

DEPARTMENT OF THE INTERIOR**National Indian Gaming Commission****25 CFR Part 502****Definition of Enforcement Action**

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is amending its regulation setting out definitions to add a definition of “enforcement action.”

DATES: *Effective Date:* September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Schlichting, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202-632-7003; email: *Melissa_Schlichting@nigc.gov*.

SUPPLEMENTARY INFORMATION:**I. 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.

II. Previous Rulemaking Activity

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 (Oct. 12, 2011). 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 502 was included in this regulatory review.

The Commission conducted a total of 14 tribal consultations as part of its review of Part 573. Tribal consultations were held in every region of the country and were attended by numerous Tribes and Tribal leaders or their representatives. 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.

On December 27, 2011, the Commission published a Notice of Proposed Rulemaking based on the comments received during the Tribal consultations and comments on the Preliminary Draft of Part 573. The Notice of Proposed Rulemaking proposed a definition for “enforcement action” be added to Part 502. Following the publication of the proposed rule, an additional 5 Tribal consultations were held. Comments to the proposed rule were due February 27, 2012.

III. Review of Public Comments

In response to our Notice of Proposed Rulemaking, published December 27, 2011, 76 FR 80846, we received the following comments:

Section 502.24 Enforcement Action

Comment: Two commenters requested that the definition of “enforcement action” be clarified to specifically exclude letters of concern and warning letters. The commenters felt that without such clarification a letter of concern or a warning letter could be considered an “enforcement action.”

Response: The Commission agrees with the commenter that clarification in the regulation is beneficial. To that end, the Commission added a sentence on to the end of the proposed definition of “enforcement action” specifically stating that “[e]nforcement action does not include any action taken by NIGC staff, including but not limited to, the issuance of a letter of concern under

§ 573.2.” This change does not include a “warning letter” because it was removed by the Commission from the § 573.2 final rule.

Comment: One commenter requested the Commission consider removing “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” because adding the statutory language is superfluous and potentially confusing.

Response: The Commission considered the comment and disagrees that the inclusion of a paraphrased portion of the statutory language within the definition causes confusion. To be clear, the language is not an exact quotation of the statutory language; it is a paraphrasing of such language, which helps to ensure that the definition remains consistent with the statute and that the extent of the Chair’s authority is clear to the regulated community.

Comment: One commenter recommends that the definition of “Chairman” be amended or changed to indicate that the word “Chair” can be used interchangeably or the word “Chair” should be separately defined.

Response: The Commission intends, as the opportunity to do so arises, to convert all references to the “Chairman” contained in the NIGC regulations to the shortened, gender-neutral word “Chair.” The use of the word “Chair” should not cause confusion as it is only a shortened form of the word “Chairman.”

Comment: One commenter asked whether the definition of “enforcement action” included audit and enforcement of revenue allocation plan requirements because the commenter believes the Commission does not have the authority to do so.

Response: The Commission believes the commenter’s question goes beyond the scope of the NOI and NRR and no answer is required. However, the definition of “enforcement action” clearly defines the Commission’s authority to enforce violations of any provision of IGRA, NIGC regulations, and any tribal ordinances, resolutions, or regulations that are approved by the Chair under IGRA. Therefore, to the extent IGRA, NIGC regulations, or any tribal ordinances, resolutions, or regulations approved by the Chair under IGRA, create audit obligations or revenue allocation plan requirements, the Chair has the authority to enforce them.

IV. Regulatory Matters

Regulatory Flexibility Act

The 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 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 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 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 rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the 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 rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 2501, *et seq.*, and is therefore not subject to review by the Office of Management and Budget.

List of Subjects in 25 CFR Part 502

Enforcement actions.

For the reasons stated in the preamble, the National Indian Gaming Commission amends 25 CFR part 502 as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

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

Authority: 25 U.S.C. 2706(b)(10); 25 U.S.C. 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. Enforcement action does not include any action taken by NIGC staff, including but not limited to, the issuance of a letter of concern under § 573.2 of this chapter.

Dated: July 31, 2012, Washington, DC.

Tracie L. Stevens,
Chairwoman.

Steffani A. Cochran,
Vice-Chairwoman.

Daniel J. Little,
Associate Commissioner.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 537

Management Contracts—Background Investigations

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is amending its regulation to allow reduced scope background investigations for specific types of entities with a financial interest in, or having management responsibility for, a management contract, and to update the forms of payment that may be accepted by the NIGC for background investigation fees.

DATES: *Effective Date:* September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Schlichting, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202-632-7003; email: *Melissa_Schlichting@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA) requires that each person with a financial interest in, or management responsibility for, a management contract for class II gaming, and in the case of a corporation, the individual members of the corporation's board of directors and stockholders who hold 10% or more of the issued and outstanding stock, submit background information to the Chair. 25 U.S.C. 2711(a)(1). IGRA also requires that the Chair not approve any management contract if he or she determines that any person with a financial interest in, or management responsibility for, a management contract for class II gaming, and in the case of a corporation, the individual members of the corporation's board of directors and stockholders who hold 10% or more of the issued and outstanding stock is "a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto." 25 U.S.C. 2711(e)(1)(D). Pursuant to the Commission's authority to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of [IGRA]," 25 U.S.C. 2706(a)(10), the Commission adopted a regulation, Part 537, requiring certain persons and entities undergo a background investigation, including entities with a financial interest in a management contract. 25 CFR 537.1(a)(4). The Commission is amending § 537.1(a)(4) to expand the types of entities with a financial interest in a management contract that may, at the discretion of the Chair, undergo a streamlined review, in the form of a reduced scope background investigation.

In addition, it came to the attention of the Commission that it could no longer accept certain methods of payment, specifically the posting of a bond or letter of credit for background investigation fees pursuant to