

country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are not subject to Executive Order 12866.

#### Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

**Raymond W. Kelly,**  
*Commissioner of Customs.*

Approved: October 1, 1999.

**John P. Simpson,**  
*Deputy Assistant Secretary of the Treasury.*  
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## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Part 504

RIN 3141-AA04

#### Classification of Games

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission (Commission) proposes regulations which will establish a formal process for the classification of games played on Indian lands under the Indian Gaming Regulatory Act (Act). These regulations would require that the Commission decide that a game is a Class II game before it authorizes the play of such game in a Class II gaming operation. It also allows for a transition period to implement this process.

**DATES:** Comments may be submitted on or before January 10, 2000.

**ADDRESSES:** Comments may be mailed to: Game Classification Comments, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 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 a.m. and noon, and between 2 p.m. and 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Penny J. Coleman 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 establish a formal, administrative process for deciding whether a game is a Class II or III game and allow the Commission to discontinue the current advisory classification opinion process.

#### 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 504.6, 504.7 and 504.8. The information will be used to determine whether a game can be classified as a Class II or III game or a nongambling game and whether the continued play of the games remains consistent with the classification decisions issued by the Commission.

The public reporting burden for this collection of information is estimated to average 10 hours per game classification request, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that, during the first two years of the implementation of this regulatory process, approximately 50 requests for classification decisions will be filed each year, for an annual burden of 500 hours. After the first two years, the Commission estimates that approximately 20 requests for classification decisions will be filed each year, for an annual burden of 200 hours.

Send comments regarding this collection of information, including suggestions for reducing the burden to both, Penny Coleman, National Indian Gaming Commission, 1441 L Street NW, 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.

**Montie R. Deer,**

*Chairman, National Indian Gaming Commission.*

#### List of Subjects in 25 CFR Part 504

Gambling, Indians-lands, Reporting and recordkeeping requirement.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new Part 504 as follows:

## PART 504—CLASSIFICATION OF GAMES

Sec.

- 504.1 What does this part cover?
- 504.2 What is a classification decision and who may apply for it?
- 504.3 Why must a tribe apply for or sponsor the application for a classification decision?
- 504.4 Can a tribe rely on a decision issued to another tribe?

- 504.5 When must a tribe apply for or sponsor the application for a classification decision?
- 504.6 Will a tribe be required to discontinue all of its existing games which are not subject to a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior until the Commission issues a classification decision?
- 504.7 How does a tribe or person apply for a classification decision?
- 504.8 Will any additional information be required?
- 504.9 Are there any additional requirements for games which employ machines?
- 504.10 Will games be field tested?
- 504.11 What is required of a tribe or person who merely seeks a modification of a game which is already the subject of a classification decision?
- 504.12 Must a tribe or person seek a classification decision on a game which it alleges is a game of skill?
- 504.13 Is there an opportunity for public comment on a request for a gaming classification before a decision is made by the Chairman?
- 504.14 How does a tribe or person appeal a classification decision with which it does not agree?
- 504.15 Will the tribe or person have an opportunity to demonstrate its game to the Commission?

**Authority:** 25 U.S.C. 2701–2721.

#### **§ 504.1 What does this part cover?**

This part establishes the process for determining whether a game played under the Indian Gaming Regulatory Act constitutes a Class II or III game as defined in part 502 of this chapter. It is intended to identify which games are class II and therefore subject to tribal and Commission jurisdiction and to assure that gaming operations do not play Class III games except under a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior.

#### **§ 504.2 What is a classification decision and who may apply for it?**

A classification decision is a determination that a game falls within Class II or III or is a game that is not subject to the Indian Gaming Regulatory Act. Tribes or their designated representatives may apply for a classification decision. Persons who own or provide individual games to tribes may also apply for a classification decision so long as the persons are sponsored by a tribe.

#### **§ 504.3 Why must a tribe apply for or sponsor the application for a classification decision?**

Tribes shall not offer games on Indian lands without a classification decision which concludes that the game is a Class II game unless the game is offered

pursuant to a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior. Tribes are subject to enforcement action by the Chairman if they offer games as Class II without a classification decision.

#### **§ 504.4 Can a tribe rely on a classification decision issued to another?**

Classification decisions which are issued to a tribe or person but applicable to others can be relied on by other tribes unless:

- (a) The games are not exactly the same;
- (b) It is a card game in a state different from where the applying or sponsoring tribe is located; or
- (c) The game otherwise violates federal law.

#### **§ 504.5 When must a tribe apply for or sponsor the application for a classification decision?**

A tribe shall apply for a classification decision:

- (a) If a tribe wishes to continue playing a Class II game it was playing as of [the effective date of the final rule], or
- (b) When a tribe wants to introduce a new game into its Class II gaming operation.

#### **§ 504.6 Will a tribe be required to discontinue all of its existing games which are not subject to a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior until the Chairman issues a classification decision?**

A tribe will be required to discontinue existing games if:

- (a) It fails to submit a completed application for a classification decision within six months of [the effective date of the final rule], and it fails to pursue diligently a decision by providing all required information, or
- (b) The tribe is otherwise notified that the game is not a class II game.

#### **§ 504.7 How does a tribe or person apply for a classification decision?**

(a) A tribe must submit the following to the Chairman:

- (1) A designation of an agent who is authorized to provide additional information if required;
- (2) A request for a classification decision;
- (3) A designation of whether and where the game is already in play;
- (4) A complete description of the game including the operational characteristics and rules of the game;
- (5) A complete description of the method used for betting, paying winners, paying the house, banking or nonbanking of the game and funding jackpots;

(6) A separate description of the game and method used for betting, paying winners, paying the house, banking or nonbanking of the game and funding jackpots, which description shall be provided to persons or entities seeking to comment on the classification of the game;

(7) Copy of any sales or promotional literature,

(8) For games that use machines;

- (i) (For games already in play) a complete list of the serial numbers or other identifiers of each machine;
- (ii) A videotape depicting the play of the entire game;
- (iii) A report of laboratory test(s) which were conducted to support the application; and

- (iv) An example of each of the memory storage chips (EPROM) or devices used to control the game play in the machine and a paper print out of the code contained in each chip or device with sufficient programmer's notes to facilitate rapid analysis of the code; and

(9) For card games, a statement with supporting materials explaining how the game meets the standard described in 25 CFR 502.3(c).

(b) In addition to the information contained in paragraph (a) of this section, a person applying for a classification decision shall submit a letter, signed by an authorized tribal official, indicating that the tribe sponsors the person's application.

#### **§ 504.8 Will any additional information be required?**

Upon request, the tribe or person may be required to provide:

- (a) A live demonstration of the game;
- (b) A prototype of any games which use machines; and
- (c) Any further information or clarification the Chairman determines he requires.

#### **§ 504.9 Are there any additional requirements for games which employ machines?**

After a game has been classified, a tribe shall provide a serial number and description of each machine which is in use and shall certify that each such machine is identical in every respect to the game which was classified by the Chairman.

#### **§ 504.10 Will games be field tested?**

(a) A preliminary, nonbinding classification decision may be made to allow for a field test. If such nonbinding decision is made, a tribe may be permitted to operate one or more of the games at a licensed gaming operation for no more than 180 days under such terms and conditions as the Chairman may approve or require.

(b) The Chairman may order a termination of the test period, if he determines, in his sole and absolute discretion, that applicant tribe or person, the manufacturer or developer of the game or the licensed gaming operation has not complied with the terms and conditions of the testing period or if he determines that the game is not Class II.

**§ 504.11 What is required of a tribe or person who merely seeks a modification of a game which is already the subject of a classification decision?**

A tribe or person shall submit a request for a classification decision on the game which is subject to the modifications by providing a detailed description of the modification and how the modification affects the game. A person shall also submit a letter, signed by an authorized tribal official, indicating that the tribe sponsors the person's application for a modification.

**§ 504.12 Must a tribe or person seek a classification decision on a game which it alleges is a game of skill?**

A tribe or person shall follow the same process for receiving a classification decision as is used for other games in this part.

**§ 504.13 Is there an opportunity for public comment on a request for a gaming classification before a decision is made by the Chairman?**

The Commission will include on its Internet site and its telephonic fax-on-demand documents a listing of games for which it is considering a classification. Games will appear on this listing for thirty (30) days whenever practicable. Any individual may request a description of a particular game from the Commission during this period and offer written comment which will then be considered by the Chairman before a classification decision is reached on that particular game.

**§ 504.14 How does a tribe or person appeal a classification decision with which it does not agree?**

(a) Within 30 days of service of a classification decision, a tribe or person sponsored by a tribe may appeal a classification decision under this part by filing:

- (1) A notice of appeal with the Commission; and
- (2) A statement and any supporting materials specifying why the appellant believes the classification decision to be erroneous.

(b) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(c) Within 60 days of receipt of the appeal when practicable, the Commission shall review the file used to make the initial classification decision and any material submitted in the appeal and issue a decision.

**§ 504.15 Will the tribe or person have an opportunity to demonstrate its game to the Commission?**

In addition to any demonstration requested during the initial classification decision process, the Commission may request a demonstration of the game during its review of the record on appeal.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106527-98]

RIN 1545-AW22

#### Capital Gains, Partnership, Subchapter S and Trust Provisions; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations under section 1(h) relating to sales or exchanges of interests in partnerships, S corporations, and trusts.

**DATES:** The public hearing originally scheduled for Thursday, November 18, 1999, at 1 p.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, August 9, 1999, (64 FR 43117), announced that a public hearing was scheduled for Thursday, November 18, 1999, at 1 p.m., in room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1(h) of the Internal Revenue Code. The public comment period for these proposed regulations expires on Monday, November 8, 1999. The outlines of topics to be addressed at the hearing

were due on Thursday, October 28, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, November 2, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, November 18, 1999, is cancelled.

**Cynthia Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2700

#### Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Mine Safety and Health Review Commission proposes to amend its procedural rules by adding a new rule setting forth settlement procedures which are intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission. The new procedures would be instituted as a pilot program for a two-year trial period.

**DATES:** Comments must be received by December 10, 1999.

**ADDRESSES:** All comments concerning these proposed rules should be addressed to Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. For the convenience of persons who will be reviewing the comments, it is requested that commenters provide an original and three copies of their comments.

**FOR FURTHER INFORMATION CONTACT:** Norman M. Gleichman, General Counsel, 202-653-5610 (202-653-2673 for TDD relay). These are not toll-free numbers.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Commission's Procedural Rules, 29 CFR Part 2700, are currently silent regarding procedures to be utilized by administrative law judges ("ALJs") to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of