

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect, using both visual and eddy current methods, the brake housing subassembly for damage (cracks, nicks, corrosion, etc.), and accomplish the following: (i) Replace the brake housing if damage is found in the torque take-out cavity in the area specified in the referenced service information; or (ii) Repair the brake housing if damage is found on the walls of the torque take-out cavity and the width exceeds the maximum limit specified in the referenced service information.	Inspect within the next 300 hours time-in-service (TIS) after the effective date of this AD. Repair or replace prior to further flight.	In accordance with Aircraft Braking Systems Corporation Service Bulletin Do228-212-32-13, dated December 15, 2000, and Aircraft Braking Systems Corporation Service Bulletin Do228-212-32-12, dated November 15, 2000, as specified in Fairchild/Dornier Dornier 228 Service Bulletin SB-228-236, issued January 11, 2001.
(2) Modify the torque take-out cavity of the brake housing assembly.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD, and thereafter prior to the installation of a brake housing assembly.	In accordance with Aircraft Braking Systems Corporation Service Bulletin Do228-212-32-13, dated December 15, 2000, and Aircraft Braking Systems Corporation Service Bulletin Do228-212-32-12, dated November 15, 2000, as specified in Fairchild/Dornier Dornier 228 Service Bulletin SB-228-236, issued January 11, 2001.
(3) Do not install any brake housing assembly (or FAA-approved equivalent part number) unless it has been inspected as required in paragraph (d)(1) of this AD and modified as required in paragraph (d)(2) of this AD	As of the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas

City, Missouri 64106; telephone: (816) 329-4146; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Dornier Luftfahrt GmbH, Customer Support, P.O. Box 1103, D-82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 304463. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD Number 2001-164, dated June 14, 2001.

Issued in Kansas City, Missouri, on September 24, 2001.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

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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 to implement a system of oversight to carry out its responsibilities with regard to the provisions of the Indian Gaming Regulatory Act (IGRA) that require tribal gaming facilities to be constructed, maintained and operated in a manner which protects the environment, public health and safety. One of the responsibilities conferred upon the Commission by IGRA is the approval of tribal gaming ordinances, which must contain certain enumerated provisions. IGRA further requires the Commission ensure that these statutorily mandated provisions are implemented by tribal governments.

Among these mandatory provisions is one that requires that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner that adequately protects the environment and the public health and safety. At present, the Commission does not have in place an appropriate mechanism to carry out its oversight responsibility that follows from the IGRA provision. It is the view of the Commission that the most effective means of ensuring that adequate programs are implemented on an industry wide basis is to promulgate a rule establishing a framework for measuring tribal compliance.

This regulation establishes the Commission's oversight process to ensure that the environment, public health and safety are adequately protected at Indian gaming facilities in accordance with IGRA. The Commission will focus its oversight activities on reviewing tribal compliance with the environment, public health and safety plans submitted by tribal governments. Environment, public health and safety plans will identify the policies, practices, and methods used by the submitting tribal government to ensure that the environment, public health and safety are adequately protected at its gaming facilities.

DATES: Comments may be submitted on or before October 31, 2001.

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 a.m. and noon, and between 2 p.m. and 5 p.m., Monday through Friday.

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 establish a system to implement the Commission's oversight authority in

the areas of environment, public health and safety. The statutory basis for this responsibility is set forth in 25 U.S.C. 2710 (b)(2)(E) which 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 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 tribal governments. During the period from November 1999 through May 2000, the Commission and the Tribal Advisory Committee met four times to develop a regulatory proposal. The Commission published a Notice of Proposed Rulemaking that appeared in the **Federal Register** at Volume 65, page 45558, on July 24, 2000. In response to the **Federal Register** notice, the Commission received a number of helpful comments suggesting changes to the proposed rule. The Tribal-Commission Advisory Committee met after the close of the public comment period to discuss the comments that had been submitted. Upon consideration of the comments submitted, and discussions with the Tribal-Commission Advisory Committee, the Commission decided to revise the proposed rule and republish the revised rule as a proposed rule.

In proposing this regulation, the Commission is aware that tribal governments take 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 it lacks the appropriate mechanism to carry out this aspect of its oversight responsibilities. The Commission has a duty to design and implement a viable means of determining whether tribal governments are in compliance with requirements of the Act. Moreover, the absence of a clear standard for compliance creates an impediment to effective enforcement for both tribal governments and the Commission.

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). Compliance with this rule is met through submission of an environment, public health and safety plan (Plan) which sets forth the tribal government's policies and programs 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 tribal government's policies for the development, implementation, and enforcement of environmental, public health and safety standards for its gaming operation(s) and describe the tribal government's standards, regulatory structure(s), and enforcement program(s) that ensure the environment, public health and safety of its gaming operation(s) are adequately protected. The Plan will cover 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. Thereafter, the Commission's role in enforcing compliance with this regulation focuses on the tribal government's compliance with its Plan. This approach enables the Commission to carry out its oversight responsibilities without creating a set of unnecessary requirements that may be inconsistent with existing provisions of tribal law or tribal-state gaming compacts or inappropriate to the geographic or other special conditions in a particular area. The Commission's oversight of such Plans will provide an effective 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 tribal governments 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 that 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 tribal government 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 tribal governments. 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 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 updated every three 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 tribal governments 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

Gambling, Indians-lands,
Environment, Health and Safety,
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

- Sec.
- 580.2 What is the purpose of this part?
- 580.3 When does this part apply?
- 580.4 What is the scope of this part?
- 580.5 How does a tribal government comply with this part?
- 580.6 What is the Environment, Public Health, and Safety Plan?
- 580.7 What is the effect of a tribal government's Compliance with this part?

Subpart B—Contents of an Environment, Public Health and Safety Plan

- 580.20 What must the tribal government include in its Plan?
- 580.22 What are some examples of information about emergency preparedness that will help meet the requirements of § 580.20(b)?
- 580.24 What are some examples of information about construction, maintenance and operation that will help meet the requirements of § 580.20(b)?
- 580.26 What are some examples of information about drinking water and food that will help meet the requirements of § 580.20(b)?
- 580.28 What are some examples of information about use, storage, and disposal of hazardous materials that will help meet the requirements of § 580.20(b)?
- 580.30 What are some examples of information about sanitation and waste disposal that will help meet the requirements of § 580.20(b)?
- 580.32 May a tribal government assign its Plan compliance functions to another entity?
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Subpart C—Plan Submission and Review Process

- 580.40 When must the tribal government submit its Plan?
- 580.42 Where is the Plan to be submitted?
- 580.44 When does a Plan become effective?
- 580.50 Who will review the Plan?
- 580.52 What factors will be considered in the review of the Plan?
- 580.54 What are the steps in the review process?

- 580.56 What happens when a tribal government submits its Plan to the Commission?
- 580.58 What happens if the initial evaluation does not result in a finding of compliance?
- 580.60 What is the process for a formal review of the Plan?
- 580.62 If the Reviewing Commissioner determines that the Plan does not comply, may the tribal government appeal?
- 580.64 How will the Commission process an appeal under 580.62?
- 580.66 What is the status of the Plan if the tribal government does not appeal the Reviewing Commissioner's determination?

Subpart D—Plan Revisions and Updates

- 580.70 When must a Plan be revised?
- 580.72 When must a Plan be updated?

Subpart E—Inspections, Enforcement, and Recordkeeping

- 580.80 When can the Commission conduct an on-site inspection?
- 580.82 What procedures will the Commission follow in an enforcement action taken pursuant to this part?
- 580.84 What happens if the Plan is found not to be in compliance following the conclusion of a formal review?
- 580.86 What are some other examples of violations that may result in an enforcement action?
- 580.88 If the tribal government has signed a Tribal-State compact, will the tribal government have to comply with two sets of standards?
- 580.90 Does this part affect the regulatory authority of any other governmental entity or alter tribal-state gaming compacts?
- 580.92 What records must the tribal government keep?
- 580.94 How long must the tribal government maintain the types of records outlined in § 580.92?

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) Encourage tribal government(s) to exercise regulatory primacy and 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;

(b) 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); and

(c) Establish the process and criteria used by the Commission in carrying out its statutory oversight responsibility to

determine compliance with the sections of an approved tribal gaming ordinance on matters pertaining to the environment, public health and safety.

§ 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 tribal government'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 tribal government's gaming regulatory body has jurisdiction under the tribal government's approved gaming ordinance.

§ 580.5 How does a tribal government comply with this part?

In order to comply with this part, a tribal government will:

- (a) Prepare an Environment, 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 § 580.40 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 Environment, Public Health and Safety Plan is a document that describes the standards, systems, and/or processes used by the submitting tribal government to implement, monitor and enforce the tribal government's environment, public health and safety standards as they pertain to the gaming operation(s) on its Indian lands. The Plan will be used by the Commission in carrying out its oversight responsibility in accordance with 25 U.S.C. § 2710(b)(2)(E).

§ 580.7 What is the effect of a tribal government's compliance with this Part?

Once a Plan is in place, the Commission will focus its oversight activities on: reviewing and processing Plan submissions; monitoring tribal compliance with its Plan; and monitoring the tribal government's response to conditions presenting an imminent threat to the environment, public health and safety. Routine

oversight and enforcement will be considered the primary responsibility of the appropriate tribal governmental agency and/or other entity described in the Plan.

Subpart B—Contents of an Environment, Public Health and Safety Plan

§ 580.20 What must the tribal government include in its Plan?

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

The Plan must address	And each area must contain
(a) Part I. Identifying information	<ol style="list-style-type: none"> (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) Part II. Substantive Areas: Emergency preparedness (accidents, injuries and medical emergencies; natural and other disasters; fire; security threats); Construction, maintenance and operation; Drinking water and food; Use, storage and disposal of hazardous material; and Sanitation and waste disposal.	<ol style="list-style-type: none"> (1) Copies or a description of the tribal government's policies, operating procedures, standards, compliance monitoring system, enforcement program(s) and qualified personnel. (2) The official title and responsibilities of each tribal or other entity responsible for carrying out the Plan or parts thereof. (3) A description or copy of pertinent agreements with any non-tribal entity if applicable.
(c) Part III. Supporting Information: Documentation showing that the tribal government has an adequate program(s) to carry out the Plan.	<ol style="list-style-type: none"> (1) Identification of the written standards the tribal government will use to carry out the provisions of its Plan, including either citations to or copies of the applicable tribal ordinances, resolutions, regulations, management controls, policy and procedures 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 tribal government will use to enforce compliance with the Plan; (4) A description or copy of the procedures the tribal government will use to monitor compliance with the Plan, which may include permitting processes, and inspection, license, reporting, monitoring and record keeping requirements; (5) A description of the record keeping system which may contain employee/contractor training, education, certifications, licenses, work experience, and continuing education requirements for each section of the Plan.
(d) Part IV. Certificates of Assurance: Documents certifying that the Plan fairly and accurately describes the standards, processes, and systems used by the tribal government to ensure that gaming operation(s) on Indian lands are constructed, operated, and maintained in a manner that adequately protects the environment, public health and safety.	<ol style="list-style-type: none"> (1) Certification that the standards identified in the Plan are at least as stringent as applicable federal or other standards commonly used in the surrounding geographic area. (2) Certification that sufficient resources are available to carryout the Plan. (3) Certification that individuals responsible for oversight, planning, and implementation of the Plan have the minimum qualifications necessary to discharge their responsibilities. (4) Certification that the Plan contains a true and accurate description of the standards and systems in place to ensure that the gaming operation(s) is constructed, operated and maintained in a manner that adequately protects the environment, public health and safety; (5) Certification that adequate resources are available to carry out the Plan; and (6) Certification that the standards identified in the Plan have been duly considered by the tribal government and found to be as stringent as federal or other legally applicable standards, and consistent with environment, public health and safety needs and concerns in relation to the gaming operation.

§ 580.22 What are some examples of information about emergency preparedness that will help meet the requirements contained in § 580.20(b)?

The following table shows examples of information that can be included in the Plan to satisfy this requirement.

For	Narrative descriptions of
(a) Accidents, injuries, and medical emergencies.	<ol style="list-style-type: none"> (1) The steps taken to prevent, prepare for, and respond to accidents, injuries, and medical emergencies; the emergency response system in place, including the availability of trained emergency personnel, ambulance service, medical transport and medical facilities serving the tribal government's gaming operation and identifying information; (2) Other pertinent information or documentation, such as emergency response plans, evacuation policies or procedures, or other similar documents.

For	Narrative descriptions of
(b) Natural and Other Disasters	(1) The steps taken to prepare for and respond to such natural or other disasters with a likelihood of occurrence given the geological or climatic conditions of the area, including evacuation or other special safety procedures, incident response systems or other safety measures in place. (2) Some additional examples of information that might be included depending on the scope and complexity of the operation such as descriptions of back-up communications systems, mock drill schedules, 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, including evacuation procedures and alarm systems; (2) 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 or other special precautions; and (3) The availability of law enforcement services.

§ 580.24 What are some examples of information about construction, maintenance and operation that will help meet the requirements of 580.20(b)?

The following table shows examples of the information that can be included in the Plan to satisfy this requirement.

For	Some examples of information that will meet this requirement include
(a) Construction standards	(1) The building code or standards that the tribal government follows; (2) The standard that the tribal government uses for plumbing, electrical and mechanical systems; and (3) The practices that the tribal government 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 are some examples of information about drinking water and food that will help meet the requirements of § 580.20(b)?

The following table shows information that can be included to 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 are some examples of information about use, storage, and disposal of hazardous materials that will help meet the requirements of § 580.20(b)?

The following table shows examples of information that can be included in the Plan to satisfy this requirement. For purposes of this part hazardous material shall mean: 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 tribal government's written procedures for use and handling hazardous materials.
(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 are some examples of information about sanitation and waste disposal that will help meet the requirements of § 580.20(b)?

The following table shows information that can be included to 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.

For	Some examples of information that will meet this requirement include
(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 for the plant 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 May a tribal government assign its Plan compliance functions to another entity?

A tribal government 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 tribal government of its responsibility to comply with the Plan,

or any portion thereof. Responsibility to ensure compliance with the Plan rests with the tribal government as the responsible governmental entity.

§ 580.38 What is a Certificate of Assurance?

A Certificate of Assurance is a written pledge from the governing body of a tribe certifying that all requirements of § 580.20 are (or will) be met and that all

representations made in the Plan are true and accurate.

Subpart C—Plan Submission and Review Process

§ 580.40 When must the tribal government submit its Plan?

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

If the tribal government's gaming operation is	Then the tribal government must
(a) Already in existence on the effective date of this part.	Submit the tribal government's Plan within twelve (12) months of the effective date of this part.
(b) Under construction on the effective date of this part.	Submit the tribal government's Plan within twelve (12) months of the effective date of this part or at least sixty (60) days before the tribal government opens the gaming operation whichever is later.
(c) Not in existence or under construction on the effective date of this part.	Submit the tribal government's Plan at least sixty (60) days before the tribal government opens the gaming operation.

§ 580.42 Where is the Plan to be submitted?

The Plan is to be submitted 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.

§ 580.44 When does a Plan become effective?

A tribal Plan becomes effective on the date it is mailed to the address listed in § 580.42.

§ 580.50 Who will review the Plan?

The Commission shall designate one of its members to oversee the review process and make the initial determination on whether the tribal government's Plan meets the requirements in § 580.20.

§ 580.52 What factors will be considered in the review of the Plan?

The Commission will consider whether the Plan meets the requirements of § 580.20 and contains all the required certificates of assurance.

§ 580.54 What are the steps in the review process?

The review process may include three phases: an initial evaluation, a formal review by the Commissioner designated to conduct the review, and an appeal to the full Commission. A Plan may be

found to comply with the requirements of this part in any phase of the review process and upon determination of compliance the review is complete.

§ 580.56 What happens when a tribal government submits its Plan to the Commission?

On the initial submission the Plan is evaluated for completeness in accordance with § 580.20. If the Plan complies with the requirements of this part, the Reviewing Commissioner will notify the tribal government that the Plan is compliant and that the review process is concluded. As part of the initial evaluation the Reviewing Commissioner may also:

- (a) Request any additional information needed to complete the evaluation;
- (b) Consult with tribal entities or other entities identified in the Plan to clarify information contained therein;
- (c) Conduct on site inspections where appropriate.

§ 580.58 What happens if the initial evaluation does not result in a finding of compliance?

If the initial evaluation does not result in a finding of compliance, the Reviewing Commissioner will notify the tribal government that the Plan does not appear to address the factors specified in § 580.20 and indicate the part(s) of the Plan that require revision and

further advise the tribal government that the Plan will be considered in a formal review process if revisions are not submitted within ninety (90) days.

§ 580.60 What is the process for a formal review of the Plan?

The formal review process commences when the Reviewing Commissioner notifies the tribal government by certified mail that the Plan does not appear to be compliant and has been referred for formal review. During the formal review process, the Reviewing Commissioner will:

- (a) Examine any further submissions from the tribal government and conduct further consultations with the tribal government if such consultations appear useful;
- (b) Prepare an administrative record based on the Plan;
- (c) Based on the administrative record decide whether the Plan is compliant;
- (d) After considering the matter, inform the tribal government in writing whether, in the opinion of the Reviewing Commissioner, the Plan complies with the factors specified in § 580.20;
- (e) If the Plan does not comply with these factors include with the written determination:

- (1) A description of those aspects in the Plan, which make the Plan unsatisfactory;

(2) The steps the tribal government must take for the Plan to be considered satisfactory;

(3) A schedule for corrective action and resubmission of the Plan;

(4) A statement regarding the tribal government's opportunity to appeal the matter to the full Commission.

(f) The formal review process will be concluded within ninety (90) days from the date of the notice.

§ 580.62 If the Reviewing Commissioner determines that the Plan does not comply, may the tribal government appeal?

Yes. A tribal government may appeal the Reviewing Commissioner's determination that the Plan does not comply to the full Commission. Such an appeal shall be filed in writing within thirty (30) days after the Reviewing Commissioner serves the determination letter under part 519 of this chapter, unless that time is extended by the Commission at the request of the tribal government. An appeal shall state why the tribal government 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.

§ 580.64 How will the Commission process an appeal under 580.62?

The Commission may decide the appeal based only on a review of the record before it or may initiate further consultation discussions if requested by the tribal government, before deciding the appeal. The decision on appeal shall require a majority vote of the Commissioners. The Commission shall advise the tribal government of its decision in writing.

§ 580.66 What is the status of the Plan if the tribal government does not appeal the reviewing Commissioner's determination?

If a tribal government does not appeal the determination of the Reviewing Commissioner, the Reviewing Commissioner's determination completes the formal review process and that determination becomes the decision of the Commission as to whether the Plan complies with the factors established under § 580.52.

Subpart D—Plan Revisions and Updates

§ 580.70 When must a Plan be revised?

A tribal government should keep its Plan current and revise its Plan whenever a material change affects the

tribal government's ability to carry out the Plan. Some examples 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 When must a Plan be updated?

(a) A tribal government must review and update its Plan every three years. The updated Plan should reflect any changes to the Plan during the Plan review period and in the three-year period before the review.

(b) The Commission will send a notice to the tribal government informing the tribal government that it needs to review and update its Plan. Within 90 days, of receipt of this notice, a tribal government must submit its updated Plan to the Commission. If none of the information contained in the tribal government's Plan has changed the tribal government must notify the Commission in writing that it has completed a review of its Plan and that no changes to the Plan have been made.

Subpart E—Inspections, Enforcement, and Recordkeeping

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

Under its enforcement 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 tribal government's Plan raises concerns that an area of the environment, public health or safety is not being adequately addressed; or

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

§ 580.82 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.

§ 580.84 What happens if the Plan is found not to be in compliance following the conclusion of a formal review?

If a tribal government operating a gaming facility fails to bring its Plan into compliance following the Commission's decision an enforcement action under 25 CFR part 573 may be initiated.

§ 580.86 What are some other examples of violations that may result in an enforcement action?

(a) Failure to submit a Plan as required by this part;

(b) Failure to comply with the Plan that the tribal government has adopted;

(d) Operation of a gaming facility without regard to a Plan approved by the tribal government which adequately protects the environment or public health and safety;

(e) Failure to correct deficiencies discovered during a compliance review by the Commission; or

(f) Misrepresentations of any fact or assertion made in the Plan under §§ 580.20, and 580.52 upon which the Commission relied in granting approval of a Plan.

§ 580.88 If the tribal government has signed a Tribal-State compact, will the tribal government have to comply with two sets of standards?

No. When standards are contained in Tribal-State compacts those standards can be used to comply with this part.

§ 580.90 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).

§ 580.92 What records must the tribal government keep?

The tribal government must keep sufficient records to verify compliance with its Plan including any records the tribal government has identified in its Plan under § 580.20, or otherwise required by federal law, to carry out provisions of this part.

For	Such records including updates, for example
(a) Emergency Preparedness; Drinking Water and Food; Use, Storage & Disposal of Hazardous Materials; Sanitation and Waste Disposal; and Maintenance and Operations..	<p>(1) Copies of policies, procedures and standards described or identified in the tribal government's Plan.</p> <p>(2) Employee training, education, certifications, licenses, and work experience</p> <p>Monitoring and test results such as:</p> <p>(i) Emergency equipment inspection;</p> <p>(ii) Drills;</p> <p>(iii) Fire suppression systems;</p> <p>(iv) Water quality testing;</p> <p>(v) Alarm systems.</p> <p>(4) Inspection Reports such as:</p> <p>(i) Health;</p> <p>(ii) Fire;</p> <p>(iii) Sanitation;</p> <p>(iv) Chemical handling;</p> <p>(v) Insurance;</p> <p>(vi) Safety;</p> <p>(vii) Wastewater;</p> <p>(viii) Maintenance.</p> <p>(5) Enforcement records such as:</p> <p>(i) Notices of violations;</p> <p>(ii) Corrective action records;</p> <p>(iii) Sanctions;</p> <p>(iv) Personnel actions;</p> <p>(v) Final dispositions of enforcement actions.</p> <p>(6) 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.</p>
(b) Construction	Requirements for record retention for construction may be satisfied by: certificates of occupancy, certificates from independent qualified inspectors, or individual construction records.

§ 580.94 How long must the tribal government maintain the types of records outlined in § 580.92?

The tribal government must retain the types of records identified in § 580.92 for a period of three 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 51

[AD-FRL-7070-8]

Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed guidelines for implementation of the best available retrofit technology (BART) requirements under the regional haze rule. The EPA originally requested comments on the proposed rule by September 18, 2001 (66 FR 38108, July 20, 2001). We are extending this deadline to October 5,

2001. We are requesting written comments by October 5, 2001.

ADDRESSES: *Docket.* Information related to the BART guidelines is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A-2000-28. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Room M-1500, Washington, DC 20460, telephone (202) 260-7548. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

You should submit comments on the proposed BART guidelines and the materials referenced therein (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-2000-28, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You may also submit comments to EPA by electronic mail at the following address: *A-and-R-Docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket number A-2000-28.

Electronic comments on this proposed rule also may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919-541-4718), EPA,

Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, North Carolina, 27711. Internet address: *smith.tim@epa.gov*.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2001.

Jeffrey R. Holmstead,
Assistant Administrator for Air and Radiation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[DE001-1001; FRL-7056-8]

Approval of Section 112(I) Authority for Hazardous Air Pollutants; State of Delaware; Department of Natural Resources and Environmental Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Delaware Department of Natural Resources and Environmental Control's (DNREC's) request to implement and enforce its hazardous air pollutant