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By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 556 and 558

RIN 3141-AA15

Tribal Background Investigations and Licensing

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is amending certain NIGC regulations concerning background investigations and licenses to streamline the submission of documents to the Commission; to ensure that two notifications are submitted to the Commission in compliance with the Indian Gaming Regulatory Act (IGRA); and to clarify the regulations regarding the issuance of temporary and permanent gaming licenses.

DATES: *Effective Date:* February 25, 2013.

FOR FURTHER INFORMATION CONTACT: John Hay, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202-632-7009.

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 NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. 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 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. These parts 556 and 558 were included in this regulatory review.

II. Previous Rulemaking Activity

The Commission consulted with tribes as part of its review of parts 556 and 558. Tribal consultations were held in every region of the country and were attended by numerous tribes, tribal leaders or their representatives. After considering the comments received from the public and through tribal consultations, the Commission published a Notice of Proposed Rulemaking regarding background and investigation licensing procedures on December 22, 2011.

III. Review of Public Comments

In response to our Notice of Proposed Rulemaking, published December 22, 2011, 76 FR 79567, we received the following comments.

General Comments

Comment: Many commenters supported the formalization of the "pilot program" because it reduces the quantity of documents a tribe must submit to the NIGC, formalizes a streamlined process, and is a cost effective measure.

Response: The Commission agrees and has decided to amend parts 556 and 558 to implement the pilot program.

Comment: Many commenters generally support the changes to part 558.

Response: The Commission has decided to go forward with many of the amendments set forth in the proposed rule.

Comment: One commenter supported the agency's efforts to improve tribal access to background investigation materials but was puzzled by the suggestion that the Commission presently lacks "sufficient resources and technology" to make this information available in a secure format. The commenter believes that the necessary technology is available and the Commission resources would be minimal. Further, the commenter urges the Commission to develop a plan and a timeline for implementing such a system.

Response: The Commission will continue to review this issue closely to determine whether it is feasible to make background investigation information available in a secure format.

Comment: One commenter stated that there is potential for confusion and/or possible non-compliance when attempting to reconcile the requirements in 556.1, 556.6(b)(2), 558.1, and 558.3(b), because the perimeters of temporary versus permanent licenses are unclear in these sections. The commenter suggested that a revision to the regulations may not be necessary; however, additional guidance may be beneficial for applying the regulatory sections.

Response: The Commission reviewed this provision and believes it is sufficiently clear. The Commission will examine whether it is appropriate to issue additional guidance for those sections.

Comment: One commenter inquired whether a tribe would be out of compliance with 556.2(b)(2) and/or 558.3(b) if it allows for temporary employees to be used and/or issues temporary licenses for a period of 90 days or less and it hires such temporary employee or individual with a temporary license as a key employee or primary management official during that time period.

Response: Temporary licenses are used by tribes that choose to have individuals working in their gaming facilities while the individuals are undergoing the background investigation and licensing process. No key employee or primary management official can work at a gaming facility for longer than 90 days without a gaming license issued pursuant to parts 556 and 558. The tribe should implement the regulatory licensing process for a key employee or primary management official simultaneously with issuing a temporary license to ensure that a

permanent license is issued within 90 days of the individual beginning work.

556.4 Background Investigations

Comment: Two commenters supported the revision to 556.4(b) to clarify that a tribe may use investigative materials obtained from the NIGC that were submitted by another tribe. Specifically, one commenter noted that information regarding an applicant's prior gaming licenses and disciplinary actions in relation to previously held licenses can be of great benefit to tribal governments in determining the suitability of an applicant and, among other things, can help verify the information provided in a license application.

Response: The Commission agrees and has adopted the amendment in the proposed rule.

Comment: Several commenters contended that requesting that an applicant provide a list of "associations to which they pay dues" is overly broad and unnecessary, and the Commission should not add this to the regulation concerning background investigation applications. One commenter disagrees, because a requirement to list and disclose all such associations provides valuable information concerning an applicant's suitability.

Response: The Commission agrees with the majority of commenters that the addition of a requirement to provide a list of associations is unnecessary, because tribes may require any additional information they deem necessary through 556.4(a)(13). This broad provision should be sufficient for tribes to request a list of associations as well as any other information that they deem necessary for purposes of a background investigation.

Comment: One commenter requested that the NIGC consider deleting 556.4(c) mandating that tribal investigators "shall keep confidential the identity of each person interviewed in the course of an investigation," because the rules of investigatory processes should be determined by each tribal jurisdiction. Further, the commenter is concerned that this provision may violate due process in certain tribal jurisdictions because an applicant would be denied the opportunity to confront an accuser.

Response: IGRA requires background investigations for primary management officials and key employees. Accordingly, such investigations are conducted pursuant to Federal and tribal law. Confidentiality is an existing requirement under the current regulations and pilot program. Section 556.4(c) requires tribal gaming commissions to keep individual

identities confidential to promote candor in interviews to determine an applicant's eligibility for a license. Confidentiality facilitates an interviewee's willingness to provide information during the process. A lack of candor in interviews could needlessly prolong the background investigation process and impact both tribal and federal resources. The Commission feels that the need for candid information outweighs any due process concerns.

Comment: One commenter believed that the NIGC does not want to be notified every time a tribe does not license an individual because there are potentially thousands of applicants each year that a tribe does not license. The commenter explained that these applicants may have moved or found other employment before the background was completed or requested withdrawal for any number of reasons.

Response: The Commission appreciates the potential for a large number of key employee and primary management official applicants a tribe may receive. However, the NIGC often receives notice regarding an applicant long before a complete application is submitted. Once a person has been entered into the NIGC system for fingerprints, a record is automatically created. If the NIGC does not receive notification that licensing action was not taken as to such persons, it will not have accurate and up to date information. Accurate information regarding the results of individuals seeking employment as key employees or primary management officials enhances the NIGC's ability to provide current investigative information as to particular individuals. Consequently, notifying the Commission of the results of a license application serves to maintain the integrity of Indian gaming.

Comment: Two commenters recommended that the Commission eliminate the requirement that background investigations include personal references.

Response: Personal references help to implement IGRA's requirement that eligibility determinations include an evaluation of an individual's reputation, habits, and associations. See 25 U.S.C. 2710(b)(2)(F). Such an evaluation is furthered by interviews conducted beyond the context of documented business relationships.

Comment: One commenter supported a change to 556.4(b) that would allow tribes to rely on notice of results of an applicant already on file at NIGC and to simply update the investigation and investigation report, because this would save tribal resources.

Response: The Commission understands the need to conserve tribal resources and agrees with this comment. Section 556.4(b) provides for a tribe to rely on materials on file with NIGC or with a previous tribal investigative body and to update those materials.

556.5 Tribal Eligibility Determination

Comment: Two commenters stated that the NIGC should reconsider its decision against replacing the term "eligibility" with "suitability" in 556.5. The commenter proposed that the standard for issuing a gaming license is based on the suitability of the applicant and the standard for hiring is based on the eligibility of the applicant and that hiring and licensing are done by different tribal entities.

Response: The Commission disagrees in light of IGRA's language, which specifically requires that background investigation processes include an eligibility determination. See 25 U.S.C. 2710(b)(2)(F)(ii).

556.6 Report to the Commission

Comment: One commenter stated that the proposed regulation would require the tribe to send the notice of results before 60 days of employment and also requires a tribe to send a licensing decision notification prior to 90 days of employment. The commenter believes that the 60 day requirement should be eliminated, leaving only the 90 day requirement.

Response: IGRA requires two notifications: The first involves notifying the Commission of the results of the background check before the issuance of a license, and the second involves notifying the Commission of the issuance of the license. See 25 U.S.C. 2710(b)(2)(F)(i)(I) and (III). The Commission requires tribes to submit the notice of results within 60 days of employment to provide the Commission an opportunity to object while the tribe is still considering issuing the license. IGRA dictates that the NIGC has 30 days to provide objections to a tribe regarding the issuance of a gaming license. See 25 U.S.C. 2710(c)(1). This 30 day time period, prior to the 90 day deadline for issuing a license, ensures that the NIGC's objections will be received prior to the issuance of a permanent license. See 25 U.S.C. 2710(c)(2).

Comment: One commenter recommended that the Commission adopt a single form to be used for the notice of results (NOR).

Response: After careful review of this issue, the Commission has determined not to adopt a single form to be used for the notice of results. This will allow tribes greater flexibility over how the

information is submitted to the Commission.

Comment: One commenter stated that submissions made pursuant to 558.3 for purposes of the Indian Gaming Individuals Record System (IGIRS) should be voluntary, not mandatory, because a mandatory requirement exceeds the Commission's authority. Another commenter believes that mandatory submissions are overly burdensome.

Response: The submissions to the IGIRS include the notice of results of the background check, the eligibility determination, and the notification of the licensing action. IGRA requires that tribes notify the Commission of background check results and subsequently notify the Commission of the issuance of a license. See 25 U.S.C. 2710(b)(2)(F)(ii)(I) and (III). Receipt of these submissions serves to maintain the integrity of Indian gaming and promotes the ability of tribal regulators to receive accurate information concerning key employees and primary management officials.

558.1 Scope of This Part

Comment: Many commenters stated that they were pleased that the Commission added language to 558.1 to clarify that the regulations "do not apply to any license that is intended to expire within 90 days of issuance."

Response: The Commission agrees and has decided to make this addition.

558.3 Notification to NIGC of License Issuance and Retention Obligations

Comment: Two commenters supported 558.3(c)(2), which requires a tribe that does not license an applicant to forward the eligibility determination and any investigative report "to the Commission for inclusion in the Indian Gaming Individuals Records System." However, one commenter believes that this submission should be discretionary, because a mandatory requirement would exceed NIGC's authority. Another commenter believes that, although this is a useful resource, the regulation should be voluntary instead of mandatory.

Response: IGRA, 25 U.S.C. 2710(b)(2)(F)(ii)(I) and (III), requires tribes to submit results of background checks of key employees and primary management officials to the Commission, as well as to notify the Commission when licenses are issued to such employees. The Commission agrees with commenters' suggestion that submitting the full investigative report should be voluntary and, therefore, the submission is now limited to eligibility

determinations, notice of background results, and licensing action notices.

Comment: One commenter suggested that the NIGC limit the notifications to NIGC in 558.3(c) to require notification to NIGC only if an applicant is unsuitable or has been denied a gaming license, by adding language to 558.3(c) that states, "(c) if a tribe denies an applicant a license—" or " if a tribe finds an applicant unsuitable for licensing—," thereby eliminating the requirement that tribes notify the NIGC if an application is either incomplete or the investigative process is otherwise not completed. Other commenters stated that the requirement in 558.3(c) to notify NIGC if an applicant is not licensed is overly burdensome and fails to recognize benign reasons why a license is not issued.

Response: The Commission disagrees. The suggested limitation would limit the NIGC's ability to provide accurate information on an individual applicant. Often, an individual is identified in the NIGC system before an application is complete or before the eligibility determination is made because fingerprints are processed first. Without information on every applicant, NIGC is unable to provide accurate investigative information to gaming tribes. Thus, licensing information on each applicant is necessary to ensure that accurate information is disseminated.

Comment: A few commenters believed that determining the retention period for applications, investigation reports, and eligibility determinations should be a matter of tribal discretion and, therefore, 558.3(e) should be revised or removed.

Response: IGRA requires an adequate system to ensure that background investigations are conducted and that oversight of primary management officials and key employees is conducted on an ongoing basis. 25 U.S.C. 2710(b)(2)(F). A purpose of IGRA is to provide a statutory basis of gaming regulation by Indian tribes adequate to shield them from organized crime and other corrupting influences. The NIGC is tasked with creating regulations to implement IGRA. To implement IGRA's requirements consistent with that purpose of the legislation, the Commission believes that a three year minimum time period is appropriate. An alternative approach, as set forth in the current regulations, would be to provide the NIGC with all the necessary information, eliminating the three year time period. However, maintaining that approach would negate the positive aspects of the pilot program, including the reduction of the submission burden on tribes.

558.4 Notice of Information Impacting Eligibility and Licensee's Right to a Hearing

Comment: One commenter stated that the word "immediately" in 558.4(b) should be replaced with "promptly" to give the tribe more latitude, because the term "promptly" more closely conforms to the language contained in IGRA.

Response: The Commission disagrees. IGRA's requirement that a tribe "shall suspend the license" indicates that the tribe should act without delay. 25 U.S.C. 2710(c)(2). Therefore, IGRA provides no latitude in proceeding with the suspension of the license.

Comment: One commenter suggested the term "employment" in 558.4(a) be changed to "licensure," because a gaming commission issues licenses and does not employ key employees or primary management officials.

Response: The Commission carefully considered this issue and disagrees with the comment because IGRA mandates that tribes have an adequate system for assessing the eligibility of primary management officials and key employees for "employment." 25 U.S.C. 2710(b)(2)(F)(ii)(II).

Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the 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 Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 3141-0003. The OMB control number expires on October 31, 2013.

List of Subjects in 25 CFR Parts 556 and 558

Gaming, Indian lands.

For the reasons discussed in the Preamble, the Commission 25 CFR chapter III as follows:

- 1. Revise part 556 to read as follows:

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.

- 556.1 Scope of this part.
- 556.2 Privacy notice.
- 556.3 Notice regarding false statements.
- 556.4 Background investigations.
- 556.5 Tribal eligibility determination.
- 556.6 Report to the Commission.
- 556.7 Notice.
- 556.8 Compliance with this part.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 556.1 Scope of this part.

Unless a tribal-state compact assigns sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming. The procedures and standards of this part apply only to primary management officials and key

employees. This part does not apply to any license that is intended to expire within 90 days of issuance.

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission (NIGC) members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the NIGC in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

- (1) Complete a new application form that contains a Privacy Act notice; or
- (2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(c) All license application forms used one-hundred eighty (180) days after February 25, 2013 shall comply with this section.

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

(c) All license application forms used 180 days after February 25, 2013 shall comply with this section.

§ 556.4 Background investigations.

A tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous five years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(10) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph

(a)(8) or (a)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A photograph;

(13) Any other information a tribe deems relevant; and

(14) Fingerprints consistent with procedures adopted by a tribe according to § 522.2(h) of this chapter.

(b) If, in the course of a background investigation, a tribe discovers that the applicant has a notice of results on file with the NIGC from a prior investigation and the tribe has access to the earlier investigative materials (either through the NIGC or the previous tribal investigative body), the tribe may rely on those materials and update the investigation and investigative report under § 556.6(b)(1).

(c) In conducting a background investigation, a tribe or its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

§ 556.5 Tribal eligibility determination.

A tribe shall conduct an investigation sufficient to make an eligibility determination.

(a) To make a finding concerning the eligibility of a key employee or primary management official for granting of a gaming license, an authorized tribal official shall review a person's:

- (1) Prior activities;
- (2) Criminal record, if any; and
- (3) Reputation, habits and associations.

(b) If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, an authorizing tribal official shall not license that person in a key employee or primary management official position.

§ 556.6 Report to the Commission.

(a) When a tribe employs a primary management official or a key employee, the tribe shall maintain a complete application file containing the information listed under § 556.4(a)(1) through (14).

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall:

(1) Create and maintain an investigative report on each background investigation. An investigative report shall include all of the following:

- (i) Steps taken in conducting a background investigation;
- (ii) Results obtained;
- (iii) Conclusions reached; and
- (iv) The basis for those conclusions.

(2) Submit a notice of results of the applicant's background investigation to the Commission no later than sixty (60) days after the applicant begins work. The notice of results shall contain:

- (i) Applicant's name, date of birth, and social security number;
- (ii) Date on which applicant began or will begin work as key employee or primary management official;
- (iii) A summary of the information presented in the investigative report, which shall at a minimum include a listing of:
 - (A) Licenses that have previously been denied;
 - (B) Gaming licenses that have been revoked, even if subsequently reinstated;
 - (C) Every known criminal charge brought against the applicant within the last 10 years of the date of application; and
 - (D) Every felony of which the applicant has been convicted or any ongoing prosecution.

(iv) A copy of the eligibility determination made under § 556.5.

(v) A copy of the eligibility determination made under § 556.5.

(vi) A copy of the eligibility determination made under § 556.5.

(vii) A copy of the eligibility determination made under § 556.5.

§ 556.7 Notice.

(a) All notices under this part shall be provided to the Commission through the appropriate Regional office.

(b) Should a tribe wish to submit notices electronically, it should contact the appropriate Regional office for guidance on acceptable document formats and means of transmission.

§ 556.8 Compliance with this part.

All tribal gaming ordinances and ordinance amendments approved by the Chair prior to the February 25, 2013 and that reference this part, do not need to be amended to comply with this part. All future ordinance submissions, however, must comply.

■ 2. Revise part 558 to read as follows:

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

Sec.

- 558.1 Scope of this part.
- 558.2 Review of notice of results for a key employee or primary management official.
- 558.3 Notification to NIGC of license decisions and retention obligations.
- 558.4 Notice of disqualifying information and licensee right to a hearing.

558.5 Submission of notices.

558.6 Compliance with this part.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 558.1 Scope of this part.

Unless a tribal-state compact assigns responsibility to an entity other than a tribe, the licensing authority for class II or class III gaming is a tribal authority. The procedures and standards of this part apply only to licenses for primary management officials and key employees. This part does not apply to any license that is intended to expire within 90 days of issuance.

§ 558.2 Review of notice of results for a key employee or primary management official.

(a) Upon receipt of a complete notice of results for a key employee or primary management official as required by § 556.6(b)(2) of this chapter, the Chair has 30 days to request additional information from a tribe concerning the applicant or licensee and to object.

(b) If the Commission has no objection to issuance of a license, it shall notify the tribe within thirty (30) days of receiving notice of results pursuant to § 556.6(b)(2) of this chapter.

(c) If, within the 30-day period described in § 558.3(a), the Commission provides the tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official applicant for whom the tribe has provided a notice of results, the tribe shall reconsider the application, taking into account the objections itemized by the Commission. The tribe shall make the final decision whether to issue a license to such applicant.

(d) If the tribe has issued the license before receiving the Commission's statement of objections, notice and hearing shall be provided to the licensee as provided by § 558.4.

§ 558.3 Notification to NIGC of license decisions and retention obligations.

(a) After a tribe has provided a notice of results of the background check to the Commission, a tribe may license a primary management official or key employee.

(b) Within 30 days after the issuance of the license, a tribe shall notify the Commission of its issuance.

(c) A gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) Shall forward copies of its eligibility determination and notice of

results, under § 556.6(b)(2) of this chapter, to the Commission for inclusion in the Indian Gaming Individuals Record System.

(e) A tribe shall retain the following for inspection by the Chair or his or her designee for no less than three years from the date of termination of employment:

- (1) Applications for licensing;
- (2) Investigative reports; and
- (3) Eligibility determinations.

§ 558.4 Notice of information impacting eligibility and licensee's right to a hearing.

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under § 556.5 of this chapter, the Commission shall notify the issuing tribe of the information.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) A right to a hearing under this part shall vest only upon receipt of a license granted under an ordinance approved by the Chair.

(e) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision within 45 days of receiving notification from the Commission pursuant to paragraph (a) of this section.

§ 558.5 Submission of notices.

(a) All notices under this part shall be provided to the Commission through the appropriate Regional office.

(b) Should a tribe wish to submit notices electronically, it should contact the appropriate Regional office for guidance on acceptable document formats and means of transmission.

§ 558.6 Compliance with this part.

All tribal gaming ordinances and ordinance amendments that have been approved by the Chair prior to February 25, 2013 and that reference this part do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

Dated: January 17, 2013, Washington, DC.

Tracie L. Stevens,
Chairwoman.

Daniel J. Little,
Associate Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9723-8]

40 CFR Parts 124 and 270

Revisions to Procedural Rules To Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises existing procedures for appeals from RCRA, UIC, NPDES, PSD or other final permit decisions that are filed with the Environmental Appeals Board in an effort to simplify and make more efficient the review process, particularly in appeals from permits issued under new source review provisions. Most significantly, the changes reconcile current provisions of the regulation governing appeals, which over time has proven to be somewhat confusing and redundant. The changes will bring the regulation more fully in line with current practice. Under the current rule, a Petitioner is required to file a substantive petition for review demonstrating that review is warranted. The Environmental Appeals Board considers that substantive petition, as well as any briefs filed in response to the petition, to determine whether to grant review. If review is granted, the current rule contemplates that a second substantive round of briefing is begun and another substantive review process occurs. In practice, however, the Board has determined that a second round of briefing generally is unnecessary because in nearly all cases, a decision on the merits can be made based on the substantive briefs already filed. The changes to the rule clarify to practitioners that substantive briefing must be submitted at the outset of the appeal and that one substantive review will occur. Additional briefing may be ordered when the Board determines it warranted. A number of additional provisions governing procedure are also added to the rule to reflect existing practices that are currently guided by standing orders of the Environmental Appeals Board and its Practice Manual. Revising the regulation to reflect current practice will provide clarity to practitioners before the Board, which will in turn make the appeals process more efficient by avoiding unnecessary filings and Board orders.

DATES: This final rule will become effective on March 26, 2013.

FOR FURTHER INFORMATION CONTACT:

Eurika Durr, Clerk of the Board, U.S. Environmental Protection Agency, Environmental Appeals Board (EAB), 1200 Pennsylvania Avenue NW., Mail Code 1103M, Washington, DC 20460-0001; telephone (202) 233-0122; fax number: (202) 233-0121; email address: durr.eurika@epa.gov. For more information regarding this rule, please visit <http://www.epa.gov/eab>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and has particular applicability to anyone who seeks review of a RCRA, UIC, NPDES, PSD or other final permit decision under 40 CFR § 124.19 by the Environmental Appeals Board. Because this action may apply to everyone, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to the particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get additional information?

Electronic copies of this document and certain other related documents are available at <http://www.epa.gov/eab/>.

C. When will this rule become effective?

This rule will become effective sixty days after the date of publication in the **Federal Register**. The sixty days between the date of publication and the effective date will allow the Board to notify current practitioners of the changes, modify its procedural guidance documents and take other measures to implement the rule as appropriate.

II. Background

A. What action is the agency taking?

The existing rule governing appeals of RCRA, UIC, NPDES, PSD and other applicable final permit decisions is potentially redundant and cumbersome, lacks detailed procedures that would help simplify the permit review process, and is not fully reflective of the Environmental Appeals Board's current practice. EPA is amending the language of the rule to more fully reflect current practice, which is bound by the current language but also guided in large part by Board precedent, Board standing orders, and the Board's Practice Manual.

The amendments to the rule clarify review procedures for practitioners before the Environmental Appeals Board, which will simplify and make