



BILLING CODE: 7565-01

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 573

Compliance and Enforcement

AGENCY: National Indian Gaming Commission

ACTION: Correcting amendments.

SUMMARY: On August 9, 2012, the National Indian Gaming Commission (NIGC) published a final rule amending its enforcement regulation to include a graduated pre-enforcement process for voluntary compliance. That rule referenced a rule that was later withdrawn and also incorrectly referenced an internal citation. This publication corrects the error and makes technical amendments to reference the Commission's recently finalized appeal rules contained in a new subchapter.

DATES: Effective: [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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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 includes 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 August 9, 2012, the Commission published a final rule amending part 573 (Compliance and Enforcement) to include a graduated pre-enforcement process through which a tribe may come into voluntary compliance. 77 FR 47517, Aug. 9, 2012. The part also sets forth general rules governing the Commission's enforcement of the IGRA, NIGC regulations, and tribal ordinances and resolutions approved by the Chair under 25 C.F.R. part 522.

On September 25, 2012, the Commission published a final rule consolidating all appeal proceedings before the Commission into a new subchapter H (Appeal Proceedings Before the Commission), thereby removing former parts 524, 539, and 577. 77 FR 58941, Sept. 25, 2012. Thus, any reference in part 573 to appeal rights in former part 577 is obsolete and must be revised to reference the new subchapter H.

This document amends the final rule by making two technical amendments and a correction to the final rule to accurately identify referenced regulations. Specifically, this technical amendment amends § 573.4(c)(3) and § 573.5(a) to

accurately reference the new subchapter H in place of part 577. Also, this document corrects an error in § 573.2(c) by replacing a cross reference to paragraph “(b)” with paragraph “(a).”

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.

Text of the Rules

For the reasons discussed in the Preamble, the Commission corrects its regulations at 25 CFR part 573 as follows:

PART 573—COMPLIANCE AND ENFORCEMENT

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

Authority: 25 U.S.C. 2706(b)(1); 2713; E.O. 13175, 65 FR 67249, 3 CFR 2000

Comp., p. 304

2. In § 573.2, revise paragraph (c) to read as follows:

§ 573.2 When may a letter of concern be issued?

(c) A letter of concern issued under paragraph (a) 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.

3. In § 573.4, revise paragraph (c)(3) to read as follows:

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

(c) ***

(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 subchapter H of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chair for good cause.

4. In § 573.5, revise paragraph (a) to read as follows:

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

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

DATED: January _14___, 2013, Washington, D.C.

Tracie L. Stevens,
Chairwoman

Daniel J. Little,
Associate Commissioner

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