

review process established a Tribal consultation schedule of 33 meetings over 11 months with a description of the regulation groups to be covered at each consultation.

### Removal of Part 523—Review and Approval of Existing Ordinances or Resolutions

Part 523 applies only to gaming ordinances or resolutions enacted by Tribes prior to January 22, 1993, and not yet submitted to the Chairwoman. Comments received in response to the NOI and during Tribal consultation meetings indicated any ordinances or resolutions enacted prior to January 22, 1993 have already been submitted to the Chairwoman. Accordingly, comments support the repeal of this Part. A review of the Commission documents also did not find any ordinances or resolutions meeting the criteria of this Part. Because this regulation appears to be no longer necessary, the Commission proposes to remove this Part.

### List of Subjects in 25 CFR Part 523

Gambling, Indian—lands, Indian—Tribal government, Reporting and recordkeeping requirements.

Accordingly, under the authority 25 U.S.C. 2701, the National Indian Gaming Commission proposes to amend 25 CFR chapter III by removing and reserving part 523.

### PART 523—[REMOVED AND RESERVED]

Dated: October 3, 2011, in 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 571

RIN 3141-AA49

#### Issuance of Investigation Completion Letters

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend our regulations to provide for an investigation completion letter to be

issued to a Tribe if the Agency's authorized staff will not recommend the commencement of an enforcement proceeding against a respondent.

**DATES:** Submit comments on or before December 12, 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.

- *E-mail 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:* 1441 L Street, NW., Suite 9100, Washington, DC 20005.

- *Fax comments to:* National Indian Gaming Commission at 202-632-0045.

**FOR FURTHER INFORMATION CONTACT:** Lael Echo-Hawk, Counselor to the Chairwoman, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Telephone: 202-632-7009; e-mail: [reg.review@nigc.gov](mailto:reg.review@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.

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. This part 571 was included in the regulatory review.

##### II. Development of the Proposed Rule

The Commission conducted a total of 9 Tribal consultations as part of its review of part 571. 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 571. After considering the comments received from the public and through Tribal consultations, the Commission proposes one amendment to part 571: inclusion of a process for issuing an investigation completion letter.

The Notice of Regulatory Review Schedule (NRR) announced the Commission's intent to review whether part 571 needed revised to clarify the NIGC's authority to access records located off-site, including at sites maintained and owned by third-parties. Additionally, comments received during consultation indicated a need to provide a response to Tribes who had been the subject of an investigation but never issued a notice of violation.

##### A. NIGC Authority To Access Off-Site Records

In response to comments received from the NOI, the NRR included review of whether the regulations should include language clarifying the NIGC's authority to access records located off-site, including at sites maintained and owned by third parties. A discussion draft containing this revision was posted for comment. Some comments received indicated that this revision was not objectionable, so long as the Commission was not accessing Tribal government records or Class III records. Other comments did not object to the proposed amendment, but stated that it was unnecessary because under the provision of the Act, the Commission has subpoena authority "to require by subpoena the attendance and testimony

of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation.” 25 U.S.C. 2715. Another commentator stated that this issue is already adequately addressed by regulation. Another comment stated that this would be an expansion of the NIGC’s authority and would constitute an unwarranted intrusion into a Tribe’s ability to self-govern.

The Commission agrees with the comments that an amendment is unnecessary because IGRA and NIGC regulations already provide broad authority to access off-site records, including sites maintained and owned by third parties. The amendment contained in the preliminary draft of this regulation did not change this already comprehensive subpoena authority. The proposed revision is thus unnecessary and has not been included in this proposed rule.

#### *B. Investigation Completion Letter*

During consultation, the Commission heard that the regulations should include a process for notifying a Tribe that an investigation has been concluded. Tribal representatives explained that in some instances they were never notified of the results of investigations opened by the NIGC years ago. The lack of any response left Tribes in a situation where when asked, the Tribe had to indicate that they were under investigation. The discussion draft attempted to formalize NIGC’s informal process of advising a Tribe, through NIGC’s authorized representative, after an investigation was terminated. All comments received on the discussion draft were supportive of the concept. However, several comments indicated that such a letter should be mandatory and not discretionary. Because each investigation and Tribe are different, the Commission believes it is important to provide the NIGC with the discretion to evaluate each investigation on a case-by-case basis and to decide to issue a letter based on the facts and circumstances in that particular investigation. The proposed rule retains that discretion. Additionally, the discussion draft titled this section “Investigation Closure Letter”, however, commentators recommended changing the title to “Investigation Completion Letter” stating that “closure” is a term used for closure of a gaming operation. The Commission made this recommended change in this proposed rule.

### **Regulatory Matters**

#### *Regulatory Flexibility Act*

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 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 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 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 this 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 Office of General Counsel 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 this 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 Subjects in 25 CFR Part 571**

Gambling, Indian—lands, Indian—Tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Commission proposes to amend 25 CFR part 571 to read as follows:

### **PART 571—MONITORING AND INVESTIGATIONS**

1. The authority citation for part 571 continues to read as follows:

**Authority:** 25 U.S.C. 2701 *et seq.*

2. Add § 571.4 to read as follows:

#### **§ 571.4 Investigation completion letter.**

In instances where NIGC agency staff have concluded its investigation of a particular matter and will not recommend the commencement of an enforcement proceeding against a respondent at that time, the Commission’s authorized representative, in his or her discretion, may advise the party by letter that the investigation has been completed. An investigation completion letter does not constitute a finding that no violation of IGRA, NIGC regulations, or a Tribe’s approved gaming ordinance occurred. Further, an investigation completion letter does not preclude the reopening of an investigation or the initiation of an enforcement action by the Chair.

Dated: October 3, 2011, in Washington, DC.

**Tracie L. Stevens,**  
*Chairwoman.*

**Steffani A. Cochran,**  
*Vice-Chairwoman.*

**Daniel J. Little,**  
*Associate Commissioner.*

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## **DEPARTMENT OF LABOR**

### **Mine Safety and Health Administration**

#### **30 CFR Part 75**

**RIN 1219-AB65**

#### **Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; scheduling of public hearing.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is announcing