



## **DEPARTMENT OF THE INTERIOR**

### **National Indian Gaming Commission**

#### **25 CFR Part 573**

#### **Enforcement Actions**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Final rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) is amending its enforcement regulation to include a graduated pre-enforcement process through which a tribe may come into voluntary compliance.

**DATES:** Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Melissa Schlichting, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, D.C. 20005. Telephone: 202-632-7003; email: [Melissa\\_Schlichting@nigc.gov](mailto: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. 75 FR 70680 (Nov. 18, 2010). After consulting with tribes, 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 573 was included in this regulatory review.

The Commission conducted 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.

After considering the comments received from the public and through Tribal consultations, the Commission proposed amending Part 573 to include a graduated pre-enforcement process whereby a gaming operation may achieve voluntary

compliance with the IGRA, Commission regulations or tribal ordinances and resolutions approved by the Chair. Following the publication of the proposed rule, additional Tribal consultations were held. The public comment period on the proposed rule closed on February 27, 2012.

### **III. Review of Public Comments**

In response to our Notice of Proposed Rulemaking, published December 27, 2011, 76 FR 80847, we received the following comments:

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

**Comment:** One commenter argued that, as currently drafted, a warning letter is essentially the same as a notice of violation, except that a warning letter cannot be appealed. The commenter stated that a warning letter would be considered final agency action by a court even though it is issued by NIGC staff rather than the Chair. Therefore, the commenter suggested that the NIGC remove warning letters as a pre-enforcement step because a letter of concern is sufficient to accomplish the Commission's intent to encourage voluntary compliance and resolve any potential enforcement issues. The commenter stated further that because a warning letter contains a finding that a violation has occurred, it could have significant negative repercussions for a tribe that is required to report such actions to lenders or other debt holders, and may also have negative licensing implications for a tribe and its employees.

**Response:** The Commission agrees with the commenter and has removed warning letters as a pre-enforcement option.

### **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 573**

Enforcement, Enforcement actions, Gambling, Gaming, Indians, Indian gaming.

For the reasons stated in the preamble, the National Indian Gaming Commission amends 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, 65 FR 67249, 3 CFR, 2000 Comp., p. 304.

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 be issued?**

- (a) Prior to the Chair taking an enforcement action, a letter of concern 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. A letter of concern describes the available facts and information, includes a preliminary assessment regarding the incident or condition, and indicates that it may be a violation.
- (b) Action under this section does not constitute agency action.

(c) A letter of concern issued under paragraph (b) of this section must provide a time period for the respondent to respond. If the letter of concern is resolved without enforcement action, NIGC staff may send an investigation completion letter pursuant to § 571.4 of this chapter.

(d) 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 is issued, the enforcement action must state the reasons for moving directly to an enforcement action without first issuing a letter of concern.

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, 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: July 31, 2012, Washington, DC.

---

Tracie L. Stevens,  
Chairwoman

---

Steffani A. Cochran,  
Vice-Chairwoman

---

Daniel J. Little,  
Associate Commissioner

[FR Doc. 2012-19163 Filed 08/08/2012 at 8:45 am; Publication Date: 08/09/2012]