

### *Paperwork Reduction Act*

The current rules contain no collection-of-information requirements subject to the Paperwork Reduction Act, P.L. No. 96-511, 44 U.S.C. Chapter 35. See 57 FR at 43834.

### *Federalism Implications*

This request for comments will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, we have determined that it does not present sufficient federalism implications to warrant consultations with State and local governments.

Issued in Washington, D.C. on July 17, 2000.

**A. Bradley Mims,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

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## **NATIONAL INDIAN GAMING COMMISSION**

### **25 CFR Part 580**

**RIN 3141-AA04**

### **Environment, Public Health and Safety**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission (Commission) proposes regulations that provide for adequate protection of the environment, public health and safety under the Indian Gaming Regulatory Act (Act). These regulations would implement the provisions of the Act which require that tribal gaming facilities be constructed, maintained and operated in a manner which protects the environment, public health and safety. The primary effect of this action is to have gaming tribes regulated by the Act develop and implement environment, public health and safety standards at their gaming operations. This regulation will establish a process through which the Commission and tribal government(s) exercise concurrent regulatory authority in enforcing these standards.

**DATES:** Comments may be submitted on or before November 30, 2000. A public hearing will be held on October 25, 2000 at 10:00 am.

**ADDRESSES:** Comments may be mailed to: Environment, Public Health and Safety 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 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday. The public hearing will be held in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Christine Nagle 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 gaming activities on Indian lands. The Act expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement provisions of this (Act)." 25 U.S.C. 2706(b)(10).

The regulations proposed today would implement the Commission's authority to issue environment, public health and safety regulations. This criteria is set forth in 25 U.S.C. 2710 (b)(2)(E) and provides that tribal ordinances or resolutions submitted for the Chairman's approval ensure that "the construction and maintenance of the gaming facility, and the operation of that gaming (facility) (sic) is conducted in a manner which adequately protects the environment and the public health and safety."

On April 27, 1999, the Commission issued an Advance Notice of Proposed Rulemaking regarding the establishment of environment, public health and safety procedures. After reviewing the information solicited through this notice, the Commission decided to move forward with proposed regulations. In November 1999, a Tribal-Commission Advisory Committee was formed to consult on the project. The Commission attempted to assemble a diverse advisory committee that represented the interests of a broad range of gaming tribes. During the period from November 1999 through May 2000, the Commission and the Tribal Advisory Committee met four times to develop a regulatory proposal. Ultimately, the Commission and the Committee selected an approach that strikes a balance between the inherent authority of tribal governments and the statutory authority of the Commission.

This approach enables the Commission to meet its regulatory responsibilities without creating a set of substantive standards that may be inconsistent with existing provisions of tribal law or tribal-state gaming compacts.

The Commission's decision to propose this regulation is based primarily on three considerations: (1) The need to ensure that adequate environment, public health and safety programs are in place at all Indian gaming operations; (2) the need to set forth applicable standards for these programs so that the tribes and the Commission will have notice of compliance requirements; and (3) the impediment to effective enforcement that exists in the absence of a clear statement of applicable standards.

In proposing this regulation, the Commission is aware that many tribes have taken steps to ensure that their gaming facilities are constructed, maintained, and operated in a manner, which protects the environment, and public health and safety. The Commission notes, however, that there is no existing regulatory mechanism to ensure that adequate protections are in place at all Indian gaming facilities. In the view of the Commission, the most effective means of ensuring that adequate programs are implemented on an industry wide basis is to promulgate a rule which would be applicable to all gaming tribes. In addition, in the last several years the Commission has encountered a number of potential threats to the environment, public health, and safety at Indian gaming facilities. In assessing these matters it is apparent that, absent a rulemaking which sets forth applicable standards, neither tribal governments nor the Commission have a viable means of determining whether tribes are in compliance with requirements of the Act. Moreover, the absence of a clear statement of applicable standards creates an impediment to effective enforcement for both tribes and the Commission.

The proposed rule applies whenever an Indian tribe undertakes the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Act. Under this regulation, tribal government(s) are encouraged to assume the full responsibility for the development, and implementation of environment, public health and safety laws, codes, ordinances and resolutions applicable to their gaming operation(s). To comply with this rule, a gaming tribe must prepare and submit to the Commission an environment, public health and safety plan (Plan) which sets forth the

tribe's policies for ensuring that its gaming operations do not pose a threat to the environment, public health and safety. Under this regulation, the Plan is to contain the tribe's policies for the development, implementation, and enforcement of environmental, public health and safety standards for its gaming operation(s); describe the tribe's standards, regulatory structure(s), and enforcement program(s) in place or to be implemented to ensure that the environment, public health and safety of its gaming operation(s) are adequately protected; and meet the requirements of § 580.20 of the regulation. Section 580.20 includes requirements for emergency preparedness, construction, maintenance and operation, drinking water and food, use, storage and disposal of hazardous materials, and sanitation and waste disposal.

The Commission will review the Plans to ensure that they comply with requirements in this rule. A preliminary review will be conducted at the time of submission to ensure completeness and to notify the tribe of any apparent deficiencies. Tribes will be notified at the time the Commission undertakes a formal review of their Plan. The Commission's role in enforcing compliance with this regulation focuses on the tribe's compliance with its Plan. The Commission's oversight of such Plans will provide a comprehensive mechanism for ensuring that all tribal gaming facilities are constructed, maintained and operated in the manner required under the Act.

Therefore, pursuant to 25 U.S.C. 2710(b)(2)(E), these regulations are being proposed to establish the adequate protection of the environment, public health and safety at Indian gaming operations regulated by the Act.

#### **Regulatory Flexibility Act**

The Commission certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act.

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not: (1) Result in an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic

regions; and (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based companies in domestic and export markets.

#### **Unfunded Mandates Reform Act**

The Commission has determined that this proposed rule does not impose an unfunded mandate on State, local or tribal governments or on the private sector of more than \$100 million per year. The Commission has determined that this proposed rule may have a unique effect on tribal governments, as this rule applies exclusively to tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Indian Gaming Regulatory Act. Thus, in accordance with section 203 of the Unfunded Mandates Reform Act, the Commission has developed a small government agency plan which provides tribal governments with adequate notice, opportunity for "meaningful" consultation, and information, advice and education on compliance.

The Commission's small government agency plan includes: formation of a tribal advisory committee; discussions with Tribal leaders and tribal associations; preparation of guidance material and model documents; and technical assistance. During the period from November 1999 through May 2000, the Commission and the Tribal Advisory Committee met four times to develop a regulatory proposal. In selecting committee members, consideration was placed on the current level of environmental, public health and safety regulation exercised by the tribe represented, the applicant's experience in this area, as well as the size of the tribe the nominee represented, geographic location of the gaming operation and the size and type of gaming conducted. The Commission attempted to assemble a committee that incorporates diversity and is representative of Indian gaming interests. Since beginning formulation of this proposed rule, the Commission spoke at three tribal association meetings and held three field consultations with tribes. The Commission is in the process of developing guidance materials that will include a model Environment, Public Health and Safety Plan. The Commission will meet with the Tribal Advisory Committee to discuss the public comments that are received as a result of publication of this proposed rule. Lastly, prior to the implementation

deadline of this proposed rule, the Commission will hold numerous regional technical assistance workshops.

#### **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 §§ 580.20–580.30, and will be used to determine compliance with this part.

The public reporting burden for this collection of information is estimated to average 150 hours, to initially prepare an Environmental, Public Health and Safety Plan, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that information needed to maintain the Plan will require an annual burden of 190 hours. It is estimated that an additional 21 hours will be required to prepare, and gather the data needed, and to complete the collection of information necessary to prepare for plan renewal. Plans need to be renewed every five years.

Public reporting burden for this collection of information is estimated to average 361 hours per year including the time for initial Plan preparation, monitoring, recordkeeping and Plan renewal preparation. The Commission estimates that approximately 198 tribes will need to file an Environmental, Public Health and Safety Plan for an annual burden of 71,478 hours.

Send comments regarding this collection of information, including suggestions for reducing the burden to both, Environment, Public Health and Safety Comments, 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 (42 U.S.C. 4321 *et seq.*).

### Takings (Executive Order 12630)

The Commission has determined that this proposed rule does not have significant "takings" implications. Thus, a takings implications assessment is not required.

### Federalism (Executive Order 12612)

The Commission has determined that this proposed rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

### Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Commission has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Montie R. Deer,  
Chairman.

### List of Subjects in 25 CFR Part 580

Environment, Gambling, Health and safety, Indians-lands, Indians-Tribal government.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new part 580 as follows:

## PART 580—PROTECTING THE ENVIRONMENT, PUBLIC HEALTH, AND SAFETY

### Subpart A—Requirement for an Environment, Public Health, and Safety Plan

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Authority: 25 U.S.C. 2710.

### Subpart A—Requirement for an Environment, Public Health, and Safety Plan

#### § 580.2 What is the purpose of this part?

The purpose of this part is to:

(a) Ensure that tribal gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment, public health and safety as required by the Indian Gaming Regulatory Act (Act);

(b) Establish a process through which the National Indian Gaming Commission (Commission) and tribal government(s) coordinate the exercise of concurrent regulatory jurisdiction over gaming operations on Indian lands in relation to the environment and public health and safety; and

(c) Encourage tribal government(s) to assume the fullest responsibility for the administration and enforcement of tribal environmental, public health and safety laws, codes, ordinances and other tribal enactments applicable to gaming operations on Indian lands.

#### § 580.3 When does this part apply?

This part applies when an Indian tribe undertakes the ownership, operation, regulation, or licensing of gaming facilities on Indian lands over which it has jurisdiction, under the provisions of the Act.

#### § 580.4 What is the scope of this part?

This part pertains to the development, regulation, and enforcement of environment, public health and safety standards applicable to a tribe's gaming operation(s), and covers the area(s) where gaming activities are conducted; parking areas used primarily for gaming patrons; and any other area(s) over which the tribe's gaming regulatory body has jurisdiction under the tribe's approved gaming ordinance.

**§ 580.5 How does a tribe comply with this part?**

In order to comply with this part, a tribe must:

- (a) Prepare an Environmental, Public Health and Safety Plan (Plan) in accordance with § 580.20 of this part;
- (b) Submit the Plan to the Commission in accordance with provisions of § 580.38 of this part;
- (c) Meet all the requirements contained in this part; and
- (d) Comply with the provisions contained in its Plan.

**§ 580.6 What is the Environment, Public Health, and Safety Plan?**

The Plan is the document that a tribe must prepare and submit to the Commission for approval in order to comply with this part. The Plan must:

- (a) Contain the tribe's strategy for the development, implementation, and enforcement of its environmental, public health and safety standards for gaming operation(s) on its Indian lands;
- (b) Describe the tribe's standards, regulatory structure(s), and enforcement program(s) in place or to be implemented to ensure that the environment, public health and safety of its gaming operation(s) are adequately protected; and
- (c) Meet the requirements of § 580.20.

**§ 580.7 What is the effect of a tribe's compliance with this part?**

Tribal compliance with this Part provides the mechanism through which the Commission will recognize the tribal government's primary regulatory and enforcement authority in the area of

environment, public health and safety. The Commission will focus its regulatory activities on: Reviewing and processing Plan submissions; monitoring tribal compliance with its Plan; and responding to emergencies. Routine oversight and enforcement will be considered the primary responsibility of the appropriate tribal governmental agency and/or other governmental entity delineated in the Plan.

**Subpart B—Contents of an Environment, Public Health and Safety Plan****§ 580.20 What must the tribe include in its plan?**

The Plan must contain all of the information shown in the following table.

The Plan must contain—	Which must include—
(a) Complete identifying information .....	(1) The tribe's name and the name(s) of the gaming operation(s); (2) The owner, operator, licensing body and/or management contractor of the gaming operation(s); (3) The contact person; and (4) A description of the gaming operation(s) including: location(s), size in square feet, days and hours of operation, and maximum occupancy load.
(b) An emergency preparedness section ..	A description of the tribe's policies, procedures, standards, compliance monitoring, enforcement program(s), and qualified personnel in place to handle emergencies. See § 580.22 for further guidance on how to comply with this requirement.
(c) A construction, maintenance and operation section.	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for construction, maintenance and operation. Certification that any mitigation measures required by the Commission pursuant to the National Environmental Policy Act (NEPA) have been completed. See § 580.24 for further guidance on how to comply with this requirement.
(d) A drinking water and food section .....	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for drinking water and food preparation and handling. See § 580.26 for further guidance on how to comply with this requirement.
(e) A use, storage and disposal of hazardous materials section.	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for use, storage and disposal of hazardous materials. The tribe must describe how it will use, store and dispose of hazardous materials, including but not limited to: paints, solvents, pesticides, cleaning agents, and fuels if they are used as part of the construction, operation or maintenance of the gaming operation. See § 580.28 for further guidance on how to comply with this requirement.
(f) A sanitation and waste disposal section	A description of the tribe's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel in place for sanitation and waste disposal. See § 580.30 for further guidance on how to comply with this requirement.
(g) Documentation showing that the tribe has an adequate program(s) to carry out the Plan.	(1) Identification of the legal standards the tribe will use to carry out the provisions of its Plan, including either citations to or copies of the applicable tribal ordinances, resolutions, regulations or other governing instruments; (2) Identification of each tribal governing body responsible for administering the Plan, or part thereof; (3) A description or copy of the procedures the tribe will use to enforce compliance with the Plan; (4) A description or copy of the procedures the tribe will use to monitor compliance with the Plan, including permitting processes, and inspection, license, reporting, monitoring and record keeping requirements; (5) Certification that individuals responsible for oversight, planning, and implementation of the Plan have the minimum qualifications necessary to discharge their responsibilities; (6) A description of the record keeping system containing employee/contractor training, education, certifications, licenses, work experience, and continuing education requirements for each section of the Plan; (7) Certification that the tribe will devote sufficient resources to carry out the tribe's Plan; (8) Certification that the tribe's standards meet all of the requirements contained in § 580.32.
(h) Documentation showing that the tribe's standards are at least as stringent as federal or other standards commonly used in surrounding jurisdictions.	Certification that the standards identified in the Plan are at least as stringent as federal or other standards commonly used in surrounding jurisdictions.
(i) Complete identifying information for each entity responsible for compliance with standards identified in the Plan.	(1) The official title and responsibilities of each tribal entity; and/or (2) A description or copy of all pertinent agreements with any non-tribal entity.

**§ 580.22 What emergency preparedness information must the tribe include?**

To meet the requirements of § 580.20(b), the tribe must include the following information in the emergency preparedness section of its Plan:

For—	The tribe must include a description of—
(a) Accidents, injuries, and medical emergencies.	(1) The steps taken to prevent, prepare for, and respond to accidents, injuries, and medical emergencies; and (2) The trained emergency medical personnel, ambulance service, medical transport, and medical facilities serving the tribe's gaming operation.
(b) Natural and Other Disasters .....	(1) Identification of the range of natural disasters associated with the tribe's geographic area, or other disasters that might create a serious threat to the environment, public health and safety; (2) The steps taken to prepare for and respond to the identified disasters; (3) Evacuation procedures; and (4) The incident response system, which may also include, back-up communications, mock drills, equipment testing, back-up power and water systems, and hazardous materials response.
(c) Fire .....	(1) The steps taken to prevent, prepare for and respond to fire emergencies; (2) Evacuation procedures; (3) The alarm systems in place; and (4) The availability of fire fighting services, trained personnel, and fire suppression systems.
(d) Security threats .....	(1) The steps taken to prepare for and respond to security threats, including bomb threats, unlawful intrusions, criminal acts and other foreseeable security risks; (2) Evacuation procedures; and (3) The availability of law enforcement services.

**§ 580.24 What construction, maintenance and operation information must the tribe include?**

Section 580.20(c) requires that the tribe include in its Plan a description of the policies, operating procedures, standards, compliance monitoring system, enforcement program and qualified personnel in place for construction, maintenance and operation, and certification that any mitigation measures required by the Commission pursuant to the National Environmental Policy Act (NEPA) have been met. The following table shows examples of the documents that the tribe can describe or include to help satisfy this requirement.

For—	Some examples of information that will meet this requirement include—
(a) Construction standards .....	(1) The building code that the tribe follows; (2) The criteria that the tribe uses for plumbing, electrical and mechanical systems; and (3) The practices that the tribe follows for managing sediment and stormwater.
(b) Preventative Maintenance and Repair	(1) Maintenance and inspection schedules for heating and air conditioning systems, elevators, parking areas, and stormwater management facilities; and (2) Procedures and schedules in place for ensuring the safe operation of energy sources used to supply the gaming operation(s) and records systems for inspections, maintenance, and repair.

**§ 580.26 What information must the tribe include on drinking water and food?**

Section 580.20(d) requires that the tribe include in its Plan a description of its policies, operating procedures, standards, compliance monitoring systems, enforcement programs and qualified personnel in place for drinking water and food preparation and handling. The following table shows examples of the documents that the tribe can describe or include to help satisfy this requirement.

For—	Some examples of information that will meet this requirement include—
(a) Drinking water .....	(1) The water system that supplies the gaming operation; (2) The amount of storage maintained and/or whether a back-up source is available; (3) The inspection and testing program, including the responsible entity; and (4) An emergency plan to respond to contamination.
(b) Food Preparation and Handling .....	(1) The inspection and testing program, including the responsible entity; (2) Measures used to ensure proper temperature control of food; (3) Methods used to educate employees on proper hygienic practices; and (4) Control measures used to prevent food contamination.

**§ 580.28 What information must the tribe include on use, storage, and disposal of hazardous materials?**

Section 580.20(e) requires that the tribe include in its Plan a description of the tribe's policies, operating procedures, standards, compliance monitoring systems, enforcement programs and qualified personnel in place for use, storage and disposal of hazardous materials. The tribe must describe how it will use, store and dispose hazardous material including but not limited to: Paints, solvents, pesticides, cleaning agents, and fuels if they are used as part of the construction, operation or maintenance of the gaming operation.

For—	Some examples of information that will meet this requirement include—
(a) Use and handling .....	(1) Certification, licensing, or other methods used to make sure persons using or handling hazardous materials have been trained appropriately; and (2) A copy of the tribe's written procedures for use and handling hazardous materials.

For—	Some examples of information that will meet this requirement include—
(b) Storage .....	(1) The methods used to control access to hazardous materials; (2) The spill-prevention and response plan; and (3) Methods used to ensure hazardous materials are placed in proper containers and that containers are labeled properly.
(c) Disposal .....	(1) The guidelines that have been adopted for the proper disposal of hazardous materials; and (2) Any agreements in place with local governments or private contractors.

**§ 580.30 What information must the tribe include on sanitation and waste disposal?**

Section 580.20(f) requires that the tribe include in its Plan a description of its policies, operating procedures, standards, compliance monitoring systems, enforcement programs and qualified personnel in place for sanitation and waste disposal. The following table shows examples of the documents that the tribe can describe or include to help satisfy this requirement.

For—	Some examples of information that will meet this requirement include—
(a) Solid waste .....	(1) The methods used to dispose of solid waste; (2) Recycling or pollution prevention plans in place; and (3) Any agreements in place with local governments or private contractors.
(b) Wastewater and Sewage Disposal .....	(1) The treatment and/or disposal system being used; (2) Any agreements in place with local government or private contractors; (3) If wastewater is treated or disposed of on-site, the maintenance program and qualification criteria for plant operators.
(c) Bio-hazard disposal .....	(1) The disposal program in place. (2) Any agreements in place with local governments or private contractors.

**§ 580.32 What regulatory standards and enforcement programs does the tribe have in place to carry out its Plan?**

To comply with the requirements of § 580.20(g), the Plan must show that the tribe has in place regulatory standards and enforcement programs to do all of the following:

(a) Require gaming operations under the tribe's jurisdiction to be constructed, operated and maintained in a manner that adequately protects the environment, public health and safety;

(b) Adopt and implement tribal standards for the following areas: Emergency Preparedness; Construction, Maintenance and Operation; Drinking Water and Food; Use, Storage and Disposal of Hazardous Materials; and Sanitation and Waste Disposal;

(c) Monitor compliance with the Plan, through a program that includes inspections, monitoring, reporting, record keeping requirements, and permitting and licensing;

(d) Enforce applicable laws, regulations, and standards;

(e) Ensure that individuals responsible for oversight, planning, and implementing the Plan have the appropriate qualifications; and

(f) Ensure that the tribe will allocate adequate resources to carry out the Plan.

**§ 580.34 What if the tribe does not have legal / regulatory standards and/or enforcement programs in place?**

The tribe shall adopt such standards and/or such program(s) or the Plan should specify if the tribe has an intergovernmental agreement or the government entity, which will meet the requirements of § 580.20.

**§ 580.36 Can the tribe assign its Plan compliance functions to another entity?**

A tribe may enter into an agreement with a federal, state, or local government or contract with a private entity to provide services or functions necessary to carry out its Plan or any portion thereof, however, this does not relieve the tribe of its responsibility to comply with the Plan, or any portion thereof.

**§ 580.38 When must the tribe submit its Plan?**

The tribe must submit its Plan to the Commission as shown in the following table.

If the tribe's gaming operation is—	then the tribe must—	and—
(a) Already in existence on the effective date of this part.	Submit the tribe's Plan within twelve (12) months of the effective date of this part.	Submit the tribe's Plan within twelve (12) months of the effective date of this part or at least sixty (60) days before the tribe opens the gaming operation whichever is later.
(b) Under construction on the effective date of this part.	Submit a Certificate of Assurance within ninety (90) days of the effective date of this part.	
(c) Not in existence, or under construction, on the effective date of this part.	Submit a Certificate of Assurance before engaging in any construction activity.	Submit the tribe's Plan at least sixty (60) days before the tribe opens the gaming operation.

**§ 580.40 What is a Certificate of Assurance?**

A Certificate of Assurance is a written pledge from the tribal government stating that the tribe's construction standards meet or exceed federal, or other standards commonly used in jurisdictions surrounding the gaming operation and that systems are in place to monitor compliance and enforcement of such standards. At a minimum, the construction standards must include:

- (a) The building code followed;
- (b) The criteria the tribe will use for plumbing, mechanical and electrical system; and
- (c) The practices the tribe will follow for managing sediment and stormwater.

**§ 580.42 Where does the tribe send its Plan?**

*The tribe sends the Plan by certified mail return receipt requested to:* The National Indian Gaming Commission Environment, Public Health, and Safety 1441 L Street, NW, Suite 9100 Washington, DC 20005.

**Subpart C—Plan Review Process****§ 580.50 Who will review a tribe's Plan?**

The Chairman shall appoint one Commissioner to oversee the Plan approval process and make the initial determination on whether the tribe's Plan meets the approval criteria.

**§ 580.52 What happens when a tribe submits its Plan?**

A tribal Plan becomes effective on the date it is mailed to the address listed in § 580.42 and remains in effect through completion of the review process.

**§ 580.54 What are the steps of the review process?**

There are two steps in the Plan review process:

- (a) Preliminary Review. (1) The preliminary review process is the first step. During this stage, the Reviewing Commissioner will:
  - (i) Review a tribe's Plan for completeness in accordance with §§ 580.20 and 580.56; and
  - (ii) Request any additional information needed to initiate the formal review process.
 (2) The Reviewing Commissioner may also:
  - (i) Notify the tribe of any apparent deficiencies in its compliance with §§ 580.20 and 580.56; or
  - (ii) Contact the tribal entities or federal, state, or local entities identified in the Plan to clarify information contained therein.
- (b) Formal Review. (1) The formal review process is the final stage of the review process, which commences

when the Reviewing Commissioner notifies the tribe that the formal review of the tribe's Plan is underway. The formal review process will be concluded within ninety (90) days from the date the tribe is sent notice that the formal review process is underway. During the formal review process, the Reviewing Commissioner will:

- (i) Notify the tribe by certified mail that the review process has been initiated. The notice will be sent to the contact person identified by the tribe in its Plan;
  - (ii) Review the Plan;
  - (iii) Determine whether the Plan meets the criteria specified in §§ 580.20, 580.32 and 580.56; and
  - (iv) Send written Notice of Approval to the contact person listed in the tribe's Plan; or
  - (v) Send the tribe a Notice of Intent to Disapprove in accordance with § 580.58.
- (2) As part of the formal review process:
- (i) On-site inspections may be conducted;
  - (ii) Consultation with the tribal entities or federal, state, or local entities identified in the Plan may take place; or
  - (iii) Documentation or any other information deemed pertinent to the Reviewing Commissioner's formal review of the Plan may be requested.

**§ 580.56 What factors will be considered in the review of the tribe's Plan?**

Review of the tribe's Plan will look for adherence to the criteria in §§ 580.20 and 580.32, and will consider whether:

- (a) The standards in the tribe's Plan are at least as stringent as the federal standards or standards commonly used in surrounding jurisdictions;
- (b) The tribe will exercise authority under the Plan through appropriate means;
- (c) The tribe has established compliance monitoring procedures to carry out the Plan;
- (d) The tribe has allocated sufficient resources to carry out its Plan;
- (e) The tribe has procedures ensuring that the individuals responsible for oversight, planning, and implementation of the areas of coverage have the appropriate qualifications to discharge their responsibilities; and
- (f) The tribe's Plan adequately addresses all of the criteria in §§ 580.20 and 580.32.

**§ 580.58 How is a Notice of Intent to Disapprove issued?**

A Notice of Intent to Disapprove will be sent by certified mail to the contact person listed in the Plan. The Notice will contain:

- (a) A description of the deficiencies that have been identified;

(b) The steps the tribe must take to cure the deficiencies;

(c) The legal authority under which the notice is being issued; and

(d) A deadline by which the tribe must correct the deficiencies identified under paragraph (a) of this section.

**Subpart D—Appeals****§ 580.60 What actions can the tribe take if it receives a Notice of Intent to Disapprove?**

(a) The tribe may submit a revised Plan curing the deficiencies identified in the Notice of Intent to Disapprove within the timeframe specified in the notice; or

(b) The tribe can request that the Reviewing Commissioner hold a hearing by following the procedures contained in this section. To request a hearing under this part the tribe must:

(1) Submit a request for a hearing in writing within thirty (30) days of receiving a Notice of Intent to Disapprove. The tribe's request must specify:

(i) The tribe's objections to the Reviewing Commissioner's preliminary determination and submit all evidence and other documentation supporting the tribe's objections;

(ii) Any oral or written testimony that the tribe wants to present.

(2) Within fifteen (15) days of receiving the tribe's request, the tribe will be notified of the:

- (i) Date and place of the hearing;
- (ii) Schedule for conducting the hearing, including the order of presentation;
- (iii) Issues to be addressed;
- (iv) Witnesses that can be called; and
- (v) Time allotted for testimony and oral argument.

(3) The Reviewing Commissioner will issue a decision within sixty (60) days after the hearing.

**§ 580.62 What happens if the tribe fails to correct deficiencies identified or file an appeal within the specified timeframes?**

If the tribe fails to cure the deficiencies or file an appeal of the Notice of Intent to Disapprove within the specified timeframe, a Notice of Disapproval will be issued and an enforcement action under 25 CFR part 573 may be initiated.

**§ 580.64 If the Reviewing Commissioner issues a Notice of Disapproval, may the tribe appeal?**

Yes. A tribe may appeal the Reviewing Commissioner's disapproval of its Plan to the full Commission. Such an appeal shall be filed within thirty (30) days after the tribe receives a Notice of Disapproval. Such an appeal shall state why the tribe believes the

Reviewing Commissioner's determination to be erroneous, and shall include supporting documentation, if any. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

**§ 580.66 How will the Commission handle the tribe's appeal under § 580.64?**

(a) Such appeal must be received by the Commission within thirty (30) days of the service of the decision and shall include a supplemental statement that states with particularity the relief desired and the grounds therefore. The Commission shall decide the appeal based only on a review of the record before it. The decision on appeal shall require a majority vote of the Commissioners.

(b) The decision of the Commission to approve or disapprove a tribe's Plan shall be a final agency action. A Commission denial shall be appealable under 25 U.S.C. 2714.

**Subpart E—Inspections, Enforcement, and Recordkeeping**

**§ 580.70 When must a tribe revise its Plan?**

A tribe must revise its Plan whenever there is a material change that affects the tribe's ability to carry out its Plan. Some examples of changes that are likely to require a Plan revision include, but are not limited to:

- (a) Substantial changes in tribal codes, ordinances, regulations, or compact provisions;
- (b) Substantial changes to or termination of intergovernmental agreements;
- (c) Structural expansions, renovations, or modifications of the gaming operation(s);
- (d) Construction of a new gaming operation;
- (e) Changes in the tribal regulatory structure or enforcement programs identified in the Plan; or
- (f) Managerial changes that substantially affect or alter the practices, procedures, or systems contained in the Plan.

**§ 580.72 What must a tribe do in order to revise its Plan?**

The tribe must send its revision(s) to the Commission no later than 120 days after the occurrence of the material change prompting the revision(s). Revisions will become effective upon

submission to the Commission, but will not become part of the approved Plan until the revision is reviewed and approved in accordance with §§ 580.50 through 580.58.

**§ 580.74 Does a change of management at a gaming operation require a tribe to revise its Plan?**

A change in the management at a gaming operation does not in itself require the tribe to revise its Plan provided that the new management continues to follow the provisions in the tribe's Plan.

**§ 580.76 Does the tribe have to renew its Plan?**

Yes. A tribe's Plan expires five years from the date of its approval and must be renewed.

**§ 580.78 What must a tribe do to renew its Plan?**

Within 60 days prior to expiration of its Plan, a tribe must submit a new Plan for approval even if the provisions of the new Plan are not substantially different from those in the expired Plan. The new Plan must:

- (a) Contain all the sections required under § 580.20;
- (b) Meet the criteria required under §§ 580.20, 580.32 and 580.56;
- (c) Include all revisions that the tribe submitted to the Commission during the previous approval period if the revisions remain in effect; and
- (d) Include any other changes that the tribe has made for which a revision was not required.

**§ 580.80 How will the Commission review the new Plan?**

The Commission will follow the Plan review provisions contained in §§ 580.50–580.64.

**§ 580.88 When can the Commission conduct an on-site inspection?**

In addition to the authority set forth in 25 CFR 571.5, the Commission may conduct an on-site inspection:

- (a) At any time to ensure compliance with the Plan;
- (b) If the Commission conducts a routine investigation not related to environmental, public health and safety issues, and discovers a condition that needs investigation;
- (c) If the tribe's Plan raises concerns that an area of environmental, public health or safety is not being adequately addressed;
- (d) To ensure that the tribe has implemented all mitigations, if any,

required by the Commission pursuant to NEPA; or

(e) When an emergency situation exists at a gaming operation.

**§ 580.90 What procedures will the Commission follow in an enforcement action taken pursuant to this part?**

The Commission will follow the enforcement procedures set forth in 25 CFR part 573.

**§ 580.92 What are some examples of violations that may result in an enforcement action?**

- (a) Failure to submit a Plan;
- (b) Failure to revise the Plan;
- (c) Failure to comply with the Plan;
- (d) Failure to cure deficiencies that result in disapproval;
- (e) Operating with a disapproved Plan;
- (f) Failure to correct deficiencies discovered during a compliance review by the Commission; or
- (g) Misrepresentations of any fact or assertion made in the Plan under §§ 580.20, 580.32 and 580.56 upon which the Commission relied in granting approval of a Plan or revisions of the Plan.

**§ 580.94 If the tribe has signed a Tribal-State compact, will the tribe have to comply with two sets of standards?**

No. The tribe can use provisions in Tribal-State compacts to satisfy the requirements of this part if the compact provisions are as stringent as the requirements specified in this part.

**§ 580.96 Does this part affect the regulatory authority of any other governmental entity or alter tribal-state gaming compacts?**

No. Nothing in this part is intended to:

- (a) Reduce, diminish, or otherwise alter the regulatory authority of any other Federal, State, or tribal governmental entity; or
- (b) Amend or require amendment(s) to any tribal-state gaming compact(s).

**§ 580.98 What records must the tribe keep?**

The tribe must keep sufficient records to demonstrate compliance with each area of its Plan including any records the tribe has identified in its Plan under § 580.20 (g), or otherwise required by federal law, to carry out provisions of this part.



For—	Such records include, for example—
Emergency Preparedness; Drinking Water and Food; Use, Storage & Disposal of Hazardous Materials; Sanitation and Waste Disposal; and Maintenance and Operations.	<ol style="list-style-type: none"> <li>(1) Copies of policies, procedures and standards described or identified in the tribe's Plan.</li> <li>(2) Employee, training, education, certifications, licenses, and work experience.</li> <li>(3) Monitoring and test results such as: <ol style="list-style-type: none"> <li>(i) Emergency equipment inspection;</li> <li>(ii) Drills;</li> <li>(iii) Fire suppression systems;</li> <li>(iv) Water quality testing;</li> <li>(v) Alarm systems.</li> </ol> </li> <li>(4) Inspection Reports such as: <ol style="list-style-type: none"> <li>(i) Health;</li> <li>(ii) Fire;</li> <li>(iii) Sanitation;</li> <li>(iv) Chemical handling;</li> <li>(v) Insurance;</li> <li>(vi) Safety;</li> <li>(vii) Wastewater;</li> <li>(viii) Maintenance.</li> </ol> </li> <li>(5) Enforcement records such as: <ol style="list-style-type: none"> <li>(i) Notices of violations;</li> <li>(ii) Corrective action records;</li> <li>(iii) Sanctions;</li> <li>(iv) Personnel actions;</li> <li>(v) Final dispositions of enforcement actions.</li> </ol> </li> <li>(6) Such environmental records relating to disposal of hazardous materials and waste, protection of the environment.</li> </ol>
Construction .....	<ol style="list-style-type: none"> <li>(1) Requirements for record retention for construction may be satisfied by: certificates of occupancy, certificates from independent qualified inspectors, or individual construction records;</li> <li>(2) Such environmental records relating to disposal of hazardous materials and waste, protection of the environment, or otherwise required by federal law to carry out provisions of this part.</li> </ol>

**§ 580.100 How long must the tribe maintain the types of records outlined in § 580.98?**

The tribe must retain the types of records identified in § 580.98 for a period of five years, following the year to which they relate unless a longer period of time is specified by some other provision of law.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ–063–0028; FRL–6839–6]

**Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval of revisions to the Pinal County Air Quality Control District (PDAQCD) portion of the Arizona State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from

stationary storage tanks, dock loading and leakages from pumps and compressors. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must arrive by August 23, 2000.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, (P.O. Box 987), Florence, AZ 85232.

**FOR FURTHER INFORMATION CONTACT:** Max Fantillo, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1183.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by PDAQCD and submitted by the Arizona Department of Environmental Quality (ADEQ).