.

(2) Prior to May 31, 2003, the Tribe shall enact, as Tribal law, a requirement that beginning June 1, 2003, no Person under 21 years of age shall be permitted to place any Wager, directly or indirectly, in any Gaming Activity.

(3) If, during the term of the Compact, the State amends its law to permit wagering by Persons under 21 years of age in any gaming activity by a Person or entity other than an Indian tribe, the Tribe may amend Tribal law to reduce the lawful gaming age under this Compact to correspond to the lawful gaming age under State law.

(4) No Person under 18 years of age shall be employed as a Gaming Employee. No Person under 21 years of age shall be employed in the service of alcoholic beverages at any Gaming Facility, unless such employment would be otherwise permitted under State law.

(x) Advertising.

(1) Right to advertise. The State and the Tribe recognize the Tribe's constitutional right to engage in advertising of lawful Gaming Activities and nothing in this Compact shall be deemed to abrogate or diminish that right.

(2) Prohibition on advertising directed to minors. The Gaming Facility Operator shall not advertise or market Gaming Activities in a manner that specifically appeals to minors.

(3) Advertising guidelines. Within thirty days after the Effective Date, the Gaming Facility Operator shall adopt guidelines for the advertising and marketing of Gaming Activities that are no less stringent than those contained in the American Gaming Association's general advertising guidelines.

(4) Content of advertising. In recognition of the Tribe's constitutional right to advertise Gaming Activities, the specific content of advertising and marketing materials shall not be subject to the provisions of Section 15 of this Compact.

(y) Internet Gaming. The Tribe shall not be permitted to conduct gaming on the Internet unless Persons other than Indian tribes within the State or the State are authorized by State law to conduct gaming on the Internet.

(z) Lottery Products. The Tribe will not offer paper lottery products in competition with the Arizona Lottery's Pick or Powerball games.

(aa) Annual Statement. The Tribe shall certify annually to the State Gaming Agency that it is in compliance with the Act regarding the Tribe's use of net revenues from Class III Gaming Activity. The Tribe shall also produce to the State Gaming Agency within seven (7) days of receipt copies of any federal report, finding, or other written communication asserting a lack of compliance

with the Act's requirements on the Tribe's use of net revenues from Class III Gaming Activity.

SECTION 4. TRIBAL-STATE LICENSING AND CERTIFICATION REQUIREMENTS

(a) Gaming Facility Operator and Gaming Facility. The Gaming Facility Operator, and all Gaming Facilities authorized by this Compact, shall be licensed by the Tribal Gaming Office in conformance with the requirements of this Compact prior to commencement of operation, and annually thereafter. The licensing of the Gaming Facility Operator shall include the licensing of each Principal, Primary Management Official and Key Employee. Prior to the initial commencement of the operation, the State Gaming Agency and Tribal Gaming Office shall verify compliance with this requirement through a joint pre-operation inspection and letter of compliance. The State Gaming Agency shall send a compliance letter within seven (7) working days after the completion of the inspection if the inspection reveals that the Gaming Facility Operator and Gaming Facilities comport with the terms of this Compact. If the State Gaming Agency determines that the Gaming Facility Operator and Gaming Facility do not comport with the terms of this Compact a non-compliance letter shall be sent within seven (7) working days of the inspection that shall set forth the matters of non-compliance upon which the State Gaming Agency bases its decision. If a dispute arises during the inspection, it shall be resolved pursuant to Section 15 of this Compact.

(b) Gaming Employees. Every Gaming Employee shall be licensed by the Tribal Gaming Office and every employee of the Tribal Gaming Office shall be licensed by the Tribe. Except as otherwise provided in this Section 4(b), any Gaming Employee or Tribal Gaming Office employee that is not an Enrolled Tribal Member shall also be certified by the State Gaming Agency prior to commencement of employment, and annually thereafter, subject to the temporary certification provided in Section 5(n). Enrolled Tribal Members are not required to be certified by the State as a condition of employment. Gaming Employees that hold the following positions are also not required to be certified by the State, so long as they do not have unescorted access to secure areas such as Gaming Device storage and repair areas, count rooms, vaults, cages, change booths, change banks/cabinets, security offices and surveillance rooms, revenue accounting offices, and rooms containing information systems that monitor or control Gaming Activities (or, as may be agreed to by the State Gaming Agency and the Tribal Gaming Office in a separate agreement delineating the secure areas in the Tribe's Gaming Facilities):

(1) Food and beverage service personnel such as chefs, cooks, waiters, waitresses, bus persons, dishwashers, food and beverage cashiers, and hosts;
(2) Gift shop managers, assistant managers, cashiers, and clerks;
(3) Greeters;
(4) Landscapers, gardeners, and groundskeepers;
(5) Maintenance, cleaning, and janitorial personnel;
(6) Stewards and valets;
(7) Wardrobe personnel;
(8) Warehouse personnel; and
(9) Hotel personnel.

(c) Management Contractors. Any Management Contractor, including its Principals, engaged by the Tribe to assist in the management or operation of the Gaming Facilities or Gaming Activities shall be subject to the licensing requirements of the Tribal Gaming Office, and shall be required to obtain State Certification prior to providing management services for Class III Gaming authorized by this Compact. The certification shall be renewed annually thereafter.

(d) Manufacturers and Distributors of Gaming Devices and Suppliers of Gaming Services.

Each Manufacturer and Distributor of Gaming Devices, and each Person providing Gaming Services, within or without the Gaming Facility, shall be licensed by the Tribal Gaming Office and shall be certified by the State Gaming Agency prior to the sale or lease of any Gaming Devices or Gaming Services. The Tribe shall provide to the State Gaming Agency a list of the names and addresses of all vendors providing Gaming Services on a periodic basis at the time of the meetings required pursuant to Section 6(h) of this Compact. Utility companies that are the sole available source of any particular service to a Gaming Facility are not required to be certified. A vendor licensed and regulated by another governmental agency may submit a supplement to the application on file with the other agency. The State Gaming Agency may waive the requirement that a vendor be certified if it determines that certifying the vendor is not necessary to protect the public interest.

SECTION 5. PROCEDURES FOR TRIBAL LICENSING AND STATE CERTIFICATION

(a) Procedures for Tribal License Applications and State Certification. Every Applicant for a Tribal gaming license and every Applicant for State Certification shall submit the completed Application, along with any required information, to both the Tribe or Tribal Gaming Office, as applicable, and, except as provided in this Section 5(a), to the State Gaming Agency. Each Application for State Certification and for a Tribal license shall be accompanied, as required, by the Applicant's fingerprint card(s), current photograph, and the fee required by the State Gaming Agency or the Tribe or Tribal Gaming Office, as applicable. Gaming Employees who are not required to have State Certification or recommendation under Section 4(b) because they occupy one of the positions in Sections 4(b)(1) through (9) and do not have access to secure areas as described in that Section are not required to send Applications or pay the fees to the State Gaming Agency for State Certifications, recommendations, or renewals, but the State Gaming Agency may review the Applications and background investigations, may conduct background investigations as authorized by Section 5(b)(3), and may invoke the administrative process in Section 5(q) with respect to these employees.

(b) Background Investigation of Applicants.

(1) Upon receipt of a completed Application and required fee for Tribal licensing, the Tribe or Tribal Gaming Office, as applicable, shall conduct the necessary background investigation to ensure the Applicant is qualified for Tribal licensing. Upon completion of the necessary background investigation, the Tribe or Tribal Gaming Office, as applicable, shall either issue a Tribal license, or deny the Application. If the Application for licensing is denied, a statement setting forth the grounds for denial shall be forwarded to the State Gaming Agency together with all other documents relied upon by the Tribe or Tribal Gaming Office, as applicable, to the extent allowed by law.

(2) Upon receipt of a completed Application and required fee for State Certification, the State Gaming Agency shall conduct the necessary background investigation to ensure the Applicant is qualified for State Certification. The State Gaming Agency shall expedite State Certification Applications. Upon completion of the necessary background investigation, the State Gaming Agency shall either issue a State Certification, or deny the Application. If the Application for certification is denied, a statement setting forth the grounds for denial shall be forwarded to the Tribe or Tribal Gaming Office, as applicable, together with all other documentation relied upon by the State Gaming Agency to the extent allowed by State law. Consistent with the provisions of Section 5(a), the State shall also conduct background investigations of all Applicants for Tribal licenses and, consistent with Section 5(q), shall provide the Tribe or Tribal Gaming Office, as applicable, with a written recommendation as to whether the Applicant should be licensed.

(3) The Tribe or Tribal Gaming Office, as applicable, and the State Gaming Agency shall retain the right to conduct additional background investigations of any Person required to be licensed or certified at any time, while the license or certification remains valid.

(c) Notification to Applicant. The Applicant for State Certification shall be notified by the Tribe or Tribal Gaming Office, as applicable, of the status of the Application within ten (10) days after receiving the State Gaming Agency's recommendation for certification or denial.

(d) Tribal Employment Standards. Neither the issuance of a license by the Tribe or Tribal Gaming Office nor the issuance of certification by the State Gaming Agency creates or implies a right of employment or continued employment. The Tribal Gaming Office and Gaming Facility Operator shall not employ and, if already employed, shall terminate a Tribal Gaming Office employee or Gaming Employee if it is determined that the Applicant:

(1) has been convicted of any felony or gaming offense;

(2) has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her employment Application or background questionnaire; or

(3) is determined 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, and methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(e) Notification of Change of Principals. After an entity is licensed by the Tribal Gaming Office, or certified by the State Gaming Agency, it shall file a report of each change of its Principals with the Tribal Gaming Office and the State Gaming Agency. Each new Principal shall file a complete Application within (30) days after appointment or election. The Tribal Gaming Office shall forward a copy of the Application to the State Gaming Agency. The entity's License shall remain valid unless the Tribal Gaming Office disapproves the change or denies the Application. The entity's certification shall remain valid unless the State Gaming Agency disapproves the change or denies the Application.

(f) Grounds for Revocation, Suspension or Denial of State Certification. The State Gaming Agency may revoke, suspend or deny a State Certification when an Applicant or holder of certification:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of this Compact or its appendices or any provision of any State Gaming Agency rule, or when any such violation has occurred upon any premises occupied or operated by any such Person or over which he or she has substantial control;

(2) Knowingly causes, aids, abets, or conspires with another to cause any Person to violate any of the laws of the State or the rules of the State or the Tribal Gaming Office, or the provisions of this Compact or its appendices;

(3) Has obtained a State Certification or tribal license by fraud, misrepresentation, concealment or through inadvertence or mistake;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payment or reports to any tribal, state or United States governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses or of bribing or otherwise unlawfully influencing a public official or employee of a tribe, any state of the United States or of any crime, whether a felony or misdemeanor, involving any Gaming Activity or physical harm to individuals or moral turpitude;

(5) Makes a misrepresentation of, or fails to disclose, a material fact to the State Gaming Agency or the Tribe or Tribal Gaming Office;

(6) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this Section;

(7) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (d) of this Section; provided that, at the request of an Applicant for an original certification, the State Gaming Agency may defer decision upon the Application during the pendency of such prosecution or appeal;

(8) Has had a gaming license issued by any state or tribe in the United States revoked or denied;

(9) Has demonstrated a willful disregard for compliance with gaming regulatory authority in any jurisdiction, including suspension, revocation, denial of Application or forfeiture of license;

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal laws of any state if such pursuit creates probable cause to believe that the participation of such Person in gaming or related activities would be detrimental to the proper operation of an authorized gaming or related activity in this State. For the purposes of this paragraph, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(11) Is a career offender or a member of a career offender organization or an associate of a career offender or career offender organization in such a manner which creates probable cause to believe that the association is of such a nature as to be detrimental to the proper operation of the authorized gaming or related activities in this State. For the purposes of this paragraph, career offender shall be defined as any Person whose behavior is pursued in an occupational manner or context for the purposes of economic gain utilizing such methods as are deemed criminal violations of Tribal law, federal law or the laws and the public policy of this State. A career offender organization shall be defined as any group of Persons who operate together as career offenders;

(12) Is a Person whose prior activities, criminal record, if any, reputation, habits and associations pose a threat to the public interest of the Tribe or the State or to the effective regulation and control of Class III Gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and activities in

the conduct of Class III Gaming, or the carrying on of the business and financial arrangements incidental thereto; or

(13) Fails to provide any information requested by the State Gaming Agency within 14 days of the request for the information.

(g) Right to Hearing for Revocation, Suspension or Denial of State Certification. Any Applicant for State Certification, or holder of a State Certification, shall be entitled to a full hearing on any action by the State Gaming Agency which may result in the revocation, suspension, or denial of State Certification. The hearing shall be conducted in accordance with the procedures contained in the applicable provisions of the Arizona Administrative Procedures Act, Title 41, Chapter 6, Arizona Revised Statutes or the State Gaming Agency's administrative rules; provided, the State, after consultation with the Tribe or Tribal Gaming Office, as applicable, may defer such actions to the Tribe or Tribal Gaming Office. Nothing herein shall prevent the Tribe or Tribal Gaming Office from invoking its disciplinary procedures.

(h) Issuance, Revocation, Suspension or Denial of License Issued by Tribal Gaming Office. The issuance, revocation, suspension or denial of any Tribal gaming license by the Tribe or the Tribal Gaming Office, including the terms and conditions thereof, shall be in accordance with the Tribe's ordinances and regulations governing such procedures and the grounds for such actions shall not be less stringent than those of this Section. The Tribe or Tribal Gaming Office, as applicable, shall not be required to grant an Application for a license even if the State Gaming Agency issues a State Certification.

(i) Duration and Renewal of Tribal Licenses and State Certification. Any Tribal license or State Certification shall be effective for one (1) year from the date of issuance, except that Tribal licenses and State Certifications for Management Contractors, financiers, Manufacturers and Distributors of Gaming Devices, and Persons providing Gaming Services, shall be effective for two (2) years from the date of issuance. A licensed or certified employee or Person that has applied for renewal may continue to be employed or engaged under the expired license or State Certification until action is taken on the renewal Application by the Tribe or Tribal Gaming Office, as applicable, or the State Gaming Agency. Applicants for renewal of a license or certification shall provide updated material as requested, on the appropriate renewal forms, to both the Tribe or Tribal Gaming Office, as applicable, and the State Gaming Agency, consistent with the provisions of Section 5(a), but shall not be required to resubmit historical data already available to the Tribe or Tribal Gaming Office, or the State Gaming Agency. Additional background investigations shall not be required of Applicants for renewal unless new information concerning the Applicant's continuing eligibility for a license or a State Certification is discovered.

(j) Identification Cards. The Gaming Facility Operator shall require all Gaming Employees, and the Tribal Gaming Office shall require all Tribal Gaming Office employees, to wear in plain view, identification cards issued by the Tribal Gaming Office which shall include photograph, first and last name, and an identification number unique to the individual Tribal license and which shall include the Tribe's seal or signature, and a date of expiration.

(k) Exchange of Tribal Licensing and State Certification Information. In an effort to ensure a qualified work force in the Class III Gaming authorized by this Compact, upon completion of any administrative action against a holder of a Tribal license or State Certification, the final disposition shall be forwarded to the Tribe, the Tribal Gaming Office or the State Gaming Agency, as appropriate, and maintained as part of their permanent records and which may be shared with other federal, state, and tribal agencies.

(l) Fees for State Certification. The fees for State Certification or recommendation shall be the following:

(1) Gaming Employee and Tribal Gaming Office employee, other than a Primary Management Official

Initial Certification/Recommendation	$ 250
Renewal	$ 125

(2) Management Contractors and/or financiers

Initial Certification	$ 5,000
Renewal	$ 1,000

(3) Manufacturers and Suppliers of Gaming Devices

Initial Certification	$ 5,000
Renewal	$ 1,000

(4) Provider of Gaming Services

Initial Certification	$ 1,500
Renewal	$ 500

(5) Primary Management Official

Initial Certification/Recommendation	$ 500
Renewal	$ 250

A State Certification shall be valid for any Gaming Operation in Arizona and no additional fee shall be required. In the event actual costs incurred by the State Gaming Agency to investigate the background of an Applicant exceed the above fees, those costs shall be assessed to the Applicant during the investigation process. Payment in full to the State Gaming Agency shall be required prior to the issuance of State Certification. The State may require Manufacturers and Distributors, suppliers of Gaming Services, Management Contractors and financiers applying for State Certification to post a bond sufficient to cover the actual costs that the State Gaming Agency anticipates will be incurred in conducting a background investigation of the Manufacturer, Distributor, supplier of Gaming Services, Management Contractor or financier. Notwithstanding any other provision of this Compact, the State Gaming Agency may modify any of the above fees by giving the Tribe sixty (60) days notice of intent to modify fees. Should a dispute arise under this Section, it shall be resolved pursuant to Section 15 of this Compact.

(m) Fees for Tribal License. The fees for Tribal licenses shall be set by the Tribe.

(n) Temporary Certification. Within twenty (20) days of the receipt of a complete Application for State Certification, and upon request of the Tribe or Tribal Gaming Office, as applicable, the State Gaming Agency shall issue a temporary certification to the Applicant unless the background investigation undertaken by the State Gaming Agency discloses that the Applicant has a criminal history, or unless other grounds sufficient to disqualify the Applicant pursuant to subsection (f) of this Section are apparent on the face of the Application. The temporary certification shall become void and be of no effect upon either the issuance of a State Certification or upon the issuance of notice of denial, in accordance with the provisions of this Compact.

(o) Summary Suspension of Tribal License or State Certification. The Tribe or Tribal Gaming Office, pursuant to the laws and regulations of the Tribe, and the State Gaming Agency, pursuant to the laws and regulations of the State, may summarily suspend any respective Tribal license or State Certification if the continued licensing or certification of a Person constitutes an

immediate threat to the public health, safety or welfare.

(p) State Administrative Process; Certifications. Any Applicant for State Certification agrees by making such Application to be subject to State jurisdiction to the extent necessary to determine the Applicant's qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to the Administrative Procedures Act, Title 41, chapter 6, Arizona Revised Statutes and the administrative rules of the State Gaming Agency.

(q) Administrative Process; Licenses.

(1) Any Person applying for licensure by the Tribe or Tribal Gaming Office acknowledges that by making such Application, the State Gaming Agency, as set forth herein, may be heard concerning the Applicant's qualifications to hold such license. If the State recommends revocation, suspension, or denial of a license, and the Tribe or Tribal Gaming Office revokes, suspends, or denies the license based on the State Gaming Agency's recommendation, the Person may appeal that action to the Tribe, to the extent any such right exists.

(2) If the Tribe or Tribal Gaming Office takes any action with respect to a license despite a State recommendation to the contrary, the Tribe or Tribal Gaming Office shall afford the State an opportunity for a hearing before an appropriate Tribal forum to contest the Tribe's or Tribal Gaming Office's licensing decision. The decision of the Tribal forum shall be final, except as provided in Section 5(q)(4).

(3) The Tribe or Tribal Gaming Office shall afford the State Gaming Agency the opportunity to be heard in an appropriate Tribal forum on its recommendation to suspend or revoke the license of any Person in the same manner as if the State Gaming Agency had recommended denial of the license in the first instance.

(4) Independent tribunal review of Tribal forum.

(A) Tribunal appointment and process. If the Tribal forum upholds a decision not to follow a Tribal Gaming Office employee or Gaming Employee license recommendation, the State Gaming Agency may appeal to an independent three member tribunal by providing written notice to the Tribe or Tribal Gaming Office, as applicable, within ten (10) days after receiving the Tribal forum's decision. Within twenty (20) days thereafter, the CPR or a similar dispute resolution service acceptable to the parties (the "Dispute Resolution Service") shall select the tribunal members, except that upon agreement by the parties, in lieu of selection by the Dispute Resolution Service, each party may select a tribunal member, and the two members shall select a third member. If, within five (5) days after their appointment, the tribunal members appointed by the parties have not agreed upon a third tribunal member, the Dispute Resolution Service shall select the third member. All tribunal members, whether appointed by the Dispute Resolution Service or the parties, shall be (a) impartial, (b) licensed by and in good standing with a state bar association, and (c) independent from the State, the State Gaming Agency, the Tribe, and the Tribal Gaming Office. The tribunal shall hold a hearing and issue its decision within ninety (90) days after the State Gaming Agency delivers its written notice of appeal to the Tribe or Tribal Gaming Office, as applicable. If

Tribal Gaming Office employee licensing decisions are made by a department or an agency of the Tribe other than the Tribal Gaming Office, then Tribal Gaming Office employees are not subject to this tribunal process.

(B) Tribunal authority. The tribunal's sole authority shall be to review the decision of the Tribal forum and determine whether the decision is supported by substantial evidence based on the record as a whole. The tribunal's hearing shall be conducted in a fair and impartial manner. The hearing shall be held on the administrative record presented to the Tribal forum. The tribunal's decision shall be final and not subject to further appeal or to Section 15 dispute resolution procedures. If the tribunal determines the employee should not be licensed, the Tribe or Tribal Gaming Office shall promptly revoke the disputed license. The cost of the tribunal and the hearing shall be borne equally between the State and the Tribe.

(r) Withdrawal. An Applicant for State Certification or recommendation, or renewal thereof, may not withdraw an Application without the written permission of the State Gaming Agency. The State Gaming Agency will not unreasonably withhold permission to withdraw an Application. An Applicant for a Tribal license, or renewal thereof, may not withdraw an Application without the permission of the Tribe or Tribal Gaming Office as applicable, unless otherwise provided under Tribal law.

SECTION 6. TRIBAL REGULATION OF COMPACT PROVISIONS.

(a) Tribal Gaming Office. The Tribal Gaming Office has the responsibility for the regulation of all Gaming Activities pursuant to the Tribe's Gaming Ordinance and for the enforcement of this Compact and its appendices on behalf of the Tribe. The State Gaming Agency has the regulatory responsibility over Gaming Activities which is specifically set out in this Compact.

(1) The Gaming Ordinance is attached as Appendix B of this Compact.

(2) The Tribe shall notify the State Gaming Agency of its intent to amend or repeal its Gaming Ordinance, or to adopt regulations and shall provide a copy of any change or modification to its Gaming Ordinance or gaming regulations to the State Gaming Agency.

(3) The Tribe's Gaming Ordinance shall provide for the detention of persons who may be involved in illegal acts for the purpose of notifying appropriate law enforcement authorities.

(4) The Tribal Gaming Office or the Gaming Facility Operator shall operate a surveillance system which meets the requirements of Appendix C to this Compact.

(5) The Tribal Gaming Office shall have the responsibility and authority to investigate alleged violations of this Compact and its appendices, the Tribe's Gaming Ordinance, and other applicable laws and to take appropriate disciplinary action against the Gaming Facility Operator or the holder of a license for a violation or to institute appropriate legal action for enforcement or both; and to confiscate or shut down any Gaming Device or other equipment or gaming supplies failing to conform to any required standards.

(b) Gaming Facility Operator. The Tribe shall require the Gaming Facility Operator to

have the responsibility for the on-site operation, management, and security of the Gaming Facility. The Gaming Facility Operator shall establish, maintain, and adhere to a written security plan which meets the requirements of Appendix C to this Compact. The Tribe shall require the Gaming Facility Operator to adopt reasonable procedures designed to provide for the following:

(1) The physical safety of its employees;
(2) The physical safety of patrons in the Gaming Facility;
(3) The physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department; and
(4) The protection of the patrons' property and the Gaming Operation's property from illegal activity.

(c) Tribal Gaming Office Staff and Executive Director. The Tribe has sole authority to determine the composition of the Tribal Gaming Office, however, no employee of a Gaming Facility Operator shall be employed by or be a member of the Tribal Gaming Office. The Tribe shall designate an Executive Director of the Tribal Gaming Office. The Executive Director shall have overall responsibility for the administrative functions of the Tribal Gaming Office. The Executive Director shall serve as the formal liaison to the person holding the similarly titled position with the State Gaming Agency.

(d) Right of Inspection.

(1) The Tribal Gaming Office shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of a Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and its appendices and the Tribe's Gaming Ordinance.

(2) The Tribal Gaming Office shall employ inspectors or agents who shall act under the authority of the Tribal Gaming Office. Said inspectors shall be independent of the Gaming Facility Operator and any Management Contractors, and shall be supervised and accountable only to the Tribal Gaming Office. Said inspectors shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of the Gaming Facility. An inspector shall be present in the Gaming Facilities during all hours of gaming operation.

(e) Reporting of Violations. The Gaming Facility Operator, or a Tribal Gaming Office inspector, as applicable, shall report unusual occurrences and all violations or suspected violations of this Compact and its appendices, or of the Tribe's Gaming Ordinance by an employee or agent of the Gaming Facility Operator, or any person on the premises whether or not associated with Gaming Activities, to the Tribal Gaming Office. Regardless of the identity of the reporter or to whom the report is made, the Tribal Gaming Office shall make a written record of any unusual occurrences, violations or suspected violations, without regard to materiality. The log may be maintained in an electronic form, provided each entry is assigned a sequential number and the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the State Gaming Agency. Each entry shall be assigned a sequential number and shall include, at a minimum, the following information which shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of each page is sequentially numbered:

(1) The assigned number;
(2) The date;
(3) The time;
(4) The nature of the incident;
(5) The person(s) involved in the incident; and

(6) The name of the security department or Tribal Gaming Office employee assigned to investigate.

(f) Investigations. The Tribal Gaming Office shall investigate any reported violation of the Compact, shall investigate any reported violation of this Compact's appendices when an investigation is reasonably necessary to ensure the integrity of gaming, the protection of persons and property, and compliance with the Compact, and shall require the Gaming Facility Operator to correct violations upon such terms and conditions as the Tribal Gaming Office determines are necessary and proper under the provisions of the Tribe's Gaming Ordinance.

(g) Reporting to State Gaming Agency. Within forty-eight (48) hours of the time a violation or suspected violation is reported and within seventy-two (72) hours of the time an unusual occurrence is reported, the Tribal Gaming Office shall notify the State Gaming Agency. Upon completion of any investigation of an unusual occurrence or a violation or suspected violation, the Tribal Gaming Office shall provide copies of its investigative report to the State Gaming Agency, if such disclosure will not compromise on-going law enforcement investigations or activities. In order to efficiently and effectively regulate and monitor Gaming Activity, the Tribal Gaming Office and the State Gaming Agency will enter into a memorandum of understanding calling for the sharing of investigatory files, including at a minimum files for Persons licensed and/or certified pursuant to Section 4 and the records required to be kept pursuant to Section 6(e), and agreeing upon the procedure for processing fingerprints, the confidentiality of records, and the process for reporting unusual occurrences and violations of the Compact's appendices.

(h) Periodic Meetings. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Compact and its appendices, representatives of the Tribal Gaming Office and the State Gaming Agency shall meet, not less than on a quarterly basis, to review past practices and examine methods to improve the regulatory program created by this Compact and its appendices. The meetings shall take place at a location selected by the Tribal Gaming Office. The State Gaming Agency, prior to or during such meetings, shall disclose to the Tribal Gaming Office any concerns, suspected activities or pending matters reasonably believed to constitute potential violations of this Compact and its appendices by any person, organization or entity, if such disclosure will not compromise on-going law enforcement investigations or activities. Following the first year of this Compact, the Tribal Gaming Office and the State Gaming Agency shall jointly determine the number of meetings necessary, but in no event shall less than two (2) meetings occur for any twelve (12) month period.

SECTION 7. STATE MONITORING OF COMPACT PROVISIONS

(a) Monitoring. The State Gaming Agency shall, pursuant to the provisions of this Compact, have the authority to monitor the Tribe's Gaming Operation to ensure that the operation is conducted in compliance with the provisions of this Compact and its appendices. Such monitoring shall include the authority to investigate suspected violations of the Compact and its appendices. The monitoring shall be conducted in accordance with the following requirements:

(1) Agents of the State Gaming Agency shall have free and unrestricted access to all public areas of a Gaming Facility during operating hours without giving prior notice to the Gaming Facility Operator;

(2) The monitoring activities of these agents shall be conducted in a manner which does not unduly interfere with the normal functioning of the Tribe's Gaming Operation;

(3) Agents of the State Gaming Agency shall be entitled to enter the non-public areas of any Gaming Facility licensed by the Tribe after such State agents

have:

(A) Provided proper identification to the senior supervisory employee of the Gaming Facility Operator on duty and to the Tribal Gaming Office inspector on duty, who at his discretion, may witness the monitoring or investigation of non-public areas of the Gaming Facilities by the State Gaming Agency, and

(B) Given advance notice to the Tribal Gaming Office. Such advance notification shall not be required if such notification will compromise an on-going law enforcement investigation or activity.

(b) State's Access to the Tribe's Gaming Records; Confidentiality Requirements. Agents of the State Gaming Agency shall, upon twenty-four (24) hours advance notification to the Tribal Gaming Office, have the right to inspect and copy during normal business hours all records maintained by the Gaming Facility Operator. Such advance notification shall not be required if such notification will compromise an on-going law enforcement investigation or activity. However, all records, and copies thereof, shall remain the property of the Tribe irrespective of their location. All such records, and the information derived from such records, are confidential and proprietary information of the Tribe. Access to all records, or documents of the Gaming Facility Operator, or copies thereof in the possession of the State shall be limited solely to employees of the State Gaming Agency and the Tribal Gaming Office and the State shall not disclose such records and documents to other persons within the State government or to third parties, provided however that disclosure shall be authorized when made pursuant to an order of a court of competent jurisdiction, or when disclosed to a federal, state or tribal regulatory or criminal justice agency pursuant to a regulatory or criminal justice investigation under this Section, or when disclosed pursuant to Section 5(k). The State Gaming Agency shall immediately notify the Tribal Gaming Office of the receipt of any request for access to any such records from any person outside the State Gaming Agency unless ordered otherwise by a court of competent jurisdiction.

(c) Retention of Records. Throughout the term of this Compact and during the pendency of any litigation arising from this Compact, and for one (1) year following the termination of this Compact, the Tribe shall require that all books and records relating to authorized Gaming Activities, including the records of any Management Contractor, the Gaming Facility Operator and the Tribal Gaming Office are separately maintained in order to facilitate auditing of these books and records to ensure compliance with this Compact and its appendices. All such records shall be maintained pursuant to generally accepted accounting principles and shall be suitable for audit pursuant to the standards of the American Institute of Certified Public Accountants. The Gaming Facility Operator shall maintain all records it creates or receives relating to the operation and management of Gaming Activity. Records of the Tribal Gaming Office and the Gaming Facility Operator may be destroyed prior to the time set forth herein upon written agreement of the Tribe and the State.

(d) Tribe's Access to State Records. The Tribe shall have the right to inspect and copy all records of the State Gaming Agency concerning the Tribe's authorized Class III Gaming if such disclosure will not compromise on-going law enforcement investigations or activities, and would not violate applicable State and federal law.

(e) Notification to Tribal Gaming Office. At the completion of any inspection or investigation conducted by the State Gaming Agency, copies of an investigative report shall be immediately forwarded by the State Gaming Agency to the Tribal Gaming Office. Within forty-eight (48) hours of the receipt of any report of a violation of this Compact and its appendices, the Tribe's Gaming Ordinance, or the Act, the State Gaming Agency shall forward notification of such report of a violation to the Tribal Gaming Office.

(f) Cooperation with Tribal Gaming Office. The State Gaming Agency shall meet periodically, consistent with Section 6(h), with the Tribal Gaming Office and cooperate fully in all matters relating to the enforcement of the provisions of this Compact and its appendices and shall immediately notify the Tribal Gaming Office of any activity suspected or occurring whether within the Gaming Facilities or not, which adversely affects State, Tribal or public health, safety, or welfare interests relating to the Gaming Facility and Gaming Facility Operator, if such disclosure will not compromise an on-going law enforcement investigation or activity.

(g) Compact Compliance Review. The State Gaming Agency is authorized to conduct an annual, comprehensive Compact compliance review of the Gaming Operation, Gaming Facilities, and the Gaming Activities of the Gaming Facility Operator to monitor compliance with this Compact, any amendments or appendices to this Compact, and other agreements relating to this Compact.

(h) Remedies. The State Gaming Agency may fine, or otherwise sanction, Persons it has certified, except Enrolled Tribal Members, for violations of this Compact, its appendices, or the administrative rules of the State Gaming Agency. With regard to fining Gaming Employees and Tribal Gaming Office employees, the State agrees the Tribe or Tribal Gaming Office, as applicable, will take the lead role. The State Gaming Agency will only act if the Tribe or Tribal Gaming Office fails to do so and shall consult with the Tribal Gaming Office before levying any fines. With regard to fining Management Contractors, financiers, Manufacturers and Distributors of Gaming Devices, and Persons providing Gaming Services, the State Gaming Agency may, but will not be required to, defer to the Tribal Gaming Office. The State Gaming Agency's ability to impose sanctions is subject to the following:

(1) The State Gaming Agency will notify the Tribal Gaming Office of the results of its investigation(s) and any administrative proceedings and will not oppose the Tribe's intervention in any administrative proceeding. The results of any investigation will not be disclosed if such disclosure will compromise ongoing law enforcement investigations or activities, or would violate applicable state and federal law;

(1) The Tribe having the right to invoke the dispute resolution provisions in Section 15 of the Compact. The State will agree to expedite the procedures in Section 15 in advance of the administrative proceedings so long as the issue to be resolved per Section 15 is limited to interpretation of the Compact or its appendices. The decision of an arbitration tribunal will be binding upon the State Gaming Agency in any subsequent administrative proceedings; and

(1) All monetary sanctions collected by the State, including any interest earned thereon, shall be transmitted to the State Treasurer for deposit in the State general fund.

SECTION 8. CIVIL AND CRIMINAL JURISDICTION

Nothing in this Compact is intended to change, revise or modify the civil and criminal jurisdiction of the Tribe or of the State. Nothing contained herein shall be deemed to modify or limit existing federal jurisdiction over Indians and the Gaming Operations authorized under this Compact.

SECTION 9. CROSS-DEPUTIZATION AGREEMENT

The State and the Tribe, to the extent permitted by law, may agree to enter into such cross-deputization agreements as necessary to facilitate cooperation between State and Tribal law

enforcement personnel.

SECTION 10. AUTHORIZATION TO ENACT RULES AND REGULATIONS

(a) State Gaming Agency Rules. Pursuant to its general rule-making authority, the State Gaming Agency may enact, as part of its rules governing gaming, all or part of the provisions of this Compact. The rules adopted by the State Gaming Agency shall be consistent with the provisions and appendices of this Compact.

(b) Tribal Gaming Office Regulations. The Tribal Gaming Office may enact, as part of its rules or regulations governing gaming, all or part of the provisions of this Compact.

SECTION 11. OPERATIONAL REQUIREMENTS

(a) Internal Control System. The Gaming Facility Operator shall operate each Gaming Facility pursuant to a written internal control system. The internal control system shall comply with and implement the internal control standards established by the Tribal Gaming Office, which shall, at a minimum, provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix H to this Compact and be consistent with this Compact. The internal control system shall be designed to reasonably assure that:

(1) Assets are safeguarded and accountability over assets is maintained;
(2) Liabilities are properly recorded and contingent liabilities are properly disclosed;
(3) Financial records including records relating to revenues, expenses, assets, liabilities, and equity/fund balances are accurate and reliable;
(4) Transactions are performed in accordance with the Tribe's general or specific authorization;
(5) Access to assets is permitted only in accordance with the Tribe's specific authorization;
(6) Recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and
(7) Functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by qualified personnel.

(b) Internal Control System Components. The internal control system shall include:

(1) An organizational chart depicting appropriate segregation of functions and responsibilities for all positions in the Gaming Operation;
(2) A description of the duties and responsibilities of each position shown on the organizational chart;
(3) A detailed, narrative description of the administrative, operational, and accounting procedures designed to satisfy the requirements of subsection (a) of this Section;
(4) A description of procedures governing the maintenance and preservation of security and surveillance information; and
(5) The internal control standards established by the Tribal Gaming Office.

(c) Internal Control System and Standards Review.

(1) The Gaming Facility Operator shall submit the internal control system and any changes it proposes to make to that system to the Tribal Gaming Office. The Tribal Gaming Office shall review the system or any proposed changes for

compliance with the internal control standards established by the Tribal Gaming Office and issue a letter either approving or disapproving of them. The internal control system, and any proposed changes to that system, must be approved by the Tribal Gaming Office prior to implementation.

(2) The Tribal Gaming Office shall provide the internal control standards and any proposed changes to those standards to the State Gaming Agency within thirty (30) days of their implementation in the Gaming Operation. The State Gaming Agency will review and submit to the Tribal Gaming Office written comments or objections, if any, to the internal control standards and any proposed changes to those standards within ten (10) days of receiving them. The State Gaming Agency's review shall be solely for the purpose of determining whether the internal control standards and any proposed changes to those standards provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix H and are consistent with this Compact.

(d) Accounting and Financial Records. The Gaming Facility Operator shall maintain:

(1) Accurate, complete, legible and permanent records of all transactions pertaining to the Gaming Operation in a manner suitable for audit under the standards of the American Institute of Certified Public Accountants;

(2) General accounting records using a double entry system of accounting with transactions recorded on a basis consistent with Generally Accepted Accounting Principles;

(3) Detailed supporting and subsidiary records;

(4) Detailed records identifying revenues, expenses, assets, liabilities and fund balances or equity for the Gaming Operation;

(5) All records required by the internal control system including, but not limited to, those relating to any Gaming Activity authorized by this Compact;

(6) Journal entries for the Gaming Operation;

(7) Detailed records sufficient to accurately reflect gross income and expenses relating to its operations on a monthly and year-to-date basis;

(8) Detailed records of any reviews or audits, whether internal or otherwise, performed in addition to the annual audit required in subsection (f) of this Section, including, but not limited to, management advisory letters, agreed upon procedure reviews, notices of non-compliance and reports on the internal control system; and

(9) Records of any proposed or adjusting entries made by an independent certified public accountant.

(e) Accounts. The Gaming Facility Operator shall maintain a bank account that is, or bank accounts that are, separate and distinct from all other Tribal accounts, unless otherwise agreed to by the State Gaming Agency. The Gaming Facility Operator's account(s) shall be used for all receipts and disbursements regarding or in any way relating to its operation of Gaming Activity or the Gaming Operation, and the construction or operation of Gaming Facilities. The requirements of this

section can be satisfied by:

(1) The Gaming Facility Operator having in use a software accounting system that separates, and can make distinct, all receipts and disbursements regarding or in any way relating to Gaming Activity, the Gaming Operation, and the construction or operation of Gaming Facilities; and

(2) The Gaming Facility Operator's software accounting system can and does readily produce documents and supporting records of all receipts and disbursements regarding or in any way relating to Gaming Activity, the Gaming Operation, and the construction or operation of Gaming Facilities.

If the bank accounts of the Gaming Facility Operator are not separate and distinct from all other bank accounts, or receipts and/or distributions are made out of accounts shared by the Tribe or other Tribal operations, and there is no software accounting system which meets the requirements of this Section 11(e), the State Gaming Agency shall have unrestricted access to all records relating to such bank accounts, including those for the Gaming Facility Operator, the Tribe, or Tribal operation(s). All records and reports of these accounts must be made available upon request to employees of the State Gaming Agency.

(f) Annual Audit. Financial statements of the Gaming Operation shall be audited, not less than annually at its fiscal year end, by an independent certified public accountant at the expense of the Gaming Facility Operator. The independent certified public accountant shall issue a report on audited financial statements of the Gaming Operation. The independent certified public accountant shall perform the audit in accordance with generally accepted auditing standards published by the American Institute of Certified Public Accountants and submit the audited financial statements, along with any reports or management letter(s) the accountant has prepared, to the Tribal Gaming Office within one hundred twenty (120) days after the Gaming Operation's fiscal year end. Promptly upon receipt of the audited financial statements, and in no event later than 120 days after the fiscal year end, the Tribal Gaming Office shall provide copies of them to the State Gaming Agency, along with copies of any reports or management letter(s) the accountant has prepared. If the Gaming Facility Operator changes its fiscal year end, it may elect either to prepare financial statements for a short fiscal year or for an extended fiscal year, but in no event shall an extended fiscal year extend more than fifteen months.

(g) Auditors. Either the firm or all independent certified public accountants engaged to do audits pursuant to subsection (f) of this Section shall be licensed by the Arizona State Board of Accountancy. The State Gaming Agency shall be authorized to confer with the independent certified public accountant during the audit process and to review all of the independent certified public accountant's work papers and documentation relating to the Gaming Operation. The Tribal Gaming Office shall be notified of and provided the opportunity to participate in and attend any such conference or document review.

(h) Fiscal Year End. The Gaming Facility Operator shall notify the State Gaming Agency in writing of its fiscal year end and any changes to its fiscal year end within ten days after deciding on a fiscal year end or a change to that year end.

SECTION 12. PAYMENT OF REGULATORY COSTS; TRIBAL CONTRIBUTIONS

(a) Payment of Regulatory Costs. The Tribe agrees to pay the State the necessary costs incurred by the State as a result of the State's performance of its rights or duties under the terms of this Compact. The Tribe's contributions under this Section 12 shall satisfy the Tribe's agreement to pay those costs.

(b) Tribal Contributions. In consideration for the substantial exclusivity covenants by the State in Section 3(h), the Tribe shall contribute for the benefit of the public a percentage of the Tribe's Class III Net Win for each fiscal year of the Gaming Facility Operator as follows:

(1) One percent (1%) of the first twenty-five million dollars ($25,000,000.00);
(2) Three percent (3%) of the next fifty million dollars ($50,000,000.00);
(3) Six percent (6%) of the next twenty-five million dollars ($25,000,000.00); and
(4) Eight percent (8%) of Class III Net Win in excess of one hundred million dollars ($100,000,000.00).

(c) Arizona Benefits Fund. The Tribe shall make eighty-eight percent (88%) of its total annual contribution under Section 12(b) to the Arizona Benefits Fund established by A.R.S. § 5-601.02(H). The State agrees that the Arizona Benefits Fund shall be used for the purpose of administering the contributions made by the Tribe to the State in accordance with the provisions of Section 12(b). All contributions to the State from the Tribe pursuant to this Section 12(c), and all contributions to the State from other Indian tribes that have entered into tribal-state gaming compacts with the State that contain similar provisions, shall be deposited in the Arizona Benefits Fund administered by the State Gaming Agency. The State agrees to invest all monies in the Arizona Benefits Fund in accordance with A.R.S. § 35-313; monies earned from such investment may only be credited to the Arizona Benefits Fund. The State agrees that contributions paid to the State by the Tribe under this Section 12(c) shall only be distributed as provided in A.R.S. § 5-601.02, as adopted by the people of the State at the November 5, 2002 election, and the State shall not impose any tax, fee, charge, or other assessment upon the Tribe's Gaming Operations.

(d) Distributions by Tribe to Cities, Towns and Counties. The Tribe shall make twelve percent (12%) of its total annual contribution under Section 12(b) in either or both of the following forms:

(1) Distributions to cities, towns or counties for government services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development;

(2) Deposits to the Commerce and Economic Development Commission Local Communities Fund established by A.R.S. § 41-1505.12.

For State planning purposes, whenever feasible the Tribe will elect on or before the first day of the Tribe's fiscal year whether or not it will deposit all or a portion of the monies it is required to distribute pursuant to this Section 12(d) in the Commerce and Economic Development Commission Local Communities Fund over the following year; provided, however, that any such election shall not be binding on the Tribe. The Commerce and Economic Development Commission shall award monies from the Commerce and Economic Development Commission Local Communities Fund in accordance with A.R.S. § 41-1505.12 in the form of grants that will be awarded pursuant to the procedures outlined in A.R.S. § 41-2702. Monies the Tribe contributes to the Commerce and Economic Development Commission Local Communities Fund shall be placed into a sub-account in the Tribe's name. The Commerce and Economic Development Commission shall prepare annually a report for the Tribe on the sub-account stating for the period the opening balance, deposits, awards, the closing balance, and the projects for which funds were awarded. The Tribe shall have the opportunity to comment on the granting of monies from the sub-account and all grant applications must have a written endorsement of a nearby Indian tribe to receive an award of funds from the Commerce and Economic Development Commission.

(e) Contribution Schedule.

(1) Tribal contributions pursuant to Section 12(b) shall be paid quarterly to the State Gaming Agency, other than the amounts distributed or deposited to benefit cities, towns and counties under Section 12(d). The contributions shall be calculated based on the Tribe's Class III Net Win for each quarter of the Gaming Facility Operator's fiscal year. Contributions shall be made no later than twenty-five (25) days after the last day of each fiscal quarter.

(2) At the time each quarterly contribution is made, the Tribe shall submit to the State Gaming Agency a report indicating the Class III Net Win by Gaming Activity for the quarter, and the amounts paid under Sections 12(c) and (d).

(3) The Tribe's first quarterly contribution will be calculated based on the Tribe's Class III Net Win for the first full fiscal quarter after the Effective Date.

(4) Following the State Gaming Agency's receipt of the annual audit pursuant to Section 11(f), any overpayment of monies by the Tribe pursuant to this Section shall be credited to the Tribe's next quarterly contribution. Any underpayment of monies shall be paid by the Tribe within thirty (30) days of the State Gaming Agency's receipt of the annual audit.

(f) Reduction of Tribal Contributions. In the event that Tribal contributions are reduced pursuant to Sections 3(g) or (h), the Tribe shall make the reduced contributions under the terms of this Section 12, and these monies shall be used in the manner set forth in A.R.S. § 5-601.02(H)(3)(a) as adopted by the people of the State at the November 5, 2002 election.

(g) Reports and Audits. Calculation of Class III Net Win under Section 12 of this Compact shall be made consistent with the standards found in Appendix I. The annual audit required by Section 11 of this Compact also shall audit and report the Tribe's Class III Net Win. It shall also include or be supplemented with an attestation by the auditor that Class III Net Win is accurately reported consistent with the terms of Appendix I.

(h) Transitional Funding. Until the Tribe makes its first quarterly contribution under Section 12(b), the Tribe shall pay an assessment to the State Gaming Agency of $125.00 for each Gaming Device the Tribe has in operation in a Gaming Facility. The assessment shall be paid on the first day of each calendar quarter. The State Gaming Agency shall be entitled to use the assessments to pay the costs it incurs as a result of the State's performance of its rights or duties under the terms of this Compact. The Tribe shall be entitled to credit the assessments it pays under this subsection against its first quarterly contribution under Section 12(b) (and any subsequent quarterly contributions if the assessments exceed the first quarterly contribution).

SECTION 13. PUBLIC HEALTH, SAFETY AND WELFARE

(a) Compliance. The Tribe shall comply with standards governing health and safety which shall apply to the Gaming Facilities and which shall be no less stringent than the standards generally imposed by the Uniform Laws Annotated Codes covering the following:

(1) The Uniform Building Code;
(2) The Uniform Mechanical Code;
(3) The Uniform Plumbing Code;
(4) The Uniform Fire Code.

Construction and modification of the Tribe's Gaming Facilities shall meet the standards set by the most current of the above listed codes in effect where the Gaming Facility is located at the time of construction or modification. In addition, public health standards for food and beverage handling

shall be in accordance with United States Public Health Service requirements.

(b) Emergency Medical and Fire Suppression Services. The Tribe shall require the Gaming Facility Operator to make provisions for adequate emergency accessibility and service. The Tribe shall establish and implement a written emergency medical and fire suppression plan that includes all steps reasonably appropriate to ensure the on-going availability of sufficient emergency services to its Gaming Facilities, including the availability of qualified emergency medical and fire suppression personnel and adequate emergency medical transportation and fire suppression equipment. Mutual aid and emergency response service agreements will be entered as needed with entities from the surrounding communities.

(c) Tort Remedies for Patrons. The Tribe shall establish written procedures for the disposition of tort claims arising from personal injury or property damage alleged to have been suffered by patrons and invitees of its Gaming Facilities and shall enact such Tribal law as is necessary to implement these procedures. The procedures shall include all time limits applicable to the disposition of the tort claim and a provision that, upon request, the patron or invitee, or the patron's or invitee's designated representative, shall be provided with a copy of the procedures as well as the name, address and telephone number of the Gaming Facility Operator and the mailing address and telephone number of the clerk of the Tribal court. The Tribe shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by establishing such procedures or by any provision of this Compact, but agrees not to assert such immunity as provided in subsection (d) of this Section.

(d) Liability for Damage to Persons and Property. During the term of this Compact, the Gaming Facility Operator shall maintain a policy of commercial general liability insurance with a combined single limit for personal injury and property damage of not less than two million dollars ($2,000,000) per occurrence and in the aggregate. The insurance policy shall include an endorsement providing that neither the insurer nor the Gaming Facility Operator may invoke Tribal sovereign immunity up to the limits of the policy set forth above with respect to any claim covered under the policy and disposed of in accordance with the Tribe's tort claim procedures, provided, that the policy shall not exclude all claims made by a patron or invitee for personal injury or property damage. Neither the insurer nor the Gaming Facility Operator shall be precluded from asserting any other statutory or common law defense and provided further that any award or judgment rendered in favor of the patron or invitee shall be satisfied solely from insurance proceeds.

(e) Law Enforcement. The Tribe shall implement a written law enforcement services plan that provides a comprehensive and effective means to address criminal and undesirable activity at the Gaming Facilities. This plan shall provide that sufficient law enforcement resources are available twenty-four hours a day seven days per week to protect the public health, safety, and welfare at the Gaming Facilities. The Tribe and the State shall investigate violations of State gambling statutes and other criminal activities at the Gaming Facilities. To accommodate investigations and intelligence sharing, the Tribe will provide that a police officer holding current Arizona police officer standards and training certification is employed by the Gaming Facility Operator, the Tribal Gaming Office, or the Tribal Police Department, and assigned to handle gaming-related matters when they arise. Intelligence liaisons will be established at the Tribal Police Department or Tribal Gaming Office and also at the State Gaming Agency. There will be federal, Tribal, and State cooperation in task force investigations. The State Gaming Agency's intelligence unit will gather, coordinate, centralize, and disseminate accurate and current intelligence information pertaining to criminal and undesirable activity that may threaten patrons, employees, or assets of the gaming industry. The State and the Tribe will coordinate the use of resources, authority, and personnel of the State and the Tribe for the shared goal of preventing and prosecuting criminal or undesirable activity by players, employees, or businesses in connection with tribal Gaming Facilities. Violations of State criminal gambling statutes on tribal lands may be prosecuted as federal crimes in federal court.

(f) Maintenance of Plans and Procedures. The Gaming Facility Operator shall maintain at all times current copies of the following:

(1) the emergency medical and fire suppression plan referenced in Section 13(b);
(2) the procedures for disposition of tort claims referenced in Section 13(c);
(3) the current certificate of insurance demonstrating compliance with Section 13(d); and
(4) the law enforcement services plan referenced in Section 13(e).

SECTION 14. PATRON DISPUTES

(a) Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron or there is otherwise a dispute with a patron regarding that patron's wins or losses from Gaming Activity, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

(1) At least five hundred dollars ($500), the Gaming Facility Operator shall immediately notify the Tribal Gaming Office. The Tribal Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

(2) Less than five hundred dollars ($500), the Gaming Facility Operator shall inform the patron of his or her right to request that the Tribal Gaming Office conduct an investigation. Upon request of the patron, the Tribal Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) Notice to Patrons. The Tribal Gaming Office shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of its decision within thirty (30) days after the date that the Tribal Gaming Office first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.

(c) Effective Date of Decision. The decision of the Tribal Gaming Office is effective on the date it is received by the patron as reflected on the return receipt.

(d) Review of Decision.

(2) Within thirty (30) days after the date of receipt of the written decision, the patron or Gaming Facility Operator may file a petition with the Tribal Gaming Office requesting a review of the decision. The Tribal Gaming Office may set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patron and the Gaming Facility Operator. The Tribal Gaming Office shall then issue a written decision within 60 days of the filing of the petition and mail the decision to the parties pursuant to the procedures set forth in Section 14(b).

(3)
(4) The Tribe's ordinance shall allow a patron whose dispute involves at least $500 to file a complaint in Tribal court within sixty (60) days of receipt of the Tribal Gaming Office's written decision referenced in Section 14(d)(1). The Tribe's Ordinances shall empower, and vest jurisdiction in, the Tribal court to hear and render decisions on these disputes. The Tribal court will review the dispute and issue a decision. Disposition of the action in Tribal court will be final and binding upon all parties in accordance with Tribal law.

SECTION 15. DISPUTE RESOLUTION

(a) Notice/Negotiation. If either the Tribe or the State believes the other has failed to comply with the requirements set forth in this Compact or its appendices, or if a dispute arises as to the proper interpretation of those requirements, then either party may serve a written notice on the other identifying the specific provision or provisions of the Compact or its appendices in dispute and specifying in detail the factual bases for any alleged non-compliance and/or the interpretation of the provision of the Compact or its appendices proposed by the party providing notice. Within ten (10) days following delivery of the written notice of dispute, the Executive Director of the Tribal Gaming Office and the Director of the State Gaming Agency shall meet in an effort to voluntarily resolve the compliance or interpretation dispute through negotiation. If those negotiations fail to resolve the dispute, the Executive Director of the Tribal Gaming Office, the Director of the State Gaming Agency, and representatives designated by the Governor of Arizona and the Chairman of the Tribe shall meet in a further effort to voluntarily resolve the dispute through further negotiation.

(b) Mediation. If the Tribe and the State are unable to resolve by negotiation any dispute regarding compliance with the requirements of the Compact or its appendices, or the proper interpretation of those requirements, within thirty (30) days after delivery of the written notice of dispute, the Tribe and the State shall, upon the request of either party, endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the CPR under its mediation procedures dated April 1, 1998 (unless otherwise agreed to by the parties), and the procedures set forth below. Although the parties shall be required to participate in the mediation process if requested, a request for mediation shall not preclude either party from pursuing any other available remedy.

(1) Selection of mediator. If the parties agree upon a mediator, that Person shall serve as the mediator. If the parties are unable to agree on a mediator within ten (10) days of a request for mediation, then the CPR (i) shall select an attorney from the CPR Panel of Distinguished Neutrals to be the mediator or (ii) if requested by the parties, shall select the mediator from a list of potential mediators approved by the parties.

(2) Conduct of mediation. The mediator shall control the procedural aspects of the mediation and shall be guided by the mediation procedures promulgated by the CPR.

(3) Costs of mediation. The costs of mediation shall be borne equally by the parties, with one-half (½) of the expenses charged to the Tribe and one-half (½) of the expenses charged to the State.

(c) Arbitration. If the Tribe and the State fail to resolve such a dispute regarding compliance with the requirements of the Compact or its appendices or the proper interpretation of those requirements through negotiation or mediation under Sections 15(a) or (b) within thirty (30) days after delivery of the written notice of dispute, upon a demand by either party, the dispute shall be settled through binding arbitration at a neutral location and, unless otherwise agreed to by the parties, the arbitration shall be conducted in accordance with the Rules, as modified by the following:

(1) Demand for arbitration. No earlier than thirty (30) days after the delivery of the notice required under Section 15(a), either party may serve on the other a written demand for arbitration of the dispute, in accordance with CPR Rule 3. The demand shall contain a statement setting forth the nature of the dispute and the remedy sought. The other party shall file a notice of defense and any counterclaim within twenty (20) days, in accordance with CPR Rule 3. Failure

to provide a notice of defense shall not delay the arbitration. In the absence of a notice of defense, all claims set forth in the demand shall be deemed denied.

(2) Arbitrators. Unless the parties agree in writing to the appointment of a single arbitrator, the arbitration shall be conducted before a panel of three (3) arbitrators. In the absence of an agreement to a single arbitrator, within twenty (20) days of the defending party's receipt of the demand, each party shall select an arbitrator. As soon as possible thereafter, but in no event more than forty (40) days following delivery of the demand, the party-appointed arbitrators shall discuss and select a third arbitrator from the Panel of Distinguished Neutrals, who shall chair the tribunal. Alternatively, if the parties have agreed upon a list of arbitrators acceptable to both parties, the CPR shall select the third arbitrator from that list. Unless the parties agree otherwise, at least one (1) of the arbitrators on the tribunal shall be an attorney or retired judge knowledgeable about the Act, federal Indian law, and jurisdiction within Indian country. If the parties do not appoint an arbitrator with those qualifications, the party-appointed arbitrators or the CPR shall do so. Once the tribunal is impaneled, there shall be no ex parte contact with the arbitrators, except for contacts with the office of the tribunal chair regarding scheduling or other purely administrative matters that do not deal with substantive matters or the merits of the issues.

(3) Selection of arbitrator(s) by the CPR. If a party fails to appoint an arbitrator, or if the party-appointed arbitrators have failed to appoint a third arbitrator within the time period provided in Section 15(c)(2), either party may request appointment of the arbitrator by the CPR. The request shall be made in writing and served on the other party. CPR shall fill any vacancies on the tribunal within ten (10) days of a request in accordance with CPR Rule 6.

(4) Neutrality of the arbitrators. All arbitrators shall be independent and impartial. Upon selection, each arbitrator shall promptly disclose in writing to the tribunal and the parties any circumstances that might cause doubt regarding the arbitrator's independence or impartiality. Such circumstances may include, but shall not be limited to, bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. Following such disclosure, any arbitrator may be challenged in accordance with CPR Rule 7.

(5) Cost of arbitration. The costs of arbitration shall be borne equally by the parties, with one-half (½) of the expenses charged to the Tribe and one-half (½) of the expenses charged to the State.

(6) Preliminary conference/hearing. The tribunal shall hold an initial pre-hearing conference no later than thirty (30) days following the selection of the members of the tribunal and shall permit discovery and make other applicable decisions in accordance with CPR Rules 9 through 12. Unless the parties agree otherwise, or unless the tribunal determines that compelling circumstances exist which demand otherwise, the arbitration shall be completed within one hundred and eighty (180) days of the initial pre-hearing conference.

(7) Discovery.

(A) Documents. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any

claim or counterclaim or on which the producing party may rely in support of or in opposition to any claim or defense. Except as permitted by the tribunal, all written discovery shall be completed within ninety (90) days following the initial pre-hearing conference. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the tribunal, whose determination shall be conclusive.

(B) Depositions. Consistent with the expedited nature of arbitration and unless the parties agree otherwise, a party, upon providing written notice to the other party, shall have the right to take the depositions of up to five (5) witnesses, each of which shall last no longer than one (1) day. Unless the parties agree otherwise, additional depositions shall be scheduled only with the permission of the tribunal and for good cause shown. A party's need to take the deposition of a witness who is not expected to be available for an arbitration hearing shall be deemed to be good cause. Except as permitted by the tribunal, all depositions shall be concluded within one hundred and twenty (120) days following the initial pre-hearing conference. All objections that might be raised to deposition testimony shall be reserved for the arbitration hearing, except for objections based on privilege, proprietary or confidential information, and objections to form or foundation that could be cured if raised at the deposition.

(8) Injunctive relief in aid of arbitration. The Tribe or the State may seek in a court of competent jurisdiction (A) provisional or ancillary remedies, including preliminary injunctive relief, pending the outcome of an arbitration proceeding, or (B) permanent injunctive relief to enforce an arbitration award.

(9) Arbitration hearing.

(A) Notice/transcript. Unless the parties agree otherwise, the tribunal shall provide the parties with at least sixty (60) days notice of the date of the arbitration hearing. Unless the parties agree otherwise, there shall be a stenographic record made of the hearing, with the cost to be shared by the Tribe and the State. The transcript shall be the official record of the proceeding.

(B) Last, best offer format. The arbitrators shall conduct each arbitration proceeding using the "last, best offer" format, unless any party to an arbitration proceeding opts out of the "last, best offer" arbitration format in the manner set forth in Section 15(c)(9)(C).

(i) No later than forty (40) days before the arbitration hearing (or forty (40) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the other party or parties to the arbitration a preliminary last, best offer for those issues that will be decided using the last, best offer format.

(ii) No later than twenty (20) days before the arbitration hearing (or twenty (20) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the tribunal and the other party or parties to the arbitration its pre-hearing last, best offer for those

issues that will be decided using the last, best offer format.

(iii) No later than ten (10) days after the conclusion of the arbitration hearing (or ten (10) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the tribunal and the other party or parties to the arbitration its final last, best offer for those issues that will be decided using the last, best offer format.

(iv) Except as otherwise provided in this Section 15(c)(9)(B)(iv), for each issue to be decided using the last, best offer format, the tribunal shall, for its decision on the issue, adopt one of the last, best offers submitted under Section 15(c)(9)(B)(iii) and no other remedy (excepting only remedies in aid of the tribunal's decision). If the tribunal expressly determines that a last, best offer submitted by a party with respect to an issue or issues is not consistent with or does not comply with the Act and/or the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject that last, best offer and shall not consider it in rendering its decision. If the tribunal expressly determines that all the last, best offers submitted by the parties with respect to an issue or issues are not consistent with or do not comply with the Act and/or the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject all the last, best offers and shall decide the related issue or issues as if the parties had elected to have the issue or those issues decided without using the "last, best offer" format. In addition, the tribunal shall have no authority to award money damages against either party, regardless of whether a last, best offer proposes an award of damages.

(C) Opting out of last, best offer format. Unless the parties agree otherwise, a party desiring to opt out of the "last, best offer" arbitration format shall serve a written notice of its election no later than fifty (50) days before the arbitration hearing (or fifty (50) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived). The notice shall:

(i) Identify with specificity the issue or issues that the arbitrators will decide without using the "last, best offer" arbitration format, or

(ii) State that the arbitrators will not use the "last, best offer" arbitration format.

(10) Decision of the tribunal. The decision of the tribunal shall be in writing, setting forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the disposition of each claim. If the tribunal determines that a last, best offer is not consistent with or does not comply with the Act and/or the Compact, the decision of the tribunal shall set forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the tribunal's determination. The written decision of the tribunal shall be made promptly and, unless otherwise agreed to by the parties, no later than forty (40) days from the date of the closing of the hearing or, if oral hearings have been waived, no

later than forty (40) days from the date the dispute is submitted to the tribunal for decision. The tribunal may take additional time to render its decision if the tribunal determines that compelling circumstances require additional time. The tribunal may issue awards in accordance with CPR Rule 13, to the extent that rule is consistent with Section 15(c). The decision of the majority of the arbitrators shall be final, binding, and non-appealable, except for a challenge to a decision on the grounds set forth in 9 U.S.C. § 10. The failure to comply with a judgment upon the award of the arbitrators shall be a breach of this Compact.

(11) Governing law/jurisdiction. Title 9 of the United States Code (the United States Arbitration Act) and the Rules shall govern the interpretation and enforcement of Section 15(c), but nothing in Section 15(c) shall be interpreted as a waiver of the State's Tenth Amendment or Eleventh Amendment immunity or as a waiver of the Tribe's sovereign immunity. The tribunal shall resolve the disputes submitted for arbitration in accordance with, and every decision of the tribunal must comply and be consistent with, the Act and the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction. The tribunal shall have no authority to award money damages against either party.

(12) Judicial confirmation. Judgment upon any award rendered by the tribunal may be entered in any court having competent jurisdiction.

(d) Injunctive Relief. The parties acknowledge that, although negotiation followed by mediation and arbitration are the preferred methods of dispute resolution, Compact Section 15 shall not impair any rights to seek in any court of competent jurisdiction injunctive relief pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii), or a judgment upon an award rendered by an arbitration tribunal. In an action brought by the Tribe against the State, one court of competent jurisdiction is the Arizona Superior Court. In an action brought by the State against the Tribe, one court of competent jurisdiction is the United States District Court for the District of Arizona. Nothing in this Compact is intended to prevent either party from seeking relief in some other court of competent jurisdiction, or to constitute an acknowledgment that the State courts have jurisdiction over the Tribe or the Tribal courts have jurisdiction over the State.

SECTION 16. RESERVATION OF RIGHTS UNDER THE ACT

(a) Status of Class I and Class II Gaming. This Compact shall not apply to any Class I or Class II Gaming whether conducted within or without the Gaming Facilities, and shall not confer upon the State any jurisdiction or other authority over such Class I or Class II Gaming conducted by the Tribe on Indian Lands.

(b) Prohibition on Taxation by the State. Nothing in this Compact shall be deemed to authorize or permit the State or any political subdivision thereof to impose any tax, fee, charge or assessment upon the Tribe or any Gaming Operation of the Tribe, except for the payment of expenses as provided in Section 12 of this Compact.

(c) Preservation of Tribal Self-Government. Nothing in this Compact shall divest or diminish the sovereign governmental authority of either the Tribe or the State.

(d) Use of Net Revenues. The net revenues derived from Class III Gaming authorized under this Compact shall be used by the Tribe for the purposes permitted under the Act.

(e) Tax Documentation. For purposes of cooperation, the Gaming Facility Operator will provide to the State Gaming Agency a copy of the documentation the Gaming Facility Operator

submits to the Internal Revenue Service indicating gaming winnings of patrons of the Gaming Operation.

SECTION 17. AMENDMENTS

(a) Proposed Compact Amendments. To continue to ensure the fair and honest operation of Indian gaming, no later than one hundred eighty (180) days after the Effective Date, the State or the Tribe may propose amendments to enhance the following regulatory provisions of this Compact:

(1) The process for Tribal judicial review of disputes regarding the nonpayment of alleged winnings to patrons;
(2) Compliance with United States Public Health Service requirements regarding food and beverage handling;
(3) Compliance with building codes and fire safety standards in the construction of new Gaming Facilities and significant modifications to existing Gaming Facilities;
(4) The availability of adequate police, fire and emergency medical services to serve each Gaming Facility;
(5) Remedies for violations of this Compact, the Gaming Ordinance, federal law, or State rules for certification holders;
(6) Liability insurance for Gaming Facilities and procedures for the disposition of tort claims that arise from personal injuries or property damage suffered at Gaming Facilities by patrons of the Gaming Facilities;
(7) Standards for background investigations, licensing and certification of Gaming Employees by the Tribe or the State Gaming Agency, or both;
(8) Standards for background investigations, licensing, and certification by the Tribe or the State Gaming Agency, or both, of Persons or entities that provide gaming goods or services on a significant basis;
(9) Reports and audits of revenue from Gaming Activities to allow tracking and confirmation of such revenue;
(10) Minimum internal control standards, technical standards, testing procedures, and inspection procedures for Class III Gaming Devices and the on-line electronic game management systems to which they are linked;
(11) Minimum internal control standards, operational standards, specifications, and regulations for other Gaming Activities permitted under this Compact, including rules for game play and dealing procedures for blackjack and poker; and
(12) Surveillance requirements.

(b) Negotiations/Mediation. Within ninety (90) days of receipt by the Tribe or the State of proposed amendments described in Section 17(a), the Tribe and the State shall enter into good faith negotiations regarding the proposed amendments. If good faith negotiations fail to result in a mutually-agreed upon amendment to this Compact regarding any of the issues listed in Section 17(a), the parties shall participate in good faith in a mediation conducted in accordance with the provisions of Section 15(b) in an effort to resolve their differences. The remaining provisions of Section 15 shall not apply to Sections 17(a) or (b). Within thirty (30) days after the conclusion of a mediation, the parties shall conclude negotiations and document any amendments consistent with Section 17(c).

(c) Effect. Any amendment to this Compact shall be in writing and signed by both parties. The terms and conditions of this Compact shall remain in effect until amended, modified, or terminated. Any provision of this Compact can be amended at any time by mutual agreement of the Tribe and the State. The Governor of the State is authorized to agree to amendments that are not inconsistent with the provisions of Title 5, Chapter 6 of the Arizona Revised Statutes.

SECTION 18. SEVERABILITY

Each provision of this Compact shall stand separate and independent of every other provision. If a court of competent jurisdiction finds any provision of this Compact to be invalid or unenforceable, it is the intent of the parties that the remaining provisions shall remain in full force and effect to the extent possible.

SECTION 19. THIRD PARTY BENEFICIARIES

This Compact is entered into solely for the benefit of the Tribe and the State. It is not intended to create any rights in third-parties which could result in any claim of any type against the Tribe and/or the State. Neither the Tribe nor the State waive their immunity from third-party claims and this Compact is not intended to result in any waiver of that immunity, in whole or in part.

SECTION 20. NOTICES

All notices required or authorized to be served under this Compact shall be served by certified mail (return receipt requested), commercial overnight courier service or by personal delivery, at the following addresses or such other address as either party shall hereafter inform the other by written notice.

State: The State of Arizona

_____, Arizona 85

Phoenix, Arizona 85007

Community: Governor

_____ Indian Community

_____, Arizona 85

SECTION 21. CALCULATION OF TIME

In computing any period of time prescribed or allowed by this Compact, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law, or when the act to be done is the filing of or providing access to any report or document, and the last day of the period falls on a day in which the weather or other conditions have made the offices in which the report or document is to be filed inaccessible, in which event the designated period shall extend until the end of the next day on which the office is accessible which is not a Saturday, Sunday or legal holiday, and is not one of the previously mentioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays under the Tribe's laws, State law or federal law shall be excluded from the computation period.

SECTION 22. COUNTERPARTS

This Compact is executed in three original documents; one shall be maintained by the Chairman of the Tribe, one shall be maintained by the Governor of the State and the third shall be sent to the Secretary of the Interior for approval.

SECTION 23. EFFECTIVE DATE AND DURATION

(a) Replacement of Other Gaming Compacts. On the Effective Date, this Compact shall replace and supersede any other tribal-state gaming compact between the State and the Tribe. The Tribe and the State shall execute an acknowledgment of the Effective Date.

(b) Duration.

(1) The initial term of this Compact shall commence on the Effective Date. The initial term of this Compact shall be the remainder of the term under Section 23(b)(1) of the Tribe's pre-existing compact as defined in A.R.S. § 5-601.02(I)(5), if any, provided that such pre-existing compact was in effect on May 1, 2002, plus ten (10) years.

(2) This Compact shall thereafter be extended for a renewal term of ten (10) years, unless the State or the Tribe notifies the other in writing, not less than one hundred eighty (180) days prior to the expiration of the initial term, that it does not intend to renew the Compact because of substantial non-compliance.

(3) This Compact shall thereafter be extended for an additional renewal term of three (3) years in order to provide the parties with an opportunity to negotiate new or amended Compact terms, unless the State or the Tribe notifies the other in writing, not less than one hundred eighty (180) days prior to the expiration of the renewal term, that it does not intend to renew the Compact because of substantial non-compliance.

(4) For purposes of this Section 23, substantial non-compliance means the willful failure or refusal to reasonably comply with the material terms of a final, non-appealable court order, or a final, non-appealable award of an arbitrator or arbitrators under Section 15. Substantial non-compliance does not include technical inadvertence or non-material variations or omissions in compliance with any such award or judgment. The failure to comply with any such award or judgment following notice from the State Gaming Agency and a reasonable opportunity to cure, which in no event shall be considered to be more than thirty (30) days, shall constitute a willful failure or refusal to reasonably comply. If either party contends that the other is in substantial non-compliance or has failed to comply with the material terms of a final, non-appealable court order, or a final, non-appealable award of an arbitrator or arbitrators under Section 15, the party so contending shall provide immediate written notice to the other, including the specific reason(s) for the contention and copies of all documentation relied upon to the extent allowed by law.

(5) A dispute over whether the State or the Tribe has engaged in substantial non-compliance shall be resolved under Section 15. The Compact shall remain in effect until the dispute has been resolved by a final, non-appealable decision under Section 15. In any Section 15 proceeding to determine substantial non-compliance, the burden of proof shall be on the party alleging substantial non-compliance.

(6) The Tribe may operate Class III Gaming only while this Compact, or any extension thereof, is in effect. Prior to the end of the final renewal term of this Compact, the State and the Tribe shall negotiate under 25 U.S.C. § 2710(d)(3)(A), or other applicable federal law, for a successor Compact or other similar agreement.

SECTION 24. GOVERNING LAW.

This Compact shall be governed by and construed in accordance with the applicable laws of the United States, and the Tribe and the State.

SECTION 25. ENTIRE AGREEMENT

This Compact contains the entire agreement of the parties with respect to the matters covered by this Compact and no other statement, agreement, or promise made by any party, officer, or agent of any party shall be valid or binding.

SECTION 26. AUTHORITY TO EXECUTE

Each of the undersigned represents that he is duly authorized and has the authority to execute this agreement on behalf of the party for whom he is signing and that this Compact is a contractual agreement which is valid, enforceable and binding upon the parties.

STATE OF ARIZONA **INDIAN COMMUNITY**

_____, Governor _____, Governor

DATE: _____ DATE:

APPROVED:

SECRETARY OF THE INTERIOR

By: _____ DATE:

A:\compact.final.wpd

Rev: February 20, 2003