

Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2011-0426/Airspace Docket No. 11-ACE-7, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647-5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321-7716.

**SUPPLEMENTARY INFORMATION:**

**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. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2011-0426/Airspace Docket No. 11-ACE-7." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received and any final disposition in

person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Red Cloud Municipal Airport, Red Cloud, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Red Cloud Municipal Airport, Red Cloud, NE.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**ACE NE E5 Red Cloud, NE [New]**

Red Cloud Municipal Airport, NE  
(Lat. 40°04'56" N., long. 98°32'29" W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Red Cloud Municipal Airport.

Issued in Fort Worth, TX, on January 12, 2012.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

[FR Doc. 2012-2087 Filed 1-30-12; 8:45 am]

**BILLING CODE 4901-13-P**

**DEPARTMENT OF THE INTERIOR**

**National Indian Gaming Commission**

**25 CFR Part 518**

**RIN 3141-AA44**

**Self-Regulation of Class II Gaming**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend the NIGC's self-regulation regulations to tailor the self-regulating qualifying criteria to a tribe's regulation of class II gaming activity and more clearly define and streamline the self-regulation certification process. By tailoring the self-regulating qualifying criteria to the capabilities of a tribe's regulatory body, and by clarifying and streamlining the certification process, more tribes may become self-regulating.

**DATES:** The agency must receive comments on or before April 2, 2012.

**ADDRESSES:** You may submit comments by any one of the following methods, but 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:* Katherine Zebell, 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:* Katherine Zebell, National Indian Gaming Commission at (202) 632-7066.

**FOR FURTHER INFORMATION CONTACT:** Katherine Zebell, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: (202) 632-7003; 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 which provide a factual basis in support of the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

**II. Background**

On November 18, 2010, the Commission 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 NIGC should review its regulations, and the process the NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all of the comments, the Commission published a Notice of Regulatory Review Schedule, setting out

a consultation schedule and process for review. 76 FR 18457. Part 518 is included in one of the regulation groups that are part of this regulatory review.

**III. Development of the Proposed Rule**

The Commission conducted numerous tribal consultations as part of its review of part 518—Self-Regulation of Class II Gaming. Tribal consultations were held in every region of the country and were attended by many tribal leaders or their representatives. In addition to tribal consultations, on August 16, 2011, the Commission requested public comment on a Preliminary Draft of part 518. After considering the comments received from the public, and through tribal consultations, the Commission proposes to amend part 518 to (a) tailor the self-regulating criteria to a tribe's regulation of class II gaming activity; and (b) clearly define and streamline the process by which a self-regulation petition is reviewed and a final determination is made by the Commission.

**IV. Overview of the Proposed Rule**

During the regulation review process, the Commission received comments that the existing self-regulation regulation discourages participation because the burdens imposed by the regulation outweigh the benefits. Specifically, comments stated that the current process is confusing, and the submission requirements, and continuing compliance requirements, are redundant and intrusive. The Commission also received comments that the current process is misfocused by placing greater emphasis on a tribe's gaming operation than on the effectiveness of a tribe's regulatory system. Therefore, the Commission is proposing amendments to streamline and clarify the process, as well as to ensure an effective regulatory framework for self-regulating tribes.

The proposed rule amends the petition and approval process to focus on the capability of the tribal regulatory body. To this end, the proposed rule requires information necessary for the Commission to evaluate the strength and effectiveness of a tribe's regulation of its gaming activity.

The proposed rule clarifies both the initial eligibility requirements and the petition submission requirements. Further, the proposed rule eliminates the need to resubmit information already provided to either the NIGC or the Bureau of Indian Affairs ("BIA"), such as gaming regulations, constitutions, revenue allocation plans, and facility licenses. The proposed rule

creates distinct stages and timelines for the certification process, and accelerates the timeline for the Commission to issue a final decision. The proposed rule provides for a streamlined process by involving the Commission in the certification review process. Under the proposed rule, the Commission will issue both the preliminary findings and final determination as to whether a tribe meets the approval criteria for self-regulation. The Commission will also hold a hearing, if requested by a tribe upon receipt of the Commission's preliminary findings.

Once certified, the only annual submission requirements under the proposed rule are the submission of independent audits and the resumes of all employees hired and licensed by the tribe's gaming regulatory body. The Commission believes that the annual self-regulation report currently required provides duplicative information already available to the agency and therefore proposes to eliminate that requirement. Additionally, the proposed rule requires self-regulating tribes to notify the NIGC within three business days of any change in circumstances that is material to the requirements for issuance of a certificate of self-regulation. This self-reporting requirement will provide the Commission with essential information in a more timely manner than the annual report mechanism in the current regulations.

Finally, the proposed rule corrects and clarifies the existing rule by referencing IGRA's post-certification limitations regarding the NIGC's authority over self-regulating tribes.

**A. General Comments**

Responses to the NOI and the Preliminary Draft of part 518 were generally positive. Many commenters stated that, in its current form, part 518 should be reviewed and revised to facilitate self-regulation while maintaining stringent standards. A commenter stated that the self-regulation regulations should be about evaluating a tribe's regulatory agency, not the gaming operation. Another commenter agreed, stating the focus should be on the tribal regulatory agency, not the gaming operation. Other commenters noted that the current financial benefits of waived fees do not outweigh the paperwork burdens of the current regulations. One commenter noted that the promise of self-regulation contemplated by the Act is not fulfilled by the NIGC's current regulations. Another commenter stated that the fact that only two tribes are self-regulating means something is wrong with the

regulations. As noted above, the Commission's proposed changes attempt to address many of these concerns.

#### *B. Eligibility and Submission Requirements for Petition*

The statute identifies who is eligible to petition for a certificate of self-regulation, and those criteria are contained in § 518.2 of the current regulation. The proposed rule attempts to clearly identify what a tribe is required to include in its petition at the time it is submitted to the NIGC, including evidence that the tribe meets the statutory eligibility requirements.

The requirement that a tribe must have continuously conducted class II gaming activity for the 3-year period immediately preceding the date of the petition raised concerns by several commenters. Commenters stated that this requirement could make ineligible those tribes conducting both class II and class III gaming, but which have not continuously conducted class II gaming for a 3-year period prior to submitting a petition. Commenters stated that if a tribe has conducted, and successfully regulated class II and/or class III gaming for three years, then it should be eligible to petition for a certificate of self-regulation. Further, there are instances in which tribes operate their gaming facilities seasonally or in which tribes have to temporarily close their facilities. While the Commission understands the perspective of the commenters, IGRA requires a tribe to continuously conduct class II gaming activity for three years before submitting a petition for self-regulation. Accordingly, and in light of the comments received, the Commission will continue to interpret the phrase "continuously conducted" in a way consistent with the common-sense interpretation found in the preamble to the existing rule at 63 FR 41961 (August 6, 1998). Likewise, this Commission does not intend to preclude a tribe from obtaining a certificate of self-regulation if its gaming operation is closed for temporary or seasonal closures, and will evaluate each situation on a case-by-case basis. Commenters noted that the current rule requires submission of information that is more focused on the gaming operation than the gaming regulatory framework. The Commission agrees with this comment and has attempted to strengthen the submission requirements that would indicate whether a tribe was successfully regulating its gaming activities, such as the criteria used for hiring tribal regulatory agency employees and a list of the gaming activity internal controls in place at the gaming operation. Under

the proposed rule, tribes will be required to provide a list of their internal controls as part of the petition. Additionally, tribes must only submit the gaming regulations with the petition if the gaming regulations are not part of the gaming ordinance previously submitted and approved by the Chair.

Further, commenters also noted that requiring information such as a tribe's constitution, revenue allocation plan or facility license is duplicative, as these documents have already been submitted to the NIGC or the BIA. The Commission agrees with this observation and has attempted to streamline the certification process by removing the requirements to resubmit documents previously provided to the NIGC or the BIA.

#### *C. Criteria That Must Be Met To Receive a Certificate of Self-Regulation*

The statute establishes criteria that must be met by a tribe before a certificate of self-regulation can be issued. The current rule identifies those criteria and provides a list of "indicators" that a tribe may use to demonstrate they have met the criteria. The proposed rule clarifies that the examples listed are not all-inclusive and that a tribe can provide other evidence to satisfy the criteria. As discussed above, the proposed rule focuses on evidence related to the tribe's regulation of the gaming activity. The proposed rule also streamlines criteria addressed by other NIGC regulations, such as compliance with applicable building, health and safety codes and procedures for resolving disputes between the gaming public and the tribe. Those requirements are addressed in Parts 559 and 522, respectively.

#### *D. Process for Petition Review and Certification of Tribes*

Several tribes commented that the timing and process for certification needs clarification. In response, the proposed rule attempts to simplify and streamline the certification process, including how petitions are submitted, reviewed and approved, and the timelines for each stage. The proposed rule also attempts to clarify the respective roles and responsibilities of the Commission and the Office of Self-Regulation ("OSR"). The current regulation authorizes the OSR to administer the self-regulation program and receive, review and approve petitions. Commenters stated that IGRA requires the Commission itself to consider petitions and certify qualifying tribes. The proposed rule modifies the roles of the OSR and the Commission by requiring the full Commission to make

the final determination as to whether a tribe meets the approval criteria for self-regulation, based on information presented in the tribe's petition, supplemental documentation and a hearing, if held. The proposed rule also streamlines the process by requiring the Commission to issue preliminary findings to the tribe and provide the tribe with an opportunity for a hearing before the Commission issues a final determination. This change allows a tribe to respond to a preliminary adverse finding before a final determination by the Commission. This proposed process is intended to facilitate collaboration with the NIGC to meet the approval criteria. Finally, the proposed rule provides for judicial review in a more timely manner than the current regulations.

#### *E. Post-Certification Rights and Responsibilities*

IGRA requires a tribe which has been issued a certificate of self-regulation to submit an independent annual audit and a complete resume on all employees hired and licensed by the tribe. The proposed rule requires self-regulating tribes to submit, on an annual basis, an independent audit and the resumes of employees hired and licensed by the tribal gaming regulatory body. Some commenters requested the regulation include a definition of "tribal regulator." The proposed rule does not define "tribal regulator" because tribal law may vary on how it defines a tribal regulator. In order to account for all persons responsible for the regulation of a tribes' class II gaming activity, without interfering with the tribe's interpretation of a "tribal regulator," the proposed rule requires self-regulating tribes to submit, on an annual basis, the resumes of all employees hired and licensed by the tribal gaming regulatory body. The Commission invites comment on this approach and comment on potential definitions of "tribal regulator."

Part 518 currently requires the tribe to submit an annual report to establish that the tribe has continuously met the eligibility and approval requirements. The proposed rule reduces this paperwork burden. The proposed rule requires a tribe to notify the NIGC within three business days of any change in circumstances that is material to meeting the requirements for issuance of the certificate. This approach will ensure timely reporting to maintain the integrity of Indian gaming while reducing paperwork requirements for the regulated community.

Finally, commenters stated that the current regulations concerning the NIGC's enforcement powers over self-

regulating tribes were unclear and overbroad. Consistent with public comments, the proposed rule corrects and clarifies § 518.9 by referencing the powers of the NIGC that are limited by statute once a tribe is issued a certificate of self-regulation

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 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 requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is, therefore, subject to review by the Office of Management and Budget.

#### List of Subjects in 25 CFR 518

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

Accordingly, for the reasons discussed in the preamble, the Commission proposes to revise 25 CFR part 518 to read as follows:

### PART 518—SELF-REGULATION OF CLASS II GAMING

Sec.

- 518.1 What does this part cover?
- 518.2 Who will administer the self-regulation program for the Commission?
- 518.3 Who is eligible to petition for a certificate of self-regulation?
- 518.4 What must a tribe submit to the Commission as part of its petition?
- 518.5 What criteria must a tribe meet to receive a certificate of self-regulation?
- 518.6 What are the responsibilities of the Office of Self-Regulation in the certification process?
- 518.7 What process will the Commission use to review and certify petitions?
- 518.8 What is the hearing process?
- 518.9 When will a certificate of self-regulation become effective?
- 518.10 What must a self-regulating tribe provide the Commission to maintain its self-regulatory status?
- 518.11 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any additional information?
- 518.12 Which investigative or enforcement powers of the Commission are inapplicable to self-regulating tribes?
- 518.13 When may the Commission revoke a certificate of self-regulation?
- 518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?

**Authority:** 25 U.S.C. 2706(b)(10); E.O. 13175.

#### § 518.1 What does this part cover?

This part sets forth requirements for obtaining a certificate of self-regulation of class II gaming operations under 25 U.S.C. 2710(c). When the Commission issues a certificate of self-regulation, the certificate is issued to the tribe, not to a particular gaming operation. The certificate applies to all class II gaming activity conducted by the tribe holding the certificate.

#### § 518.2 Who will administer the self-regulation program for the Commission?

The self-regulation program will be administered by the Office of Self-Regulation. The Chair shall appoint one Commissioner to administer the Office of Self-Regulation.

#### § 518.3 Who is eligible to petition for a certificate of self-regulation?

A tribe is eligible to petition the Commission for a certificate of self-regulation of class II gaming if, for a three (3)-year period immediately preceding the date of its petition:

- (a) The tribe has continuously conducted such gaming;
- (b) All gaming that the tribe has engaged in, or has licensed and regulated, on Indian lands within the tribe's jurisdiction, is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), in accordance with 25 U.S.C. 2710(b)(1)(A);

(c) The governing body of the tribe has adopted an ordinance or resolution that the Chair has approved, in accordance with 25 U.S.C. 2710(b)(1)(B);

(d) The tribe has otherwise complied with the provisions of 25 U.S.C. 2710; and

(e) The gaming operation and the tribal regulatory body have, for the three (3) years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

#### § 518.4 What must a tribe submit to the Commission as part of its petition?

A petition for a certificate of self-regulation is complete under this part when it contains:

(a) Two copies on 8½" x 11" paper of a petition for self-regulation approved by the governing body of the tribe and certified as authentic by an authorized tribal official;

(b) A description of how the tribe meets the eligibility criteria in § 518.3, which may include supporting documentation; and

(c) The following information with supporting documentation:

(i) A brief history of each gaming operation(s), including the opening dates and periods of voluntary or involuntary closure;

(ii) An organizational chart of the tribal regulatory body;

(iii) A brief description of the criteria tribal regulators must meet before being eligible for employment as a tribal regulator;

(iv) A brief description of the process by which the tribal regulatory body is

funded, and the funding level for the three years immediately preceding the date of the petition;

(v) A list of the current regulators and employees of the tribal regulatory body, their complete resumes, their titles, the dates they began employment, and, if serving limited terms, the expiration date of such terms;

(vi) A brief description of the accounting system(s) at the gaming operation which tracks the flow of the gaming revenues;

(vii) A list of gaming activity internal controls at the gaming operation(s);

(viii) A description of the record keeping system(s) for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three (3)-year period immediately preceding the date of the petition; and

(ix) The tribe's current set of gaming regulations, if not included in the approved tribal gaming ordinance.

**§ 518.5 What criteria must a tribe meet to receive a certificate of self-regulation?**

(a) The Commission shall issue a certificate of self-regulation if it determines that for a three (3)-year period, the tribe has:

(1) Conducted its gaming activity in a manner that:

(i) Has resulted in an effective and honest accounting of all revenues;

(ii) Has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) Has been generally free of evidence of criminal or dishonest activity;

(2) Conducted its gaming operation on a fiscally and economically sound basis;

(3) Conducted its gaming activity in compliance with the IGRA, NIGC regulations in this chapter, and the tribe's gaming ordinance and gaming regulations; and

(4) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the gaming activity;

(ii) Investigating, licensing and monitoring of all employees of the gaming activity;

(iii) Investigating, enforcing, prosecuting, or referring for prosecution violations of its gaming ordinance and regulations; and

(iv) Prosecuting criminal or dishonest activity or referring such activity for prosecution.

(b) A tribe may illustrate that it has met the criteria listed in paragraph (a) of this section by addressing factors such as those listed below. The list of factors is not all-inclusive; other factors not listed here may also be addressed and considered.

(1) The tribe adopted and is implementing minimum internal control standards which are at least as stringent as those promulgated by the Commission;

(2) The tribe requires tribal gaming regulators to meet the same suitability requirements as those required for key employees and primary management officials of the gaming operation(s);

(3) The tribe's gaming operation utilizes an adequate system for accounting of all gaming revenues from class II gaming activity;

(4) The tribe has a dispute resolution process for gaming operation customers and has taken steps to ensure that the process is adequately implemented;

(5) The tribe has a gaming regulatory body which:

(i) Monitors gaming activities to ensure compliance with Federal and tribal laws and regulations;

(ii) Monitors the gaming revenues accounting system for continued effectiveness;

(iii) Performs routine operational or other audits of the class II gaming activities;

(iv) Routinely receives and reviews gaming revenue accounting information from the gaming operation(s);

(v) Has access to and may inspect, examine, photocopy and audit all papers, books, and records of the gaming operation(s) and class II gaming activities;

(vi) Monitors compliance with minimum internal control standards for the gaming operation;

(vii) Has adopted and is implementing an adequate system for investigating, licensing, and monitoring of all employees of the gaming activity;

(viii) Maintains records on licensees and on persons denied licenses, including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction;

(ix) Establishes standards for, and issues, vendor licenses or permits to persons or entities who deal with the gaming operation, such as manufacturers and suppliers of services, equipment and supplies;

(x) Establishes or approves the rules governing class II games, and requires their posting;

(xi) Has adopted and is implementing an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations, and takes appropriate enforcement actions; and

(xii) Takes testimony and conducts hearings on regulatory matters, including matters related to the revocation of primary management officials, key employee and vendor licenses;

(6) The tribe allocates and appropriates a sufficient source of permanent and stable funding for the tribal regulatory body;

(7) The tribe has adopted and is implementing a conflict of interest policy for the regulators/regulatory body and their staff;

(8) The tribe has adopted and is implementing a system for adequate prosecution of violations of the tribal gaming ordinance and regulations or referrals for prosecution; and

(9) The tribe demonstrates that the operation is being conducted in a manner which adequately protects the environment and the public health and safety.

(c) The tribe assists the Commission with access and information-gathering responsibilities during the certification process.

(d) The burden of establishing self-regulation is upon the tribe filing the petition.

**§ 518.6 What are the responsibilities of the Office of Self-Regulation in the certification process?**

The Office of Self-Regulation shall be responsible for directing and coordinating the certification process. It shall provide a written report and recommendation to the Commission as to whether a certificate of self-regulation should be issued or denied, and a copy of the report and recommendation to the petitioning tribe.

**§ 518.7 What process will the Commission use to review and certify petitions?**

(a) Petitions for self-regulation shall be submitted by tribes to the Office of Self-Regulation.

(1) Within 30 days of receipt of a tribe's petition, the Office of Self-Regulation shall conduct a review of the tribe's petition to determine whether it is complete under § 518.4.

(2) If the tribe's petition is incomplete, the Office of Self-Regulation shall notify the tribe by letter, certified mail or return receipt requested, of any obvious deficiencies or significant omissions in the petition. A tribe with an incomplete petition may submit additional information and/or clarification within 30 days of receipt of notice of an incomplete petition.

(3) If the tribe's petition is complete, the Office of Self-Regulation shall notify the tribe in writing.

(b) Once a tribe's petition is complete, the Office of Self-Regulation shall conduct a review to determine whether the tribe meets the eligibility criteria in § 518.3 and the approval criteria in § 518.5. During its review, the Office of Self-Regulation:

(1) May request from the tribe any additional material it deems necessary to assess whether the tribe has met the criteria for self-regulation.

(2) Will coordinate an on-site review and verification of the information submitted by the petitioning tribe.

(c) Within 120 days of notice of a complete petition under § 518.4, the Office of Self-Regulation shall provide a recommendation and written report to the full Commission and the petitioning tribe.

(1) If the Office of Self-Regulation determines that the tribe has satisfied the criteria for a certificate of self-regulation, it shall recommend to the Commission that a certificate be issued to the tribe.

(2) If the Office of Self-Regulation determines that the tribe has not met the criteria for a certificate of self-regulation, it shall recommend to the Commission that it not issue a certificate to the tribe.

(3) The Office of Self-Regulation shall make all information on which it relies in making its recommendation and report available to the tribe, subject to the confidentiality requirements in 25 U.S.C. 2716(a), and shall afford the tribe an opportunity to respond.

(4) The report shall include:

(i) Findings as to whether each of the eligibility criteria is met, and a summary of the basis for each finding;

(ii) Findings as to whether each of the approval criteria is met, and a summary of the basis for each finding;

(iii) A recommendation to the Commission as to whether it should issue the tribe a certificate of self-regulation; and

(iv) A list of any documents and other information received in support of the tribe's petition.

(5) A tribe shall have 30 days from the date of issuance of the report to submit to the Office of Self-Regulation a response to the report.

(d) After receiving the Office of Self-Regulation's recommendation and report, and a tribe's response to the report, the Commission shall issue preliminary findings as to whether the eligibility and approval criteria are met. The Commission's preliminary findings will be provided to the tribe within 30 days of receipt of the report.

(e) Upon receipt of the Commission's preliminary findings, the tribe can request, in writing, a hearing before the Commission, as set forth in § 518.8. Hearing requests shall be made to the Office of Self-Regulation and shall specify the issues to be addressed by the tribe at the hearing, and any proposed oral or written testimony the tribe wishes to present.

(f) The Commission shall issue a final determination 30 days after issuance of its preliminary findings or after the conclusion of a hearing, if one is held. The decision of the Commission to approve or deny a petition shall be a final agency action.

(g) A tribe may withdraw its petition and resubmit it at any time prior to the issuance of the Commission's final determination.

#### **§ 518.8 What is the hearing process?**

(a) Within 10 days of receipt of the request for a hearing, the Office of Self-Regulation shall notify the tribe of the date and place of the hearing. The notice shall also set a hearing schedule, the time allotted for testimony and oral argument, and the order of the presentation. To the extent possible, the hearing will be scheduled not later than 60 days after the notice is issued, and the hearing schedule will be issued at least 30 days prior to the hearing.

(b) The Commission shall issue a decision on the petition within 30 days after the hearing's conclusion. The decision shall set forth, with particularity, findings regarding the tribe's satisfaction of the self-regulation standards in this part. If the Commission determines that a certificate will issue, it will do so in accordance with § 518.11.

(c) The decision of the Commission to approve or deny a petition shall be a final agency action.

#### **§ 518.9 When will a certificate of self-regulation become effective?**

A certificate of self-regulation shall become effective on January 1 of the year following the year in which the Commission determines that a certificate will issue. Petitions will be reviewed in chronological order based on the date of receipt of a complete petition.

#### **§ 518.10 What must a self-regulating tribe provide the Commission to maintain its self-regulatory status?**

(a) Each tribe that holds a certificate of self-regulation shall be required to submit the following information on April 15 of each year following the first year of self-regulation or within 120 days after the end of each fiscal year of the gaming operation, as required by 25 CFR 571.13:

(1) An annual independent audit, to be filed with the Commission, as required by 25 U.S.C. 2710(b)(2)(c); and

(2) A complete resume for all employees of the tribal regulatory body hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation, to be filed with the Office of Self-Regulation.

(b) Failure to submit the information required by this section may result in revocation of a certificate of self-regulation.

#### **§ 518.11 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any additional information?**

Yes. A tribe that holds a certificate of self-regulation has a continuing duty to advise the Commission within three (3) business days of any changes in circumstances that are material to the approval criteria in § 518.5 and may reasonably cause the Commission to review and revoke the tribe's certificate of self-regulation. Failure to do so is grounds for revocation of a certificate of self-regulation. Such circumstances may include, but are not limited to, a change in management contractor; a change of primary regulatory official; financial instability; or any other factors that are material to the decision to grant a certificate of self-regulation.

#### **§ 518.12 Which investigative or enforcement powers of the Commission are inapplicable to self-regulating tribes?**

During any time in which a tribe has a certificate of self-regulation, the powers of the Commission, as set forth in 25 U.S.C. 2706(b)(1)–(4), shall be inapplicable.

#### **§ 518.13 When may the Commission revoke a certificate of self-regulation?**

The Commission may, after an opportunity for a hearing, revoke a certificate of self-regulation by a majority vote of its members if it determines that the tribe no longer meets the eligibility criteria of § 518.3, the approval criteria of § 518.5, the requirements of § 518.10 or the requirements of § 518.11. The Commission shall provide the tribe with prompt notice of the Commission's intent to revoke a certificate of self-regulation under this part. Such notice shall state the reasons for the Commission's action and shall advise the tribe of its right to a hearing under part 584 or right to appeal under part 585. The decision to revoke a certificate is a final agency action and is appealable to Federal District Court pursuant to 25 U.S.C. 2714.

#### **§ 518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?**

Yes. A tribe may request a hearing regarding the Commission's proposal to revoke a certificate of self-regulation. Such a request shall be filed with the Commission pursuant to part 584. Failure to request a hearing within the time provided by part 584 shall

constitute a waiver of the right to a hearing.

**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 Parts 524, 539, 577, 580, 581, 582, 583, 584, and 585

RIN 3141-AA47

#### Appeal Proceedings Before the Commission

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission proposes to add a new subchapter to its regulations to create a clear process for appeal proceedings before the Commission. It would, among other things, define certain terms, set forth the burden of proof and standard of review, explain what information a Commission decision will contain, and what happens if the Commission does not issue a majority decision, and provide that an appeal of the Chair's decision does not stay the effect of that decision. The proposed regulations set forth rules for motion practice in appeals before the Commission, addresses how an entity other than a tribe would request to participate on a limited basis in ordinance appeals, how parties file motions to intervene, to supplement the record, and for reconsideration, and how to file motions before the presiding official. Additionally, the proposed regulation sets forth more specific rules for different types of appeals. Rules for appeals of ordinance disapprovals, management contract approvals and disapprovals, appeals before a presiding official, and appeals before the Commission on written submission only each receive somewhat different treatment.

**DATES:** The agency must receive comments on or before April 2, 2012.

**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.*

• *Mail comments to:* Maria Getoff, 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:* Maria Getoff, National Indian Gaming Commission at (202) 632-0045.

#### FOR FURTHER INFORMATION CONTACT:

Maria Getoff, National Indian Gaming Commission, 1441 L Street NW., Suite 9100 Washington, DC 20005.

Telephone: (202) 632-7003; email:

*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

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. Part 519—Service; Part 524—Appeals; Part 539—Appeals; and Part 577—Appeals before the Commission were included in this regulatory review. The Commission will address changes to part 519—Service in a separate rulemaking action because part 519 sets forth rules for service of actions and decisions by the Chair and therefore does not implicate the appellate review process.

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

The Commission conducted a total of 10 tribal consultations as part of its

review of Part 519—Service; Part 524—Appeals; Part 539—Appeals; and Part 577—Appeals before the Commission. Tribal consultations were held in every region of the country and were attended by numerous tribes and tribal leaders or their representatives. In addition to tribal consultations, on July 22, 2011, the Commission requested public comment on a Preliminary Draft of new Subchapter H. After considering the comments received from the public and through tribal consultations, the Commission will remove Part 524—Appeals; Part 539—Appeals; and Part 577—Appeals before the Commission and will add a new subchapter H—Appeal Proceedings before the Commission.

Currently, rules for appeals before the Commission are found in three separate places: Part 524 governs appeals of ordinance actions; part 539 addresses appeals of management contract actions; and part 577 sets forth procedures for appeals of enforcement actions and actions to void an approved management contract. The Commission believes that consolidating all appellate procedures in a new subchapter promotes clarity and effectiveness for the regulated community.

Proposed subchapter H consists of six parts: 580—Rules of general application in appellate proceedings before the Commission; 581—Motions in appellate proceedings before the Commission; 582—Appeals of disapprovals of gaming ordinances, resolutions, or amendments.; 583—Appeals of approvals or disapprovals of management contracts or amendments to management contracts; 584—Appeals before a presiding official of notices of violation, proposed civil fine assessments, orders of temporary closure, the Chair's decision to void or modify a management contracts, the Commission's proposal to remove a certificate of self-regulation, and notices of late fees and late fee assessments; and 585—Appeals to the Commission on written submissions of notices of violation, proposed civil fine assessments, orders of temporary closure, the Chair's decision to void or modify management contracts, the Commission's proposal to remove a certificate of self regulation, and notices of late fees and late fee assessments.

##### Part 580—Rules of General Application in Appeal Proceedings Before the Commission

This new part sets forth rules that are generally applicable to all appellate proceedings before the Commission. First, it defines terms used throughout the subchapter. Several commenters