

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 518

Issuance of Certificates of Self-Regulation to Tribes

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (Commission) proposes regulations that provide for tribal self-regulation of class II gaming operations under the Indian Gaming Regulatory Act (Act). These regulations would implement the class II self-regulation provisions of the Act, under which tribes that meet specified criteria may obtain a certificate of self-regulation. The primary effect of this action is to establish requirements for and a process by which tribes may obtain certificates of self-regulation. In addition, the Commission may not assess a fee on the gaming activity of a class II gaming operation operated by a tribe which holds a certificate of self-regulation in excess of one quarter of one percent of the gross revenue of that operation.

DATES: Comments may be submitted on or before May 11, 1998. A public hearing will be held on April 1, 1998, in Portland, Oregon, from 9:00 a.m. until 1:00 p.m.

ADDRESSES: Comments may be mailed to: Self-Regulation Comments, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632-7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday. The public hearing will be held at the Double Tree Hotel, Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Maria Getoff at 202/632-7003; fax 202/632-7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating class II gaming and certain aspects of class III gaming on Indian lands. The regulations proposed today would implement the Commission's authority to issue certificates of self-regulation for class II gaming to

qualified tribes under 25 U.S.C. 2710(c), which provides for a reduced fee rate on class II gaming activity for tribes that meet certain specific criteria and therefore qualify for a certificate of self-regulation. This criteria is set forth in 25 U.S.C. 2710(c)(4) (A), (B), and (C). Section 2710(c)(5)(C) of 25 U.S.C. provides that tribes that obtain certificates of self-regulation are subject to a fee of not more than one quarter of one percent of gross revenue on their class II gaming activity.

The Commission has relied on the self-regulation provisions of the Act to establish the criteria in these proposed regulations. In addition, with respect to minimum internal control standards, the Commission has reviewed the processes and procedures employed by the State of New Jersey, the State of Nevada and the materials received by the National Indian Gaming Association/National Congress of American Indians Task Force on Indian Gaming Internal Control Standards. These sources made clear the need for tribes to adopt and implement sufficient accounting, auditing, and internal control systems to be self-regulating.

Furthermore, the Commission has developed some basic examples of the information to be relied on by the Commission to determine whether a tribe is self-regulating. They include the establishment of an independent tribal regulatory body which performs certain functions, a sufficient source of funding for the regulatory body, and the adoption of a conflict of interest policy for tribal regulators. The Commission has identified these examples as areas that can make the difference between a tribal regulation system that adequately regulates gaming and one that does not.

After a tribe receives a certificate of self-regulation for class II gaming, the Commission retains oversight, investigative, and enforcement responsibilities and will continue to maintain an ongoing relationship with the tribe. A short list of the Commission's many responsibilities includes:

1. Ensuring compliance with licensing requirements pursuant to 25 C.F.R. Part 558;
2. Ensuring that the tribe has the sole proprietary interest in and responsibility for the conduct of the gaming pursuant to 25 C.F.R. 522.4(b)(1);
3. Reviewing and approving management contracts, including suitability determinations and compliance with the National Environmental Policy Act pursuant to 25 C.F.R. 533.1;

4. Ensuring that annual audit reports of the gaming operation are provided by the tribe to the Commission pursuant to 25 C.F.R. 571.13;

5. Issuing notices of violation, assessing civil fines, issuing temporary closure orders, holding hearings, taking testimony, and issuing decisions pursuant to 25 C.F.R. Part 573, 25 C.F.R. Part 575, and 25 C.F.R. Part 577;

6. Monitoring tribal operations to assure maintenance of status as self-regulatory pursuant to 25 U.S.C. § 2710(c)(6).

While this list is not exhaustive, it illustrates the extent to which the Commission will continue to be involved in the regulation of class II gaming, notwithstanding a tribe's self-regulating status.

The Act was recently amended, and that amendment may extend the application of self-regulation standards to apply to class III gaming operations as well as class II gaming operations. The Commission is therefore issuing an Advance Notice of Proposed Rulemaking regarding self-regulation by tribes of class III operations.

Requirement of an Independent Tribal Regulatory Body

Tribal gaming operations vary in type and size. A rigid set of rules for self-regulation could unnecessarily restrict tribes in the pursuit of a certificate of self-regulation. Therefore, the Commission proposes the adoption of a system to identify minimum factors that should be considered when evaluating a tribe's petition for self-regulation, while recognizing there are other factors to be considered as well. One minimum requirement is that the tribe have an independent tribal regulatory body. Effective regulatory oversight requires that there be a separation between the regulation and operation of tribal gaming activities. The independent regulatory body should be an arm of the tribal government, established for the exclusive purpose of regulating and monitoring gaming on behalf of the tribe. The regulatory body must be structured to ensure that the regulation of gaming is separate from the operation of gaming. The regulatory entity should have no involvement in the operational or managerial decisions of a gaming facility, except to the extent that the regulatory body identifies violations of federal or tribal law.

Therefore, pursuant to 25 U.S.C. 2710 (c) (3), (4), (5), and (6), these regulations are being proposed to establish the requirements and the process for obtaining a certificate of self-regulation.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The Commission is in the process of obtaining clearance from the Office of Management and Budget (OMB) for the information collection requirements contained in this proposed rule, as required by 44 U.S.C. 3501 et seq. The information required to be submitted is identified in sections 518.3 and 518.5, and relates to petitions for certificates of self-regulation. The information will be used to determine whether a tribe has met the criteria for the issuance of a certificate of self-regulation, and also to monitor a tribe's ability to continue to meet the criteria on an ongoing basis in order to maintain its certificate of self-regulation. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

Public reporting burden for this collection of information is estimated to average 20 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that approximately 10 tribes will petition each year for a certificate of self-regulation, for an annual burden of 200 hours.

In addition, the proposed rule requires tribes that hold certificates of self-regulation to prepare and submit an annual report to the Commission to establish that the tribe has continuously met the criteria for self-regulation. The Commission estimates that the annual reporting and recordkeeping burden for the annual report will be 50 hours. The Commission estimates that approximately 5 tribes per year will be issued certificates of self-regulation and thereby required to submit the annual report, for an annual burden of 250 hours. Total annual burden for the petition and the annual report is estimated at 450 hours. The Commission further estimates that the total annual cost to respondents will be between \$225,000 and \$650,000, depending on the size of the gaming operation.

Send comments regarding this collection of information, including

suggestions for reducing the burden to both, Maria Getoff, National Indian Gaming Commission, 1441 L Street N.W., Suite 9100, Washington, DC 20005; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

The Commission solicits public comment as to:

- a. whether the collection of information is necessary for the proper performance of the functions of the Commission, and whether the information will have practical utility;
- b. the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- c. the quality, utility, and clarity of the information to be collected; and
- d. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

An agency may not conduct, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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.

Philip Hogen,

Commissioner, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 518

Gambling, Indians-lands, Indians-tribal government, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new part 518 as follows:

PART 518—SELF REGULATION OF CLASS II GAMING

Sec.

518.1 What does this part cover?

518.2 Who may petition for a certificate of self-regulation?

518.3 What must a tribe submit to the Commission as part of its petition?

518.4 What criteria must a tribe meet to be issued a certificate of self-regulation?

518.5 What process will the Commission use to review petitions?

518.6 When will a certificate of self-regulation become effective?

518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?

518.8 Does a tribe that holds a certificate of self-regulation have a continuous duty to advise the Commission of any information?

518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?

518.10 Under what circumstances may the Commission remove a certificate of self-regulation?

518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?

518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Authority: 25 U.S.C. 2706(b)(10), 2710(c)(3)–(6).

§ 518.1 What does this part cover?

This part sets forth requirements for obtaining, and procedures governing, the Commission's issuance of certificates 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 will apply to all class II gaming operations operated by the tribe that holds the certificate.

§ 518.2 Who may petition for a certificate of self-regulation?

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

(a) The tribe has continuously conducted the gaming activity for which it seeks self-regulation;

(b) All gaming that the tribe has engaged in, or 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 Chairman 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 years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

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

(a) A petition for a certificate of self-regulation under this part shall contain:

(1) 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, which includes:

(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 independent tribal regulatory body;

(iii) A description of the process by which positions on the independent tribal regulatory body are filled;

(iv) A description of the process by which the independent 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 independent tribal regulatory body, their titles, and the dates they began employment; and

(vi) A list of the current gaming operation division heads.

(2) A list of the documents maintained by the tribe, to which the Commission shall have access, for use in determining whether the tribe meets the eligibility criteria of § 518.2 and the approval criteria of § 518.4, which shall include but is not limited to:

(i) The tribe's constitution or other governing documents;

(ii) If applicable, the tribe's revenue allocation plan pursuant to 25 U.S.C. 2710(b)(3);

(iii) A description of the accounting system for all revenues from the gaming activities;

(iv) Manual(s) of the internal control systems of the gaming operation(s);

(v) For the three (3)-year period immediately preceding the date of the petition, reports on internal controls based on audits of the financial statements, which are in addition to the annual audit reports required to be submitted to the Commission under 25 U.S.C. 2710(b)(2)(C), and the management letters required to be submitted to the Commission under 25 CFR 571.13;

(vi) For the three (3)-year period immediately preceding the date of the

petition, records of all allegations of criminal or dishonest activity, and measures taken to resolve the allegations;

(vii) For the three (3)-year period immediately preceding the date of the petition, records of all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, including dispositions thereof;

(viii) Records of all current employees of the gaming operation, including the name, title, and licensing status of each employee;

(ix) The dates of issuance, and criteria for the issuance of tribal gaming licenses issued for each place, facility or location at which gaming is conducted;

(x) The tribe's current set of gaming regulations; and

(xi) The dates of the last three annual audit reports for the independent tribal regulatory body and the tribal government;

(3) A copy of the public notice required under 25 CFR 518.5(e), and a certification, signed by a tribal official, that it has been posted. Upon publication of the notice in a local newspaper, the tribe shall forward a copy of such publication to the Commission;

(4) A copy of an audit report(s), along with the opinion from an independent certified public accountant, which shows that tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B) for the three (3)-year period immediately preceding the date of the petition.

§ 518.4 What criteria must a tribe meet to be issued a certificate of self-regulation?

(a) The Commission may issue a certificate of self-regulation if it determines that the tribe has, for the three years immediately preceding the petition:

(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) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the activity;

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

(iii) Investigation, enforcement and prosecution of violations of its gaming ordinance and regulations;

(3) Conducted the operation on a fiscally and economically sound basis; and

(4) The gaming activity has been conducted in full compliance with the IGRA, NIGC regulations, and the tribe's gaming ordinance and gaming regulations.

(b) Indicators that a tribe has met the criteria set forth in paragraph (a) of this section may include, but is not limited to:

(1) Adoption and implementation of minimum internal control standards which are at least as stringent as those promulgated by the Commission, or until such standards are promulgated by the Commission, minimum internal control standards at least as stringent as those required by the State of Nevada or the State of New Jersey;

(2) Evidence that suitability determinations are made with respect to tribal gaming regulators which are at least as stringent as those required for key employees and primary management officials of the gaming operation(s);

(3) Evidence of an established independent regulatory body within the tribal government which:

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

(ii) Promulgates tribal gaming regulations pursuant to tribal law;

(iii) Ensures that there is an adequate system for accounting of all revenues from the activity and monitors such system for continued effectiveness;

(iv) Performs routine audits of the gaming operation;

(v) Routinely receives and reviews accounting information from the gaming operation;

(vi) Has access to and may inspect, examine, photocopy and audits all papers, books, and records;

(vii) Provides ongoing information to the tribe on the status of the tribe's gaming operation(s);

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

(ix) Adopts and implements an adequate system for investigation, licensing, and monitoring of all employees of the gaming activity;

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

(xi) Inspects and examines all premises where gaming is conducted;

(xii) 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;

(xiii) Establishes or approves, and posts, rules of games;

(xiv) Inspects games, tables, equipment, cards, and chips or tokens used in the gaming operation(s);

(xv) Establishes standards for technological aids and tests such for compliance with standards;

(xvi) Establishes or approves video surveillance standards;

(xvii) Adopts and implements an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations and takes appropriate enforcement actions;

(xviii) Determines that there is adequate dispute resolution procedures for gaming operation employees and customers, and ensures that such system is adequately implemented; and

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

(4) Documentation of a sufficient source of permanent and stable funding for the independent tribal regulatory body which is allocated and appropriated by the tribal governing body;

(5) Adoption of a conflict of interest policy for the regulators/regulatory body and their staff;

(6) Evidence that the operation is financially stable;

(7) Adoption and implementation of a system for adequate prosecution of violations of the tribal gaming ordinance and regulations, which may include the existence of a tribal court system authorized to hear and decide gaming related cases; and

(8) Evidence that the operation is being conducted in a safe manner, which may include, but not be limited to:

(i) The availability of medical, fire, and emergency services;

(ii) The existence of an evacuation plan; and

(iii) Proof of compliance with applicable building, health, and safety codes.

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

(d) The Commission shall have complete access to all areas of and all papers, books, and records of the tribal regulatory body, the gaming operation, and any other entity involved in the regulation or oversight of the gaming operation. The Commission shall be allowed to inspect and photocopy any relevant materials. The tribe shall take no action to prohibit the Commission

from soliciting information from any current or former employees of the tribe, the tribal regulatory body, or the gaming operation. Failure to adhere to this paragraph may be grounds for denial of a petition for self-regulation.

§ 518.5 What process will the Commission use to review petitions?

(a) The Commission shall undertake an initial review of the petition to determine whether the tribe meets all of the eligibility criteria of § 518.2. If the tribe fails to meet any of the eligibility criteria, the Commission shall deny the petition and so notify the tribe. If the tribe meets all of the eligibility criteria, the Commission shall review the petition and accompanying documents for completeness. If the Commission finds the petition incomplete, it shall immediately notify the tribe by letter, certified mail, return receipt requested, of any obvious deficiencies or significant omissions apparent in the petition and provide the tribe with an opportunity to submit additional information and/or clarification.

(b) The Commission shall notify a tribe, by letter, when it considers a petition to be complete.

(c) Upon receipt of a complete petition, the Commission shall conduct a review and investigation to determine whether the tribe meets the approval criteria under § 518.4. During the course of this review, the Commission may request from the tribe any additional material it deems necessary to assess whether the tribe has met the requirements for self-regulation. The tribe shall provide all information requested by the Commission in a timely manner. The Commission may consider any evidence which may be submitted by interested or informed parties.

(d) The tribe shall post a notice, contemporaneous with the filing of the petition, advising the public that it has petitioned the Commission for a certificate of self regulation. Such notice shall be posted in conspicuous places in the gaming operation and the tribal government offices. Such notice shall remain posted until the Commission either issues a certificate or declines to do so. The tribe shall also publish such notice, once a week for four weeks, in a local newspaper with a broad based circulation. Both notices shall state that one of the criteria for the issuance of a certificate is that the tribe has a reputation for safe, fair, and honest operation of the gaming activity, and shall solicit comments in this regard. The notices shall instruct commentors to submit their comments directly to the Commission, shall provide the mailing

address of the Commission and shall request that commentors include their name, address and day time telephone number.

(e) After making an initial determination on the petition, the Commission shall issue a report of its findings to the tribe.

(f) The tribe shall have 60 days to submit to the Commission a written response to the report. This response may include additional materials which:

(1) The tribe deems necessary to adequately respond to the Commission's findings; and

(2) The tribe believes supports its petition.

(g) At the time of the submission of its response the tribe may request a hearing before the Commission. This request shall specify the issues to be addressed by the tribe at such hearing, and any proposed oral or written testimony the tribe wishes to present. The Commission may limit testimony.

(h) The Commission shall notify the tribe, within 10 days of receipt of such request, of the date and place of the hearing. The Commission shall also set forth the schedule for the conduct of the hearing, including the specification of all issues to be addressed at the hearing, the identification of any witnesses, the time allotted for testimony and oral argument, and the order of the presentation.

(i) Following review of the tribe's response and the conduct of the hearing, the full Commission shall issue a final decision on the petition. The decision shall set forth with particularity the Commission's findings with respect to the tribe's compliance with standards for self-regulation set forth in this part. Decisions to issue or to deny a certificate of self-regulation shall require a vote of at least two of the Commissioners.

§ 518.6 When will a certificate of self-regulation become effective?

A certificate of self-regulation shall become effective at the beginning of the next calendar year following the date of its issuance.

§ 518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?

Yes. Each tribe that holds a certificate of self-regulation shall be required to submit a self-regulation report annually to the Commission in order to maintain its self-regulatory status. Such report shall set forth information, with supporting documentation, to establish that the tribe has continuously met the eligibility requirements of § 518.2 and

the approval requirements of § 518.4. Such report shall be filed with the Commission on April 15th of each year following the first year of self-regulation. Failure to file such report shall be grounds for the removal of a certificate under § 518.8.

§ 518.8 Does a tribe that holds a certificate of self-regulation have a continuous duty to advise the Commission of any information?

Yes. A tribe that holds a certificate of self-regulation has a continuous duty, at all times after the receipt of a certificate of self-regulation, to immediately advise the Commission of any circumstances that may negatively impact on the tribe's ability to continue to self-regulate. Failure to do so is grounds for removal of a certificate of self-regulation. Such circumstances may include, but are not limited to: a change in management contractor; financial instability; or any other factors that may undermine a tribe's ability to effectively regulate.

§ 518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?

No. The Commission retains its investigative and enforcement powers over all class II gaming tribes notwithstanding the issuance of a certificate of self-regulation. The Commission shall retain its powers to investigate and bring enforcement actions for violations of the Indian Gaming Regulatory Act, accompanying regulations, and violations of tribal gaming ordinances.

§ 518.10 Under what circumstances may the Commission remove a certificate of self-regulation?

The Commission may, after an opportunity for a hearing, remove 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 § 518.2, the approval criteria of § 518.4, the requirements of § 518.7 or the requirements of § 518.8. The Commission shall provide the tribe with prompt notice of the Commission's intent to remove 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 § 518.9.

§ 518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?

Yes. A tribe may request a hearing regarding the Commission's proposal to remove a certificate of self-regulation

under § 518.8. Such a request shall be filed with the Commission within thirty (30) days after the tribe received notice of the Commission's action. Failure to request a hearing within the time provided by this section shall constitute a waiver of the right to a hearing.

§ 518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Yes. A tribe may file a request for reconsideration of a denial of a petition or a removal of a certificate of self-regulation within 30 days of receipt of the denial or removal. Such request shall set forth the basis for the request, specifically identifying those Commission findings which the tribe believes to be erroneous. The Commission shall issue a decision with regard to any request for reconsideration within 30 days of receipt of the request. If the Commission fails to issue a decision within 30 days, the request shall be considered to be disapproved.

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NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Self-Regulated Class III Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice announces the initiation of the rulemaking process and requests information relevant to implementing regulations governing the classification of class III gaming operations as "self-regulated." The Commission may not assess any fee on the gaming activity of a class III gaming operation operated by a self-regulated tribe.

DATES: Comments in response to this advance notice must be submitted by May 11, 1998.

ADDRESSES: Commenters may submit their comments by mail, facsimile, or delivery to: Class III Self-Regulation Rule Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street N.W., Washington, D.C. 20005. Fax number: 202-632-7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Maria Getoff at 202-632-7003, or by

facsimile at 202-632-7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

1. Introduction

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). The IGRA was enacted for several purposes, primary among them was to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting economic development, self-sufficiency, and strong tribal governments, as well as to provide for the regulation of gaming by Indian tribes adequate to shield them from organized crime. The IGRA was recently amended, by Public Law No. 105-83, to increase the total amount of fees that the Commission may impose on gaming tribes. 25 U.S.C. 2717(a). This increase was achieved by raising the original fee cap and by authorizing the Commission to collect fees from class III operations, which did not previously pay fees. The recent amendment also provides that self-regulated tribes "such as the Mississippi Band of Choctaw" (Band) shall not be required to pay fees. Section 2717(a)(2)(c) of 25 U.S.C. provides that "[n]othing in subsection (a) of this section shall apply to self-regulated tribes such as the Mississippi Band of Choctaw." (Subsection (a) provides that "the Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter"). The amendment provides no guidance as to what the term "self-regulated" means. It merely refers to the Band, which operates a class III gaming operation. The specific criteria for establishing self-regulation are set forth in the original Act as applicable to class II activity only. That section has not been amended.

The Commission has issued, contemporaneously with this Advance Notice of Proposed Rulemaking, a Notice of Proposed Rulemaking regarding the issuance of certificates of self-regulation for class II operations.

The IGRA expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement the provision of this [Act]." 25 U.S.C. 2706(b)(10).

2. Advance Notice of Proposed Rulemaking

After consideration of this issue, the NIGC has determined that the appropriate course of action is to