

1977 (NARETPA), as amended, or under sections 3(b) and (c) of the Smith-Lever Act, 7 U.S.C. 343(b) and (c) or under section 3 of the Hatch Act of 1887, 7 U.S.C. 361c.

*Eligible institution* means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), including Central State University, Tuskegee University, and West Virginia State University (1890 land-grant institutions), and a college or university designated under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*) (commonly known as the First Morrill Act) and located in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands (1862 land-grant institutions in insular areas).

*Matching funds* means funds from non-Federal sources, including those made available by the State to the eligible institutions, for programs or activities that fall within the purposes of agricultural research and cooperative extension under: sections 1444 and 1445 of NARETPA; the Hatch Act of 1887; and the Smith-Lever Act.

\* \* \* \* \*

- 2. Amend § 3419.2 as follows:
- a. Remove the introductory text;
- b. Revise Paragraphs (a) and (b).

The revisions read as follows:

#### **§ 3419.2 Matching funds requirement.**

(a) 1890 land-grant institutions: The distribution of capacity funds are subject to a matching requirement. Matching funds will equal not less than 100% of the capacity funds to be distributed to the institution.

(b) 1862 land-grant institutions in insular areas: The distribution of capacity funds are subject to a matching requirement. Matching funds will equal not less than 50% of the capacity funds to be distributed to the institution.

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#### **§ 3419.3 [Removed]**

- 3. Remove § 3419.3

#### **§ 3419.4 [Redesignated as § 3419.3]**

- 4. Redesignate § 3419.4 as § 3419.3 and revise it to read as follows:

#### **§ 3419.3 Limited waiver authority.**

(a) *1890 land-grant institutions*: The Secretary may waive the matching funds requirement in 7 CFR 3419.2 above the 50% level for any fiscal year for an eligible institution of a State if the Secretary determines that the State will be unlikely to satisfy the matching requirement.

(b) *1862 land-grant institutions in insular areas*: The Secretary may waive

up to 100% of the matching funds requirements in 7 CFR 3419.2 for any fiscal year for an eligible institution in an insular area.

(c) The criteria to waive the applicable matching requirement for 1890 land-grant institutions and 1862 land-grant institutions in insular areas is demonstration of one or more of the following:

- (1) Impacts from natural disaster, flood, fire, tornado, hurricane, or drought;
- (2) State and/or institution facing a financial crisis; or
- (3) Lack of matching funds after demonstration of good faith efforts to obtain funds.

(d) Approval or disapproval of the request for a waiver will be based on the application submitted, as defined under § 3419.4.

- 5. Add new § 3419.4 to read as follows:

#### **§ 3419.4 Applications for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas.**

Application for waivers for both 1890 land-grant institutions and 1862 land-grant institutions in insular areas. The president of the eligible institution must submit any request for a waiver for matching requirements. A waiver application must include the name of the eligible institution, the type of Federal capacity funds (*i.e.* research, extension, Hatch, etc.), appropriate fiscal year, the basis for the request (*e.g.* one or more of the criteria identified in § 3419.3); current supporting documentation, where current is defined as within the past two years from the date of the letter requesting the waiver; and the amount of the request.

#### **§ 3419.5 [Amended]**

- 6. Amend § 3419.5 by removing the word “formula” and adding, in its place, the word “capacity”.
- 7. Revise § 3419.6 to read as follows:

#### **§ 3419.6 Use of matching funds.**

The required matching funds for the capacity programs must be used by an eligible institution for the same purpose as Federal award dollars: Agricultural research and extension activities that have been approved in the plan of work required under sections 1445(c) and 1444(d) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, section 7 of the Hatch Act of 1887, and section 4 of the Smith-Lever Act. For all programs, tuition dollars and student fees may not be used as matching funds.

#### **§ 3419.7 [Redesignated as § 3419.8]**

- 8. Redesignate § 3419.7 as § 3419.8, and add a new § 3419.7 to read as follows:

#### **§ 3419.7 Reporting of matching funds.**

Institutions will report all capacity matching funds expended annually using Standard Form (SF) 425, in accordance with 7 CFR 3430.56(a).

- 9. Revise newly redesignated § 3419.8 to read as follows:

#### **§ 3419.8 Redistribution of Funds.**

Unmatched research and extension funds will be reapportioned in accordance with the research and extension statutory distribution formulas applicable to the 1890 and 1862 land-grant institutions in insular areas, respectively. Any redistribution of funds must be subject to the same matching requirement under § 3419.2.

Done at Washington, DC, on November 2, 2017.

Sonny Ramaswamy,

*NIFA Director, National Institute of Food and Agriculture.*

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## **NATIONAL INDIAN GAMING COMMISSION**

### **25 CFR Part 514**

#### **Fees**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission proposes to amend its fee regulations. The proposed rule would require the Commission to adopt annual fee rates no later than November 1 of each year. In addition, the proposed rule defines the fiscal year of the gaming operation that will be used for calculating the fee payments. Finally, the proposed rule includes additional revisions intended to clarify the fee calculation and submission process for gaming operations.

**DATES:** The agency must receive comments on or before December 28, 2017.

**ADDRESSES:** You may send comments by any of the following methods:

- *Email:* 514\_Comments@nigc.gov.
- *Fax:* 202–632–7066.
- *Mail:* National Indian Gaming Commission, 1849 C Street NW., MS 1621, Washington, DC 20240.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE., Suite 200, Washington, DC 20002,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Austin Badger, National Indian Gaming Commission; Telephone: 202-632-7003.

**SUPPLEMENTARY INFORMATION:**

**I. Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

**II. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. The IGRA established an agency funding framework whereby gaming operations licensed by tribes pay a fee to the Commission for each gaming operation that conducts Class II or Class III gaming activity that is regulated by IGRA. 25 U.S.C. 2717(a)(1). These fees are used to fund the Commission in carrying out its regulatory authority. Fees are based on the gaming operation's gross revenues. The rate of fees is established annually by the Commission and shall be payable on a quarterly basis. 25 U.S.C. 2717(a)(3). IGRA limits the total amount of fees imposed during any fiscal year to 0.08 percent of the gross gaming revenues of all gaming operations subject to regulation under IGRA. Failure of a gaming operation to pay the fees imposed by the Commission's fee schedule can be grounds for a civil enforcement action. 25 U.S.C. 2713(a)(1).

The purpose of Part 514 is to establish how the NIGC sets and collects those fees, to establish a basic formula for tribes to utilize in calculating the amount of fees to pay, and to advise of the consequences for failure to pay the fees. Part 514 further establishes how the NIGC determines and assesses fingerprint processing fees.

Under the current fee regulations, the Commission adopts a preliminary fee rate by March 1 and a final fee rate by June 1 of every year. In addition, the NIGC annually reviews the costs involved in processing fingerprint cards and adopts a preliminary rate by March 1 and a final rate by June 1. The

Commission believes that the current process would be improved by moving to an annual final fee rate announced on or before November 1 of each year. This change would improve the Commission's analysis and budgeting process and simplify the fee calculation and payment process for gaming operations, thereby reducing the frequency of error in fee calculation. Proposed changes to the fee regulations were therefore included as a topic in a November 22, 2016, letter to tribal leaders introducing the Commission's 2017 consultation series.

**III. Development of the Proposed Rule**

On March 24, 2017, in Tulsa, OK, April 5, 2017, in Scottsdale, AZ, April 13, 2017, in San Diego, CA, April 20, 2017, in Billings, MT, May 4, 2017, in Biloxi, MS, and on May 25, 2017, in Portland, OR, the NIGC consulted with tribes on the proposed change to the fee regulations. In addition, the Commission issued a discussion draft on January 30, 2017, and solicited written comments through July 1, 2017. Comments received were generally supportive of the proposed change to the fee regulations. The Commission developed the proposed rule after carefully considering the comments received.

**A. Assessed Fiscal Year**

The current regulation provides that the annual fee shall be computed using "the most recent rates of fees adopted by the Commission" and "the assessable gross revenues for the previous fiscal year." As a result, the fee rate applied to a gaming operation's fiscal year changes depending on when the gaming operation's fiscal year ends. For example, if the Commission adopts a fee rate on November 1, 2014 (Rate A), a different fee rate on November 1, 2015 (Rate B), and the gaming operation's fiscal year ends on December 31, the gaming operations quarterly payments would be calculated as follows: (1) First quarter, payable March 31, 2015, would apply Rate A to the fiscal year ending December 31, 2014, (2) Second quarter, payable June 30, 2015, would apply Rate A to the fiscal year ending December 31, 2014, (3) Third quarter, payable September 30, 2015, would apply Rate A to the fiscal year ending December 31, 2014, and (4) Fourth quarter, payable December 31, 2015, would apply Rate B to the fiscal year ending December 31, 2014.

The Commission intends for the annual rate to be applied consistently to a gaming operation's assessable gross revenue for one fiscal year. The proposed rule therefore includes

amendments intended to better describe the intended fee calculation. These amendments include defining "assessed fiscal year." Under the proposed rule, the annual fee shall be computed using the "most recent rates of fees adopted by the Commission" and "the assessable gross revenues for the gaming operation's assessed fiscal year."

Assessed fiscal year means the most recent fiscal year ending prior to January 1 of the year the Commission adopted fee rates. For example, if the Commission adopted fee rates on November 1, 2018, the assessed fiscal year would be a gaming operation's fiscal year ending prior to January 1, 2018. For gaming operations with fiscal years ending December 31, the assessed fiscal year would be the fiscal year ending December 31, 2017. For gaming operations with fiscal years ending September 30, the assessed fiscal year would be the fiscal year ending September 30, 2017. For gaming operations with fiscal years ending June 30, the assessed fiscal year would be the fiscal year ending June 30, 2017.

As a result, under the proposed rule, if the Commission adopts a fee rate on November 1, 2014 (Rate A), a different fee rate on November 1, 2015 (Rate B), and the gaming operation's fiscal year ends on December 31, the gaming operation's quarterly payments would be calculated as follows: (1) First quarter (of the gaming operation's fiscal year), payable March 31, 2015, would apply Rate A to the fiscal year ending December 31, 2013, (2) Second quarter, payable June 30, 2015, would apply Rate A to the fiscal year ending December 31, 2013, (3) Third quarter, payable September 30, 2015, would apply Rate A to the fiscal year ending December 31, 2013, and (4) Fourth quarter, payable December 31, 2015, would apply Rate B to the fiscal year ending December 31, 2014. To continue the example, the subsequent quarterly payment, payable March 31, 2016, would apply Rate B to the fiscal year ending December 31, 2014.

As an additional example, under the proposed rule, if the Commission adopts a fee rate on November 1, 2014 (Rate A), a different fee rate on November 1, 2015 (Rate B), and the gaming operation's fiscal year ends on September 30, the gaming operation's quarterly payments would be calculated as follows: (1) First quarter (of the gaming operation's fiscal year), payable December 31, 2015, would apply Rate A to the fiscal year ending September 30, 2013, (2) Second quarter payable March 31, 2016, would apply Rate A to the fiscal year ending September 30, 2013, (3) Third quarter payable June 30, 2016, would apply

Rate A to the fiscal year ending September 30, 2013, (4) Fourth quarter, payable September 30, 2016, would apply Rate A to the fiscal year ending September 30, 2013. To continue the example, the subsequent first quarter, payable December 31, 2016, would apply Rate B to the fiscal year ending September 30, 2014.

#### *B. Fees and Statements Required if a Gaming Operation Ceases Operations*

In the course of developing the proposed rule, the Commission became aware that the current regulations do not describe the fees and statements required of gaming operations that cease operations. Section 514.7(b) of the proposed rule now provides that the gaming operation prepares and submits to the Commission the fees and statements required for the period from the end of the most recent quarter for which fees have been paid through the date the gaming operation ceased operations. For example, if a gaming operation with a September 30 fiscal year end ceases operations on July 31, 2017, the gaming operation will have submitted fees and statements through June 30, 2017. The gaming operation would therefore still owe a payment for the period from July 1, 2017, through July 31, 2017.

#### *C. Transition Period*

*Comment:* Some commenters recommended that the Commission take into account the transition period between the current regulation and the final rule, if adopted.

*Response:* The Commission agrees and will issue guidance to describe how gaming operations should calculate fee payments during the transition period. The Commission intends for the most recently announced fee rate to carry over until a new fee rate is announced once a final rule is promulgated.

#### *D. Payment Adjustments*

*Comment:* Some commenters recommended that the proposed rule make clear the gaming operation's obligations regarding underpayment or overpayment of the annual fee.

*Response:* The Commission agrees that payment adjustments are warranted when the gaming operation becomes aware that prior submissions over or underpaid the required fee amount. Section 514.6(d)(5) of the proposed rule provides that the amount to be remitted be adjusted for prior amounts paid and credits received, if applicable. The Commission notes, however, that pursuant to section 571.13 copies of financial statements and audits are required to have been provided to the

Commission within 120 days after the end of the gaming operation's fiscal year. Therefore, under the proposed rule, audited financial statements for the assessed fiscal year are required to be complete before a fee payment calculated using the assessed fiscal year is due. The current regulation and the proposed rule continue, however, to require that the quarterly statements must be reconciled with a tribe's audited or reviewed financial statements for each gaming location.

#### *E. Advanced Payment*

*Comment:* A commenter sought clarification as to whether the Commission would accept pre-payments under the proposed rule.

*Response:* The Commission accepts pre-payments under the current regulations and will continue to do so under the proposed rule. Section 514.5(a) of the proposed rule provides that the annual fee payable to the Commission optionally may be paid in full in the first quarterly payment.

#### *F. Other Comments*

*Comment:* A commenter asked whether the NIGC would issue late payment fees instead of issuing a notice of violation when payments are submitted late.

*Response:* The Commission notes that the current regulation provides for late fees for payments submitted between one and ninety calendar days late. Statements and/or fee payments over ninety calendar days late constitute a failure to pay and may result in enforcement action. The proposed rule does not substantively amend the late fee or failure to pay provisions of the current regulation.

*Comment:* A commenter asked whether the Commission would amend the definition of assessable gross revenue to be consistent with standards set by professional accounting organizations.

*Response:* The Commission acknowledges that professional accounting definitions of gross revenue differ from the Commission's definition of assessable gross revenue. While the Commission's definition of assessable gross revenue must remain consistent with the definition for gross revenues contained in IGRA at 25 U.S.C. 2717(a)(6), the proposed rule includes one change intended to conform the Commission's definition of assessable gross revenue with appropriate accounting terminology. The proposed rule removes the word "amortization" from within the phrase "allowance for amortization of capital expenditures for structures" found in section 514.4(c)

and 25 U.S.C. 2717(a)(6). The Commission understands that the term depreciation rather than amortization is appropriate for an allowance for capital expenditures for structures. The methods for determining the amount of the allowance provided for in section 514.4(e) remains unchanged.

*Comment:* A commenter asked whether the proposed rule would reduce fees for processing fingerprint cards.

*Response:* The proposed rule does not affect how the fees for processing fingerprint cards are determined. As provided by the current regulation and proposed rule, the fingerprint processing fee is based on the fees charged by the Federal Bureau of Investigation and the costs incurred by the Commission.

### **Regulatory Matters**

#### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian Tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes. As discussed above, the NIGC engaged in extensive consultation on this topic and received and considered comments in developing this proposed rule.

#### *Regulatory Flexibility Act*

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

#### *Small Business Regulatory Enforcement Fairness Act*

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small

Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

#### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

#### *National Environmental Policy Act*

The Commission has determined that the proposed 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.*

#### *Paperwork Reduction Act*

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141-0007, which expired in August of 2011. The NIGC is in the process of reinstating that Control Number.

#### **List of Subjects in 25 CFR Part 514**

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

Therefore, for reasons stated in the preamble, the National Indian Gaming Commission proposes to revise 25 CFR part 514 to read as follows:

### **PART 514—FEES**

Sec.

- 514.1 What is the purpose of this part?
- 514.2 When will the annual rates of fees be published?
- 514.3 What is the maximum fee rate?
- 514.4 How does a gaming operation calculate the amount of the annual fee it owes?
- 514.5 When must a gaming operation pay its annual fees?
- 514.6 What are the quarterly statements that must be submitted with the fee payments?
- 514.7 What should a gaming operation do if it changes its fiscal year or ceases operations?
- 514.8 Where should fees, quarterly statements, and other communications about fees be sent?
- 514.9 What happens if a gaming operation submits its fee payment or quarterly statement late?
- 514.10 When does a late payment or quarterly statement submission become a failure to pay?
- 514.11 Can a proposed late fee be appealed?
- 514.12 When does a notice of late submission and/or a proposed late fee become a final order of the Commission and final agency action?
- 514.13 How are late submission fees paid, and can interest be assessed?
- 514.14 What happens if the fees imposed exceed the statutory maximum or if the Commission does not expend the full amount of fees collected in a fiscal year?
- 514.15 May tribes submit fingerprint cards to the NIGC for processing?
- 514.16 How does the Commission adopt the fingerprint processing fee?
- 514.17 How are fingerprint processing fees collected by the Commission?

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

#### **§ 514.1 What is the purpose of this part?**

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

#### **§ 514.2 When will the annual rates of fees be published?**

(a) The Commission shall adopt the rates of fees no later than November 1st of each year.

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

#### **§ 514.3 What is the maximum fee rate?**

(a) The rates of fees imposed shall be—

(1) No more than 2.5% of the first \$1,500,000 of the assessable gross revenues from each gaming operation, and

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

(b) If a tribe has a certificate of self-regulation, the rate of fees imposed on assessable gross revenues from the class II gaming activity shall be no more than 0.25%.

(c) The total amount of all fees imposed on assessable gross revenues during any fiscal year shall not exceed 0.08% of the assessable gross gaming revenues of all gaming operations.

#### **§ 514.4 How does a gaming operation calculate the amount of the annual fee it owes?**

(a) The amount of annual fees owed shall be computed using:

(1) The most recent rates of fees adopted by the Commission, and

(2) The assessable gross revenues for the gaming operation's assessed fiscal year.

(b) Assessed fiscal year means the gaming operation's fiscal year ending prior to January 1 of the year the Commission adopted fee rates.

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

(d) Assessable gross revenue tiers. Tier 1 assessable gross revenues are the first \$1,500,000 of the assessable gross revenues from each gaming operation. Tier 2 assessable gross revenues are the amounts in excess of the first \$1,500,000 of the assessable gross revenues from each gaming operation.

(e) The allowance for capital expenditures for structures shall be either:

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

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

(f) Unless otherwise provided by regulation, generally accepted accounting principles shall be used.

#### **§ 514.5 When must a gaming operation pay its annual fees?**

(a) Annual fees are payable to the Commission on a quarterly basis. The annual fee payable to the Commission optionally may be paid in full in the first quarterly payment.

(b) Each gaming operation shall calculate the amount of fees to be paid, if any, and remit them with the quarterly statement required in § 514.6 within three (3) months, six (6) months, nine (9) months, and twelve (12) months of the end of the gaming operation's fiscal year.

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

(a) Each gaming operation shall file with the Commission quarterly statements showing its assessable gross revenues for the assessed fiscal year.

(b) These statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the allowance for capital expenditures for structures.

(c) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. A telephone number and email address for each individual identified shall be included.

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

(1) Multiply the Tier 1 assessable gross revenues by the rate for those revenues adopted by the Commission.

(2) Multiply the Tier 2 assessable gross revenues by the rate for those revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in paragraphs (d)(1) and (2) of this section.

(4) Multiply the total obtained in paragraph (d)(3) of this section by  $\frac{1}{4}$ .

(5) Adjust for prior amounts paid and credits received, if applicable. The gaming operation shall provide a detailed justification for the adjustment.

(6) The amount computed in paragraph (d)(5) of this section is the amount to be remitted.

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

**§ 514.7 What should a gaming operation do if it changes its fiscal year or ceases operations?**

(a) If a gaming operation changes its fiscal year, it shall notify the Commission of the change within thirty (30) days. The Commission may request that the gaming operation prepare and

submit to the Commission the fees and statements required by this subsection for the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be sent to the Commission within ninety (90) days of its request.

(b) If a gaming operation ceases operations, it shall notify the Commission within (30) days. The Commission may request that the gaming operation, using the most recent rates of fees adopted by the Commission, prepare and submit to the Commission fees and statements for the period from the end of the most recent quarter for which fees have been paid to the date operations ceased. The submission must be sent to the Commission within (90) days of its request.

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

Remittances, quarterly statements, and other communications about fees shall be sent to the Commission by the methods provided for in the rates of fees notice published in the **Federal Register**.

**§ 514.9 What happens if a gaming operation submits its fee payment or quarterly statement late?**

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

(1) The date the statement and/or payment was due;

(2) The number of calendar days late the statement and/or payment was submitted;

(3) A citation to the federal or tribal requirement that has been or is being violated;

(4) The action being considered by the Chair; and

(5) Notice of rights of appeal pursuant to subchapter H of this chapter.

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

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

(1) For statements and/or fee payments one (1) to thirty (30) calendar days late, the Chair may propose a late fee of up to, but not more than 10% of the fee amount for that quarter;

(2) For statements and/or fee payments thirty-one (31) to sixty (60) calendar days late, the Chair may propose a late fee of up to, but not more than 15% of the fee amount for that quarter;

(3) For statements and/or fee payments sixty-one (61) to ninety (90) calendar days late, the Chair may propose a late fee of up to, but not more than 20% of the fee amount for that quarter.

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

Statements and/or fee payments over ninety (90) calendar days late constitute a failure to pay the annual fee, as set forth in IGRA, 25 U.S.C. 2717(a)(4), and NIGC regulations, 25 CFR 573.4(a)(2). In accordance with 25 U.S.C. 2717(a)(4), failure to pay fees shall be grounds for revocation of the approval of the Chair of any license, ordinance or resolution required under IGRA for the operation of gaming. In accordance with § 573.4(a)(2) of this chapter, if a tribe, management contractor, or individually owned gaming operation fails to pay the annual fee, the Chair may issue a notice of violation and, simultaneously with or subsequently to the notice of violation, a temporary closure order.

**§ 514.11 Can a proposed late fee be appealed?**

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

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

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

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

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

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

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

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

**§ 514.14 What happens if the fees imposed exceed the statutory maximum or if the Commission does not expend the full amount of fees collected in a fiscal year?**

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

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

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

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

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

(a) The Commission shall review annually the costs involved in processing fingerprint cards and, by a vote of not less than two of its members, shall adopt the fingerprint processing fee no later than November 1st of each year.

(b) The Commission shall publish the fingerprint processing fee in a notice in the **Federal Register**.

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

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

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

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

(c) Remittances and other communications about fingerprint processing fees shall be sent to the Commission by the methods provided for in the rates of fees notice published in the **Federal Register**.

Dated: November 2, 2017.

**Jonodev O. Chaudhuri,**  
*Chairman.*

**Kathryn Isom-Clause,**  
*Vice Chair.*

**E. Sequoyah Simermeyer,**  
*Associate Commissioner.*

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 201 and 202

[Docket No. 2017-15]

#### Group Registration of Unpublished Works: Extension of Comment Period

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The U.S. Copyright Office is extending the deadlines for the submission of written comments in response to its October 12, 2017 notice of proposed rulemaking, regarding the creation of a new group registration option for unpublished works to replace the existing “unpublished collections” registration option. In this document, the Office also clarifies that the new group registration option is not intended for group registration of unpublished photographs; that is the subject of a separate proposed rulemaking, which would permit submission of up to 750 photographs on one application.

**DATES:** The comment period for the notice of proposed rulemaking published on October 12, 2017 (82 FR 47415), is extended. Comments must be made in writing and must be received in the U.S. Copyright Office no later than November 17, 2017.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office Web site at <https://www.copyright.gov/rulemaking/groupunpublished/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office for special instructions using the contact information below.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; or Regan A. Smith, Deputy General Counsel, by telephone at 202-707-8040 or by email at [rkas@loc.gov](mailto:rkas@loc.gov), [ebertin@loc.gov](mailto:ebertin@loc.gov), and [resm@loc.gov](mailto:resm@loc.gov).

**SUPPLEMENTARY INFORMATION:** As detailed in an October 12, 2017 notice of proposed rulemaking (“NPRM”),<sup>1</sup> the U.S. Copyright Office is proposing to create a new group registration option for a limited number of unpublished works (“GRUW”). Under that proposal, applicants will be allowed to include up to five works in each submission. This new group registration option will replace the current “unpublished collections” option.

After publication of the NPRM, there was some understandable confusion about the scope of the NPRM among the photographer community, who feared that the GRUW option would limit them to submitting five unpublished photographs per application. To clarify, the Office does not intend to impose such a limit on photographers. On December 1, 2016, the Office issued a separate notice of proposed rulemaking amending the existing option for group registration of photographs that would create an electronic application for group registration for published photographs, and also create an analogous application for group registration for unpublished photographs.<sup>2</sup> Under that separate proposed rule, photographers would be permitted to include up to 750 photographs on each such application, rather than the five works proposed under the new GRUW option. See generally 81 FR at 86649. The Office is working on the group registration of photographs final rule in conjunction

<sup>1</sup> 82 FR 47415 (Oct. 12, 2017).

<sup>2</sup> 81 FR 86643 (Dec. 1, 2016).