



HO-CHUNK NATION GAMING COMMISSION

PO Box 667, Black River Falls, WI 54615 ~ (715) 284-7474 * (800) 814-8050 *FAX (715) 284-7550

January 24, 2012

National Indian Gaming Commission
Attn: Regulatory Review
1441 L Street, N.W., Suite 9100
Washington, D.C. 20005

RE: Comments on proposed changes to NIGC regulations, 25 C.F.R. parts 502, 537, 556, 558 and 573

Dear Commissioners:

On behalf of the Ho-Chunk Nation ("Nation"), the Ho-Chunk Nation Gaming Commission ("Commission") is submitting this letter to comment on the proposed changes to NIGC regulations, 25 C.F.R. parts 537, 556 and 558 proposed by the National Indian Gaming Commission ("NIGC") as reported in the Federal Register on December 22, 2011 and to NIGC regulations 25 C.F.R. parts 502 and 573 proposed by the National Indian Gaming Commission ("NIGC") as reported in the Federal Register on December 27, 2011.

INTRODUCTION

The Nation is a federally recognized Indian tribe organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 476, pursuant to a written Constitution which has been approved by the Secretary of the Interior. The NIGC has recognized this inasmuch as the NIGC has engaged in consultation with the Nation in multiple meetings under the NIGC's Government-to-Government Tribal Consultation Policy, 69 FR 16973, and entered into a Memorandum of Understanding Regarding the Submission of Background Investigation Materials with the Nation in January 2000.

The Nation presently operates Class III gaming facilities at Wisconsin Dells, Black River Falls, Nekoosa, Tomah and Wittenberg in the State of Wisconsin pursuant to a Tribal-State Compact with Wisconsin. The Nation also conducts Class II gaming pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C § 2701 et. seq. at the Wisconsin Dells and Black River Falls facilities. In addition, the Nation operates an exclusively Class II gaming facility in Madison, Wisconsin. With these Class II and Class III gaming facilities operating, the Nation licenses a great many employees. The Nation's Gaming Commission works with the Nation's Compliance Department to conduct background investigations pursuant to the IGRA and the NIGC's regulations. Since the Nation's gaming facilities are spread over a fourteen (14) county area within Wisconsin, tribal licensing and regulation require optimal coordination and efficiency. The Ho-Chunk Nation Gaming Commission has carried out these functions exceptionally for many years.

The Nation expresses its appreciation for the opportunity to comment on these proposed regulations. The Nation provides the following comments, questions and/or observations:

Comments and Questions Regarding the Proposed Changes.

1. 25 C.F.R. Part 502 – Definition of Enforcement Action. The NIGC has proposed adding a definition of "Enforcement Action," in order to supplement the amendments it proposes to 25 C.F.R. Part 573.

Accordingly, the NIGC proposes the following definition:

§ 502.24 Enforcement Action

“Enforcement Action means any action taken by the Chair under 25 U.S.C. 2713 against any person engaged in gaming, for a violation of any provision of IGRA, the regulations of this chapter, or tribal regulations, ordinances, or resolutions approved under 25 U.S.C. 2710 or 2712 of IGRA, including, but not limited to, the following: a notice of violation; a civil fine assessment; or an order for temporary closure.”

The Ho-Chunk Nation Gaming Commission recommends removing the text “against any person engaged in gaming for a violation of any provision of IGRA, the regulations of this chapter, or tribal regulations, ordinances, or resolutions approved under 25 U.S.C. 2710 or 2712 of IGRA”. The subject and scope of such action is already identified in 25 U.S.C. 2713. Adding the statutory language to the regulation appears superfluous and potentially confusing. Thus, the Ho-Chunk Gaming Commission suggests a definition of “Enforcement Action” that is slightly revised, as follows: *“Enforcement Action means any action taken by the Chair under 25 U.S.C. 2713 ~~against any person engaged in gaming, for a violation of any provision of IGRA, the regulations of this chapter, or tribal regulations, ordinances, or resolutions approved under 25 U.S.C. 2710 or 2712 of IGRA,~~ including, but not limited to, the following: a notice of violation; a civil fine assessment; or an order for temporary closure.*

Also, the proposed definition refers to “any action taken by the Chair under 25 U.S.C. 2713.” It is noted that 25 U.S.C. 2713 has no provision for any action being taken by a “Chair,” but does allow for action taken by a “Chairman.” However, there is no definition for “Chair” and the definition of “Chairman” provided at both 25 U.S.C. 2703 (2) and § 502.1 neither identifies “Chair” nor indicates that the two terms are interchangeable or otherwise synonymous. As we would concur that the term “Chair” is otherwise appropriate and suitable, we welcome the use of the term “Chair” throughout the proposed regulations after it is appropriately defined.

Another point the NIGC may want to clarify with the definition of “Enforcement Action” is whether it pertains to *any* action, or only *final* action of the NIGC. As it stands with the proposed definition in Part 502.24, together with the proposed language in Part 573.1 and 573.2, a letter of concern or warning letter would constitute “enforcement action.” Thus, even though such steps are meant by the NIGC to be tools to seek voluntary compliance, the proposed definition may be overly broad. To say that the NIGC has taken an “enforcement action” against a tribe, when a simple “letter of concern” is sent, for instance, appears to give the mistaken impression that the NIGC has taken action based on a conclusion that the IGRA or pertinent regulations have been violated.

2. 25 C.F.R. Part 537.1 (a)(4) – Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract.

The definitional language proposed here seems excessively vague and potentially overreaching. Specifically, what does it mean to be “federally regulated”? Federal regulations concerning insider trading, for example, apply to all investors whether individual or institutional. Accordingly, it is recommended that either “federally regulated” be removed as it is an insufficient cause to provide the Chairman with blanket discretion, or that the standard for “federally regulated” be more explicitly defined before inclusion in the proposed regulation. Additionally, the term “institutional investor” is

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similarly vague. The Ho-Chunk Nation Gaming Commission recommends that either the term “institutional investor” be defined in Part 502, removed, or replaced with either “qualified institutional investor” and/or “accredited investor” as appropriate.

3. 25 C.F.R. Parts 556 and 558 – Tribal Background Investigations and Licensing

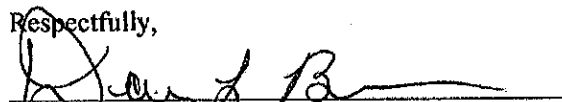
The Ho-Chunk Nation Gaming Commission supports the NIGC’s effort to formalize the long-standing Pilot Program, in which the Nation has participated for many years successfully. However, in its effort to further clarify tribal reporting requirements, the NIGC appears to leave some inefficiencies in place. By the wording of the proposed regulation, the NIGC calls for a Notification of Results before 60 days of employment, which the Nation currently does; however, the new requirement is to also send a licensing decision notification prior to 90 days of employment by the individual. Based on the experience of the Nation, this is less efficient and the 60-day requirement should be eliminated. Since the tribe has the final authority to issue licenses, it would be more efficient if the tribe were to send one notice to NIGC that highlights the background investigation, the eligibility determination, and the licensing decision all before the 90-day expiration. If NIGC has an objection to a licensing decision the licensing authority can take it under consideration and conduct a hearing if so desired.

4. 25 C.F.R. Part 558.4 (b) – Gaming Licenses, Notice of Information impacting eligibility.

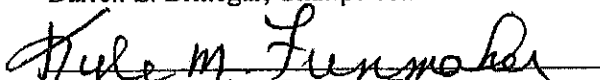
Within proposed Part 558.4(b), the Ho-Chunk Nation Gaming Commission recommends that the word “immediately” be replaced with the word “promptly” with regard to notification to NIGC of licensing decisions. The use of the word “promptly” provides some latitude in the notification process whereas the word immediate would be more difficult to define in regard to whether a tribe is in compliance with the notification requirement. Although some of the same challenges of interpretation regarding compliance with the requirement would be present, the IGRA uses the words “prompt” and “promptly” to describe requirements for notification. This recommendation would allow the proposed changes to conform more closely to the language and intent of the IGRA.

Once again, the Nation expresses its appreciation for the opportunity to comment on these proposed regulations.

Respectfully,


Darren L. Brinegar, Chairperson


Steve E. Garvin, Vice-Chairperson


Kyle M. Funmaker, Secretary/Treasurer


Daniel R. Blümer, Commissioner

CC: Jon Greendeer, President, Ho-Chunk Nation
Greg Blackdeer, Vice President, Ho-Chunk Nation
Sheila Corbine, Attorney General, Ho-Chunk Nation Department of Justice
Joe Buse, Compliance Director
Trina Johnson, Tribal Inspector
File-JAN023 Comments on Proposed Changes

For Immediate Release



Contact: NIGC
(202) 632-7003

NIGC Announces Tribal Regulatory Review Consultations for January 2012

Washington, DC January 3, 2012 — The National Indian Gaming Commission (NIGC/Commission) announced today that it will hold two consultations in January 2012 as part of its continued Regulatory Review process.

In April 2011, the Commission embarked on a regulatory review process that included Tribal consultations throughout Indian Country. As a result, NIGC has published several proposed rules in the Federal Register including, most recently, 25CFR Part 537, 25 CFR Parts 556 & 558, 25 CFR Part 502 and 25 CFR Part 573, which were informed by deliberative conversations with Tribes and comments received by the public. The upcoming consultation sessions are a further opportunity for Tribes to provide the Commission with substantive input during the next phases of the regulatory review process.

The Commission invites all Tribal leaders and their designees to share their views with the Commission during the following two scheduled consultations:

Consultation Date	Event
January 25, 2012	Regulatory Review Groups 1,2,4 & 5 Seminole Hard Rock Hotel 1 Seminole Way Hollywood, Florida 8:30 a.m. to 12:30 p.m.
January 30, 2012	Regulatory Review Groups 1,2,4, & 5 Agua Caliente Spa Resort 100 North Indian Drive Palm Springs, CA 8:30 a.m. to 12:30 p.m. <i>*Held prior to the Western Indian Gaming Conference & Trade Show at Morongo</i>

The two Tribal consultations in January 2012 will include a discussion of the following regulations:

Group 1:

- (a) Part 559 – Facility License Notifications, Renewals, and Submissions

Group 2:

- (a) Part 573 – Enforcement; and
- (b) Regulations concerning proceedings before the Commission, including: Parts 519 – Service, Part 524 – Appeals, Part 539 – Appeals, and Part 577 – Appeals Before the Commission

Group 4:

- (a) Part 556 – Background Investigations for Primary Management Officials and Key Employees;
- (b) Part 558 – Gaming Licenses for Key Employees and Primary Management Officials;
- (c) Part 537 – Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for a Management Contract; and
- (d) Part 502 – Definitions

Group 5:

- (a) Part 518 – Self Regulation of Class II Gaming

For planning purposes and to accommodate all who wish to attend the consultation, please RSVP to Rita Homa, Executive Secretary, at (202) 418-9807 or by e-mail at consultation.rsvp@nigc.gov.

For those Tribal leaders or designees unable to attend this consultation, we invite you to submit written comments by e-mail to reg.review@nigc.gov, or by US Mail to the National Indian Gaming Commission, Attn: Regulatory Review, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

Consistent with its commitment to transparency, the Commission will continue to consult with tribal governments throughout the regulatory review process. All information related to this review process can be found on our website at www.nigc.gov, then click on the Tribal Consultation tab on the left side of the website.

The NIGC is an independent regulatory agency established within the Department of the Interior pursuant to the Indian Gaming Regulatory Act of 1988.

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entitled to the treatment sought and is subject to disclosure consistent with §§ 388.108 or 388.113 of this chapter. By treating the documents as nonpublic, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The request for privileged or CEII treatment and the public version of the document will be made available while the request is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d), (e), and (f) of this section will be followed before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information or any other appropriate Commission official will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, or to make a limited release of CEII, will be given to any person claiming that the information is privileged or CEII no less than 5 calendar days before disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of information for which a person has claimed privileged treatment, the Commission will notify the person who submitted the documents of the suit.

§ 388.113 [Amended]

26. In § 388.113, paragraph (d)(1) and paragraph (d)(2), remove the phrase

“paragraph (d)(3)” and add the phrase “paragraph (d)(4)” in its place.

[FR Doc. 2011-32744 Filed 12-23-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141-AA43

Definition of Enforcement Action

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend NIGC regulations to include definitions for “enforcement action”. The Indian Gaming Regulatory Act authorizes the NIGC to take certain actions in regard to violations of the Act, NIGC regulations, and tribal gaming ordinances. However, current NIGC regulations do not provide a definition for such actions. The Commission believes that providing a definition for these actions will provide clarity to persons subject to them. Therefore, a definition of “enforcement action” is proposed in this notice.

DATES: The agency must receive comments on or before February 27, 2012.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to:* reg.review@nigc.gov.
- *Mail comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* National Indian Gaming Commission at (202) 632-0045.

FOR FURTHER INFORMATION CONTACT: National Indian Gaming Commission, 1441 L Street NW., Suite 9100 Washington, DC 20005. Telephone: (202) 632-7009; email: reg.review@nigc.gov.

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 (“Commission”) and sets out a comprehensive framework for the regulation of gaming on Indian lands. The purposes of IGRA include providing 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; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring 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. 25 U.S.C. 2702.

On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation (NOI) advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. The Commission's regulatory review process established a tribal consultation schedule with a description of the regulation groups to be covered at each consultation. Part 573 was included in this regulatory review.

III. Development of the Proposed Rule

The Commission conducted a total of 10 tribal consultations as part of its review of Part 573. Tribal consultations were held in every region of the country and were attended by over 176 tribes and 463 tribal leaders or their representatives. In addition to tribal consultations, on June 28, 2011, the

Commission requested public comment on a Preliminary Draft of amendments to Part 573. After considering the comments received from the public and through tribal consultations, the Commission realized that to supplement the amendments made to Part 573, a definition of "enforcement action" needed to be added to Part 502.

A. "Enforcement Action"

The current NIGC regulations do not provide a definition for "enforcement action." The Commission believes that providing a definition for "enforcement action" will provide clarity to persons subject to enforcement actions by the NIGC.

Regulatory Matters

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 the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). 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 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 sections 3(a) and 3(b)(2) of the Executive 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

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is therefore not subject to review by the Office of Management and Budget.

List of Subject in 25 CFR Part 502

Enforcement Actions.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 15 CFR part 502 as follows:

1. The authority citation for part 502 is revised to read as follows:

Authority: 25 U.S.C. 2706(b)(10); 2713.

2. Add § 502.24 to read as follows:

§ 502.24 Enforcement action

Enforcement action means any action taken by the Chair under 25 U.S.C. 2713 against any person engaged in gaming, for a violation of any provision of IGRA, the regulations of this chapter, or tribal regulations, ordinances, or resolutions approved under 25 U.S.C. 2710 or 2712 of IGRA, including, but not limited to, the following: a notice of violation; a civil fine assessment; or an order for temporary closure.

Dated: December 16, 2011, Washington, DC.

Tracie L. Stevens,
Chairwoman.

Steffani A. Cochran,
Vice-Chairwoman.

Daniel J. Little,
Associate Commissioner.

[FR Doc. 2011-33028 Filed 12-23-11; 8:45 am]

BILLING CODE 7565-02-P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 573

RIN 3141-AA50

Enforcement Actions

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend NIGC regulations to include a graduated pre-enforcement process through which a tribe may come into compliance before an enforcement action is taken by the Chair. Voluntary compliance is the goal of the Commission. This amendment sets forth how Commission staff and tribes may address potential or existing compliance issues. The amendment retains the Chair's authority to issue an enforcement action at the Chair's discretion.

The amendment also modifies this Part to allow a temporary closure order when there is clear and convincing evidence that a gaming operation defrauds a tribe. The current regulation provides for the issuance of a temporary closure order when there is clear and convincing evidence that a gaming operation defrauds a tribe or a customer. The Commission believes this issue has been adequately addressed by ordinance requirements of the IGRA and NIGC regulations, because tribes must include in their ordinances a dispute resolution procedure to address issues where a customer believes she or he has been defrauded. If the tribe fails to follow their ordinance, enforcement action may be taken.

Finally, current regulations do not provide specificity for when an enforcement action becomes final, such as when a notice of violation is issued and there is no appeal filed or settlement agreement reached. The proposed amendment clarifies that an enforcement action becomes final agency action and a final order of the Commission if no appeal is filed or a settlement agreement reached.

DATES: Submit comments on or before February 27, 2012.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

1. *Email comments to:* reg.review@nigc.gov.

2. *Mail comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.

3. *Hand deliver comments to:* 1441 L St. NW., Suite 9100, Washington, DC 20005.

4. *Fax Comments to:* National Indian Gaming Commission at (202) 632-0045.

FOR FURTHER INFORMATION CONTACT: National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: (202) 632-7009; email: reg.review@nigc.gov.

Commission requested public comment on a Preliminary Draft of amendments to Part 573. After considering the comments received from the public and through tribal consultations, the Commission realized that to supplement the amendments made to Part 573, a definition of "enforcement action" needed to be added to Part 502.

A. "Enforcement Action"

The current NIGC regulations do not provide a definition for "enforcement action." The Commission believes that providing a definition for "enforcement action" will provide clarity to persons subject to enforcement actions by the NIGC.

Regulatory Matters

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 the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). 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 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 sections 3(a) and 3(b)(2) of the Executive 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

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is therefore not subject to review by the Office of Management and Budget.

List of Subject in 25 CFR Part 502

Enforcement Actions.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 15 CFR part 502 as follows:

1. The authority citation for part 502 is revised to read as follows:

Authority: 25 U.S.C. 2706(b)(10); 2713.

2. Add § 502.24 to read as follows:

§ 502.24 Enforcement action

Enforcement action means any action taken by the Chair under 25 U.S.C. 2713 against any person engaged in gaming, for a violation of any provision of IGRA, the regulations of this chapter, or tribal regulations, ordinances, or resolutions approved under 25 U.S.C. 2710 or 2712 of IGRA, including, but not limited to, the following: a notice of violation; a civil fine assessment; or an order for temporary closure.

Dated: December 16, 2011, Washington, DC.

Tracie L. Stevens,
Chairwoman.

Steffani A. Cochran,
Vice-Chairwoman.

Daniel J. Little,
Associate Commissioner.

[FR Doc. 2011-33028 Filed 12-23-11; 8:45 am]

BILLING CODE 7565-02-P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 573

RIN 3141-AA50

Enforcement Actions

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend NIGC regulations to include a graduated pre-enforcement process through which a tribe may come into compliance before an enforcement action is taken by the Chair. Voluntary compliance is the goal of the Commission. This amendment sets forth how Commission staff and tribes may address potential or existing compliance issues. The amendment retains the Chair's authority to issue an enforcement action at the Chair's discretion.

The amendment also modifies this Part to allow a temporary closure order when there is clear and convincing evidence that a gaming operation defrauds a tribe. The current regulation provides for the issuance of a temporary closure order when there is clear and convincing evidence that a gaming operation defrauds a tribe or a customer. The Commission believes this issue has been adequately addressed by ordinance requirements of the IGRA and NIGC regulations, because tribes must include in their ordinances a dispute resolution procedure to address issues where a customer believes she or he has been defrauded. If the tribe fails to follow their ordinance, enforcement action may be taken.

Finally, current regulations do not provide specificity for when an enforcement action becomes final, such as when a notice of violation is issued and there is no appeal filed or settlement agreement reached. The proposed amendment clarifies that an enforcement action becomes final agency action and a final order of the Commission if no appeal is filed or a settlement agreement reached.

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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 ("Commission") and sets out a comprehensive framework for the regulation of gaming on Indian lands. The purposes of IGRA include providing 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; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring 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. 25 U.S.C. 2702.

On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation (NOI) advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. The Commission's regulatory review process established a tribal consultation schedule with a description of the regulation groups to be covered at each consultation. Part 573 was included in this regulatory review.

III. Development of the Proposed Rule

The Commission conducted a total of 9 tribal consultations as part of its review of Part 573. Tribal consultations were held in every region of the country and were attended by over 160 tribes and 443 tribal leaders or their representatives. In addition to tribal consultations, on June 28, 2011, the Commission requested public comment on a Preliminary Draft of amendments to Part 573. After considering the comments received from the public and through tribal consultations, the Commission proposes one amendment to Part 573: inclusion of a graduated pre-enforcement process whereby a gaming operation has the opportunity to come into compliance with IGRA, Commission regulations, or tribal ordinances and resolutions approved by the Chair before an enforcement action is taken. This process would not restrict the Chair from initiating enforcement action if circumstances require.

A. Voluntary Compliance is a Goal of the Commission

The proposed draft sets out voluntary compliance as a goal of the Commission and identifies how voluntary compliance can be achieved. Comments in response to the NOI and NRR consistently stated that the NIGC and tribes should be in closer communication prior to the issuance of an enforcement action. While the Commission believes it is necessary for the Chair to retain the discretion to issue an enforcement action whenever the circumstances require it, the Commission also firmly believes that communicating with tribes before taking an enforcement action can only lead to improved relationships and continued compliance. With these two goals in mind, the Commission published a Preliminary draft of the proposed rule creating a graduated process which can be used by NIGC staff to inform a tribe of potential compliance issues. While there are two measures that can be taken as part of this process, either may be taken independent of the other.

The first and lowest level of notification to the tribe of a possible compliance issue is a "letter of concern." A letter of concern would be issued when NIGC staff believes there could be a possible violation of IGRA, NIGC regulations, or the tribe's approved gaming ordinance. The second level of notification to the tribe is a "warning letter." A warning letter provides notice to the tribe that NIGC staff believes an actual violation of IGRA, NIGC regulations, or the tribe's approved gaming ordinance has

occurred, or is occurring. The letters would provide the factual basis for the potential violation, inform the tribe of any corrective action that may be taken to cure the violation, and provide a timeframe for responding to the letter or coming into compliance. In the Preliminary draft, the second action was called a "non-compliance notice." Commentors suggested either doing away with the non-compliance notice entirely, or finding a different title for it. The Commission believes having two potential options for action that may be taken by NIGC staff prior to the issuance of an enforcement action is positive for both the NIGC and tribes. However, the Commission did change the name of the second action to a "warning letter."

The goal of this proposed amendment is to start with the lowest possible action and move forward only if compliance is not achieved. However, under certain circumstances, the NIGC staff may be required to issue a warning letter without first issuing a letter of concern. Alternatively, a letter of concern could be issued and the tribe may fully address the concern without any further action required by the NIGC. This would achieve the goal of voluntary compliance.

Many comments to the Preliminary draft stated that the regulation should require both actions to include a deadline for the tribe to respond if it disagrees with the NIGC's conclusions and a deadline for the tribe to come into compliance. The Commission agrees with this recommendation and incorporated those requirements into this proposed amendment. Some comments to the Preliminary draft questioned whether these letters were final agency action. It is important to note that these actions would be issued by NIGC staff, not the Chair, and are therefore not final agency action.

Other comments acknowledged that certain circumstances will warrant immediate issuance of an NOV and requested that the regulation specify circumstances or criteria that should be present before the Chair can bypass this process and take immediate enforcement action. One commentor stated that while they are confident in this Commission to positively utilize this process, they are concerned future Commissions may disregard the general process. The intent of this proposed amendment is to achieve voluntary compliance before an enforcement action is issued. Presumably, a Chair will not initiate an enforcement action without NIGC staff first having taken appropriate pre-enforcement action unless, in the Chair's judgment, the circumstances require immediate action

or it is impracticable to issue one or both of these pre-enforcement actions. However, if the Chair takes enforcement action before a letter of concern and/or warning letter is issued, the enforcement action will likely explain the reason for moving directly to an enforcement action without pre-enforcement action.

B. Temporary Closure Order will be Issued When There is Clear and Convincing Evidence that a Gaming Operation Defrauds a Tribe

The proposed rule amends this Part to allow a temporary closure order only when there is clear and convincing evidence that a gaming operation defrauds a tribe, not a customer. A commentor pointed out that the current regulation provides for the issuance of a temporary closure order when there is clear and convincing evidence that a gaming operation defrauds a customer. The Commission believes this issue has been adequately addressed by ordinance requirements of the IGRA and NIGC regulations. Tribes must include in their ordinances a dispute resolution procedure to address issues where a customer believes she or he has been defrauded. If the tribe fails to follow their ordinance, enforcement action may be taken.

C. Final Agency Action

The current regulations do not provide specificity for when an enforcement action such as a notice of violation is issued and there is no appeal filed or settlement agreement reached. The proposed amendment clarifies that an enforcement action becomes final agency action and a final order of the Commission if no appeal is filed or a settlement agreement reached.

Regulatory Matters

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 the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). 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 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 sections 3(a) and 3(b)(2) of the Executive 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

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is therefore not subject to review by the Office of Management and Budget.

List of Subjects in 25 CFR 573

Enforcement, Enforcement Actions, Gambling, Gaming, Indians, Indian Gaming.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR part 573 as follows:

PART 573—COMPLIANCE AND ENFORCEMENT

1. The authority citation for part 573 is revised to read as follows:

Authority: 25 U.S.C. 2706(b)(10); 25 U.S.C. 2713; E.O. 13175.

2. Revise the part 573 heading to read as set forth above.

3. Revise § 573.1 to read as follows:

§ 573.1 What is the purpose of this part?

Voluntary compliance is the goal of the Commission. Voluntary compliance is achieved when a tribe and the NIGC staff are able to resolve any potential enforcement issues prior to the Chair issuing an enforcement action. This part sets forth efforts for achieving voluntary compliance and enforcement action when voluntary compliance is not forthcoming. While this part is intended to garner voluntary compliance through a graduated enforcement process, there may be circumstances under which a graduated enforcement process is omitted and an enforcement action must be taken. This part also sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chair under part 522 of this chapter. Civil fines in connection with notice of violation issued under this part are addressed in part 575 of this chapter.

4. Add § 573.2 to read as follows:

§ 573.2 When may a letter of concern and/or warning letter be issued?

(a) Prior to the Chair taking an enforcement action, a letter of concern and/or a warning letter may be provided to the respondent by NIGC staff, detailing concerns regarding the respondent's compliance with the Act, this chapter, or any tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(b) Action under this section does not constitute agency action and may be taken by NIGC staff issuing the respondent, either one or both of the following:

(1) A "letter of concern" which recites available facts and information about the incident or condition and indicates that it may be a violation; and/or

(2) A "warning letter" which confirms an assessment of the matter and states the necessary corrective action the respondent needs to take, agrees to take, or has taken.

(c) The letters referenced in paragraph (b) of this section may be issued consecutively, but NIGC staff may issue a warning letter without first issuing a letter of concern.

(d) Either action under paragraph (b) of this section shall provide a time period for the respondent to respond, and shall also provide a time period for the respondent to come into compliance. If voluntary compliance efforts are unsuccessful, enforcement action may be taken. If voluntary compliance efforts are successful, NIGC staff will send an investigation completion letter pursuant to § 571.4.

(e) The Chair's discretion to take an enforcement action is not limited or constrained in any way by this section. When the Chair takes enforcement action before a letter of concern and/or warning letter is issued, the enforcement action will state the reasons moving directly to an enforcement action without first issuing a letter of concern and/or warning letter.

5. In § 573.3, revise paragraph (a) to read as follows:

§ 573.3 When may the Chair issue a notice of violation?

(a) The Chair may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

* * * * *

§ 573.6 [Redesignated as § 573.4]

6. Redesignate § 573.6 as § 573.4
7. In newly redesignated § 573.4, revise the section heading and paragraphs (a) introductory text, (a)(3), (6), (7), (8), (9), (12), (c) introductory text, (c)(1), (c)(2) introductory text, and (c)(3) to read as follows:

§ 573.4 When may the Chair issue an order of temporary closure?

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under § 573.3 of this part, the Chair may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

* * * * *

(3) A gaming operation operates for business without a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.

* * * * *

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe.

(7) A management contractor operates for business without a contract that the Chair has approved under part 533 of this chapter.

(8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter, or of a tribal

ordinance or resolution approved by the Chair under part 522 of this chapter.

* * * * *

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

* * * * *

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chair.

(1) The Chair shall complete the expedited review provided for by this paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chair shall, within two (2) days after the expedited review provided for by this paragraph:

* * *

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chair serves an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chair for good cause.

8. Add § 573.5 to read as follows:

§ 573.5 When does an enforcement action become final agency action?

An enforcement action shall become final agency action and a final order of the Commission when:

(a) A respondent fails to appeal the enforcement action as provided for in part 577 of this chapter and does not enter into a settlement agreement resolving the matter in its entirety; or

(b) A respondent enters into a settlement agreement resolving the matter in its entirety at any time after the issuance of the enforcement action.

Dated: December 16, 2011, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011-32757 Filed 12-23-11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2011-1023]

RIN 1625-AA08; 1625-AA00

Special Local Regulations and Safety Zones; Recurring Events in Northern New England

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update recurring special local regulations and safety zones in the Coast Guard Captain of the Port (COTP) Northern New England Zone for annual recurring marine events. When these special local regulations or safety zones are subject to enforcement, this rule would restrict vessels from portions of water areas during these annual recurring events. The revised special local regulations and safety zones would expedite public notification of events, and ensure the protection of the maritime public and event participants from the hazards associated with these annual recurring events.

DATES: Comments and related material must be received by the Coast Guard on or before February 27, 2012. Requests for public meetings must be received by the Coast Guard on or before January 17, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2011-1023 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* (202) 493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lieutenant Junior