



This document is scheduled to be published in the Federal Register on 12/22/2011 and available online at <http://federalregister.gov/a/2011-32759>, and on [FDsys.gov](http://FDsys.gov)

## **DEPARTMENT OF THE INTERIOR**

### **National Indian Gaming Commission**

#### **25 CFR Part 537**

#### **RIN 3141-AA46**

### **Management Contracts - Background Investigations**

**AGENCY:** National Indian Gaming Commission

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend NIGC regulations to include tribes, wholly owned tribal entities, and national banks that are already federally regulated or required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact as entities that the Chair may exercise discretion regarding the submission of information and background investigations.

This process may provide for a streamlined review for such entities in the background investigation process required for management contracts. The proposed revision may reduce duplication of efforts while maintaining the integrity of NIGC review. The proposal maintains the Chair's discretion in determining which entities should be allowed to proceed through an expedited background investigation. This amendment has been included in this proposed rule.

The Commission also considered revising its regulations to clarify that a management contractor should be required to submit background information when

the contract is for management of both Class II and Class III gaming activities. Many public comments noted that it was not a necessary revision. The Commission agrees with those public comments and does not propose that clarification.

**DATES:** The agency must receive comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], 2011.

**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, D.C. 20005.
- Hand deliver comments to: 1441 L Street NW, Suite 9100, Washington, D.C. 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 three classes 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. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule 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. This Part 537 was included in the regulatory review process.

### **III. Development of the Proposed Rule**

The Commission conducted a total of 10 tribal consultations as part of its review of Part 537. Tribal consultations were held in every region of the country and were attended by over 137 tribes and 381 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 537. The Notice of Regulatory Review Schedule (NRR) announced the Commission's intent to review whether Part 537 should be revised to clarify that a management contractor should be required to submit background information when the contract is for management of both Class II and Class III gaming activities. Additionally, comments received from the NRR included a recommendation for the Commission to include a provision to streamline background investigations for certain entities already subject to background requirements and for tribes.

#### A. Streamlined Background Investigation for Tribes and Entities Otherwise

##### Subject to Background Investigations.

The NRR identified a recommendation that the NIGC should provide streamlined or expedited review for tribes, tribal entities or other entities required to be licensed by a compact or are otherwise federally regulated. The discussion draft of the Part included a new section providing discretion to reduce the background requirements for “a tribe, a wholly owned tribal entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact”. Comments were supportive of this change. One commentator stated that they welcomed this change, while another commentator disagreed that the reduced scope be at the discretion of the Chair.

The Commission believes that this is a reasonable addition to the regulations. The proposed revision can reduce duplication of efforts. However, it is important for the Chair to retain the discretion in determining which entities should be allowed to proceed through an expedited background investigation. This amendment has been included in this proposed rule through a revision to 25 CFR § 537.1(a)(4).

B. Background Investigations for Management Contractors of a Class II and Class III Gaming Operation.

The NRR identified background investigation information requirements for management contractors of a Class II and Class III gaming operations as a topic for review. Responses to the NOI indicated that this was an area that may need some clarification. The NIGC developed a discussion draft making this clarification and requested comment on the draft. After consulting extensively on this issue and

receiving comments from tribes, it is clear that while most comments were amenable to the proposed revision, many noted that it was not a necessary revision.

The Commission does not believe the revision is necessary and has not made the proposed change included in the discussion draft.

## **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

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an 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. Nor will the proposed rule 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 within the Department of the Interior, 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 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

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

### **List of Subjects in 25 CFR Part 537**

Gambling, Indians—tribal government, Indians—business and finance.

For the reasons discussed in the Preamble, the Commission proposes to revise its regulations at 25 CFR Part 537 as follows:

**PART 537 – BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT.**

1. The authority citation for art 537 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

2. Amend § 537.1 by revising paragraph (a)(4) to read as follows:

§ 537.1 Applications for approval.

(a) \* \* \*

(4) Any entity with a financial interest in a management contract (in the case of any tribe, a wholly owned tribal entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

\* \* \* \* \*

3. Revise § 537.3 paragraphs (b), (c) and (d) to read as follows:

§537.3 Fees for background investigations.

\* \* \* \* \*

(b) The management contractor shall post a deposit with the Commission to cover the cost of the background investigations as follows:

\* \* \* \* \*

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the deposit available.

\* \* \* \* \*

(d) The deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

4. Section 537.4 is revised to read as follows:

§537.4 Determinations.

The Chair shall determine whether the results of a background investigation preclude the Chair from approving a management contract because of the individual disqualifying factors contained in §533.6(b)(1) of this chapter. The Chair shall promptly notify the tribe and management contractor if any findings preclude the Chair from approving a management contract or a change in financial interest.

DATED: December 16\_\_\_\_, 2011, Washington, DC.

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Tracie L. Stevens,  
Chairwoman

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Steffani A. Cochran,  
Vice-Chairwoman

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Daniel J. Little,  
Associate Commissioner

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[FR Doc. 2011-32759 Filed 12/21/2011 at 8:45 am; Publication Date: 12/22/2011]