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CHEROKEE NATION GAMING COMMISSION

ADMINISTRATIVE PROCEDURES ACT POSTING

TITLE: Proposed Revisions Cherokee Nation Gaming Commission Rules and Regulations

TYPE OF ACTION: Notice of Proposed Rule Amendment

PROPOSED RULES:

Chapter VII (B) – Compact Gaming Prize Claim

PUBLICATION DATE: 22 July 2019

SUMMARY:

The purpose of the attached proposed rule is to correct drafting errors and other scrivener errors contained within the regulation and to ensure language consistency within the document.

AUTHORITY:

Title 4 CNCA § 22
Tribal-State Compact Part 5 (A)
Tribal-State Compact Part 6 (B) and (C)

REGULATORY ANALYSIS:

No regulatory analysis of the revised rule was performed.

COMMENT PERIOD:

Written comments must be received on or before 5 p.m., Thursday, 22 August 2019.

SUPPLEMENTARY INFORMATION:

Comments may be submitted electronically at gaming-commission@cherokee.org. Written comments may be sent to the Cherokee Nation Gaming Commission, P. O. Box 627, Tahlequah, OK 74465 and must be postmarked by the date above.

A copy of the current Cherokee Nation Gaming Commission Rules and Regulations may be obtained by submitting a request electronically or in writing using either of the above electronic / physical addresses.

The Tribal-State Compact may be accessed by visiting the State Compliance Agency website at [www.ok.gov/OSF/Tribal Gaming](http://www.ok.gov/OSF/Tribal_Gaming).

PUBLIC HEARING:

Persons requesting public hearings or submitting comments must include their name, address, phone number, and e-mail address, if the submission is electronic, but may request this identifying information be kept confidential. Anonymous comments will not be accepted.

A request for a public meeting shall not end before fifteen- (15) days following the public notice of all responses to written comments. A request for a public meeting shall include a statement of the issues desired to be discussed and a summary of the argument supporting the person's position on the issues. A public hearing on a rule proposed to be adopted may not be held earlier than twenty- (20) days after notice of its location and time is published on the website.

Public hearings may be held only from 8:00 A.M. to 10:00 P.M. on Monday thru Saturday. The public hearing shall be recorded by audio, audio and video, stenographic or other means.

Persons requesting an opportunity to comment at a public meeting may be required to register by name and indicate whether they support or oppose the rule or a part of the rule.

BACKGROUND:

The Indian Gaming Regulatory Act (IGRA) was enacted by the United States Congress on 17 October 1988, establishing the National Indian Gaming Commission (NIGC). Under

the IGRA, the NIGC is charged with regulating Class II gaming and certain aspects of Class III gaming.

The Cherokee Nation adopted Legislative Act 30-89 on 8 April 1989 establishing the Cherokee Nation Gaming Commission (CNGC) to regulate the conduct of gaming owned and operated by the Cherokee Nation. The Act was amended several times with the last revision being passed by the Tribal Council in July 2014 and approved by the National Indian Gaming Commission (NIGC) in October 2014.

The Cherokee Nation entered into a gaming compact with the State of Oklahoma in 2005. Within the Compact, the Nation consented to suits against the Enterprise in a court of competent jurisdiction with respect to prize claims if all requirements for filing a compact game prize claim have been met.

In drafting the regulation, an appeal of the initial decision of gaming management to Executive Management of the Enterprise was included; this additional appeal is not afforded under the Tribal-State Compact and, therefore, must be removed in order to achieve compliance.

Other minor scriveners' errors and language changes are also proposed to ensure consistency of terminology and formatting within the document.



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CHEROKEE NATION
GAMING COMMISSION
MEMORANDUM

To : John Sparks, Chairman
Steve Barrick, Vice-Chairman
Jennifer Goins, Commissioner
Janice Walters-Purcell, Commissioner

From : Jamie Hummingbird, Director

Date : 5 July 2019

Re : Compact Prize Claim Regulation – Proposed Revisions

In reviewing the Compact Gaming Prize Claim regulation (Chapter VIII-B), a drafting error was identified and requires correction in order to be compliant with the Tribal-State Compact. In addition to correcting the drafting error, other minor formatting modifications are proposed to ensure consistency within the regulation.

The following changes are proposed:

1. Scope – strike “that are subject to” and replace with “under”; remove “(CNGC).”
2. Subsection C (1) – strike “casino personnel” and replace with “the Enterprise.
3. Subsection C (1)(c) –add “The date the prize claim is filed with the Enterprise or the CNGC shall be deemed the official date of filing the prize claim notice.”
4. Subsection D – strike in its entirety.
5. Subsection E (2) – strike “this” and add “6 of the Tribal-State Compact.”
6. Subsection E (2)(1) – strike “Part” and replace with “Section”

7. Subsection F (2) – modify the sentence to read “...shall provide such pamphlets, as approved by the CNGC, to a claimant ~~approved by CNGC~~ within five (5) days...”
8. Subsection H – modify the sentence to read “...assess a fine on the Enterprise in accordance with...”
9. Where “CNGC” and “Enterprise” are mentioned, adding “the” before the title where it is not detailed.

I recommend the above noted changes be authorized for publication under the Cherokee Nation Administrative Procedures Act for a thirty- (30) day public comment period.



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CHEROKEE NATION GAMING COMMISSION
RULES AND REGULATIONS

CHAPTER:	Gaming Dispute Resolution	CHAPTER #:	VIII
SUBJECT:	Compact Gaming Prize Claim	SECTION – SUBSECTION:	B
EFFECTIVE DATE:	1 October 2015 <u>1 October 2019</u>	SUPERSEDES MATERIAL DATED:	7/28/2008 <u>1 October 2015</u>
APPROVED BY:		DATE:	6/26/15 <u>13 September 2019</u>

PURPOSE

The purpose of this Section is to ensure that patrons are afforded due process in seeking resolution to a dispute arising in connection with Compact game play.

SCOPE

The provisions of this Section shall apply to gaming-related disputes between gaming patrons and gaming operations ~~that are subject to~~ under the jurisdiction of Cherokee Nation Gaming Commission (~~CNGC~~).

AUTHORITY

Title 4 § 22 CNCA
Tribal-State Compact Part 5 (A)
Tribal-State Compact Part 6 (B) and (C)

A. DEFINITIONS

1. *Enterprise* – The entity conducting gaming operations on behalf of or as authorized by the Cherokee Nation.
2. *Cherokee Nation Gaming Commission (CNGC)* – The regulatory body established by the Cherokee Nation to oversee and regulate the conduct of gaming on lands owned by the Cherokee Nation.
3. *Compact Game* – An electronic and/or card/table game authorized under the model compact and as described in O.S. Title 3A.
4. *Gaming Activity* – Event that is the cause or subject of protest and/or allegation of liability against the Enterprise. This definition also covers requests for refunds associated with gaming activities.

5. *Management Official* – The Enterprise employee authorized to review claims and render a decision on a patron’s prize claim.
6. *Prize Claim* – A complaint related to: game play resulting in disagreement on behalf of the patron in the amount of any prize which has been awarded; the failure to be awarded a prize through gaming or; the right to receive a refund or other compensation subject to management review and/or investigation.
7. *Prize Claim Dispute* – Unresolved prize claim or a decision made by the Enterprise in reference to a prize claim in which the validity of such is questioned by a patron, thus, requiring further review.
8. *Prize Limit* – The maximum amount of any prize claim shall be the amount of the prize which the claimant establishes he/she was entitled to be awarded. The maximum allowed payout will be determined per the game pay table, pay structure, and/or pot.
9. *State Compliance Agency (SCA)* – The agency charged with overseeing compact gaming on behalf of the State of Oklahoma; currently, the Office of State Finance.

B. NO CAUSE OF ACTION CREATED

Provisions of this Section or of any other Chapter of these Rules and Regulations shall not create a cause of action against any gaming operation, gaming employee, Cherokee Nation, or the CNGC.

C. CLAIMS PROCESS

1. A patron may initiate a claim for the event for which payment is being sought by filing a written prize claim notice with either ~~casino personnel~~ [the Enterprise](#) or with the CNGC.
 - a. A copy of the dispute notice filed with [the Enterprise](#) shall be provided to the CNGC and the SCA within forty-eight (48) hours.
 - b. A copy of the dispute notice filed with the CNGC shall be provided to the Enterprise and the SCA within forty-eight (48) hours.
 - c. [The date the prize claim is filed with the Enterprise or the CNGC shall be deemed the official date of filing the prize claim notice.](#)
2. The written prize claim notice shall state:
 - a. The date, time, place and circumstances of the incident upon which the prize claim is based;

- b. The identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident;
 - c. The amount demanded and the basis for said amount;
 - d. The name, address, telephone number and email address (if any) of the claimant, and the name, address, telephone number and email address (if any) of any representative authorized to act or settle the claim on behalf of the claimant.
3. All notices of prize claims must be filed within ten (10) calendar days of the occurrence. Failure to file a claim within this timeframe will forever bar further review.
4. All notices of prize claims shall be signed by the claimant. The prize claim notice shall be signed under oath.
5. [The](#) Enterprise, through a designated Management Official, shall promptly review, investigate and make a determination regarding the prize claim.
 - a. Claimants shall cooperate in providing information, including personal sworn statements and agreeing to be interviewed, as [the](#) Enterprise shall reasonably request.
 - b. The claimant is permitted to have counsel present during any such interview.
 - c. A list of designated Management Officials shall be on file with the CNGC with updates being provided quarterly or as the list is modified.
 - d. Notice of the Management Official's decision shall be provided to [the](#) CNGC upon issuance along with all supporting documentation used in rendering the decision.
6. If the prize claim is not resolved within seventy-two (72) hours from the time of filing the claim in accordance with paragraphs 2 and 3 of this subsection, the CNGC shall immediately notify the SCA in writing that the claim has not been resolved.
7. In the event the claim is resolved, the CNGC shall not be obligated to report that fact to the SCA, but shall make CNGC reports available for review.
8. Any portion of a prize claim which is unresolved shall be deemed denied if [the](#) Enterprise fails to notify the claimant in writing of its approval within thirty (30) calendar days of the filing date, unless the parties agree by written agreement to extend the date. Each extension shall be for no more than thirty (30) calendar days, but there shall be no limit on the number of written agreements for extensions; provided that no written agreements for extension shall be valid unless signed by the claimant and an authorized representative of the CNGC. The claimant and the Enterprise may continue attempts to settle a claim beyond an

extended date; provided, settlement negotiations shall not extend the date of denial in the absence of a written extension required by this paragraph.

~~D. FILING A DISPUTE~~

- ~~1. A patron may dispute a decision by Enterprise by filing a written dispute with Gaming Management within ten (10) calendar days of the denial of their claim or from the date of the occurrence, whichever is later. Failure by the patron to file the dispute within this timeframe shall bar further review.~~
- ~~2. The written dispute notice shall state:~~
 - ~~a. The date, time, place and circumstances of the incident upon which the prize claim is based;~~
 - ~~b. The identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident;~~
 - ~~c. The amount demanded and the basis for said amount;~~
 - ~~d. The name, address, telephone number and email address (if any) of the claimant, and the name, address, telephone number and email address (if any) of any representative authorized to act or settle the claim on behalf of the claimant.~~
- ~~3. Notice of Gaming Management's decision shall be deemed served should the patron refuse delivery. Proof of delivery or refusal shall be provided to CNGC within forty-eight (48) hours of receipt by the Enterprise.~~

E. APPEAL TO THE CHEROKEE NATION DISTRICT COURT

1. An appeal may be initiated by the patron by filing a Notice of Appeal with the Cherokee Nation District Court, which shall contain a statement of the grounds for the appeal.
2. A judicial proceeding for any cause arising from a prize claim may be maintained in accordance with and subject to the limitations of subsection C of ~~this~~ [Part 6 of the Tribal-State Compact](#) only if the following requirements have been met:
 - a. The claimant has followed all procedures required by this [Part Section](#), including without limitation, the delivery of a valid and timely written prize claim notice to the Enterprise,
 - b. The Enterprise has denied the prize claim, and

- c. The claimant has filed the judicial proceeding no later than one hundred eighty (180) days after denial of the claim by the Enterprise; provided that neither the claimant nor the Enterprise may extend the time to commence a judicial proceeding.

F. NOTICE REQUIREMENTS

1. Notices explaining the procedure and time limitations with respect to making a prize claim shall be prominently posted in the facility. Such notices shall explain the method and places for making claims, that this procedure is the exclusive method of making a prize claim, and that claims that do not follow this procedure shall be forever barred.
2. The Enterprise shall make pamphlets containing the requirements in this subsection readily available to all patrons of the facility and shall provide such pamphlets, [as approved by CNGC](#), to a claimant ~~approved by CNGC~~ within five (5) days of the filing date of a claim.

G. REPORTING REQUIREMENTS

1. An electronic report of all claims and disputes must be maintained in a format approved by the CNGC and must permit the data to be queried by:
 - a. Facility name;
 - b. Vendor, if applicable;
 - c. Claim type (e.g. gaming machine, tournament, refund)
 - d. Machine or table number, if applicable;
 - e. Claim/dispute amount;
 - f. Claim/dispute status;
 - g. Date of claim/dispute occurrence;
 - h. Date filed (may be the date received by the CNGC);
 - i. Date notice sent to CNGC/SCA;
 - j. Date of approval/denial;
 - k. Description of any pertinent documents received by patron, satisfaction of reporting requirements to the patron and the CNGC by date, if such reporting is required by this section.

2. All claims/disputes shall be referenced by a control number within this report.
3. The claims/disputes report shall be provided to the CNGC upon request.

H. PENALTIES

In the event that the CNGC finds reasonable evidence that management failed to comply with any provision of this chapter, the CNGC may take action on the gaming license(s) of management personnel found to be in violation of this regulation and/or assess a fine [on the Enterprise](#) in accordance with CNGC Regulations contained in Chapter X Sections B and C and any other applicable regulation.