

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](mailto: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](mailto: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.*