

SUPPLEMENTARY INFORMATION: When requested and authorized by the candidate, the Director General of the Foreign Service, or the Director General's delegatee, will review the case of any Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide and will determine whether or not it is in the best interest of the Service to appoint the candidate despite the medical disqualification. This decision, as to whether or not to grant a waiver of the Foreign Service worldwide availability requirement, was previously made by a committee established solely for that purpose. The shifting of responsibility for this decision to the Director General, or the Director General's delegatee, is being made in appreciation of the magnitude of such decisions for the Service and as part of a general effort to increase the efficiency and transparency of the Foreign Service appointment process. This change in no way alters the rights or interests of any parties nor does it alter the substantive criteria by which a decision whether or not to waive the worldwide availability requirement will be made. As with the committee's decisions, the decisions of the Director General, or the Director General's delegatee, are final and are not subject to further appeal.

In addition, while candidates must still be medically cleared for full overseas duty, the Department of State no longer considers the medical condition of eligible family members for pre-employment purposes. References in 22 CFR § 11.1 (e)(4) to previous practices in this regard are hereby removed and the citation to the Foreign Affairs Manual has been updated. It should be noted, however, that the Department still requires medical clearances for family members before they can travel overseas to accompany an employee on assignment at US Government expense. Finally, references in 22 CFR Part § 11.1(e)(5) to the procedures of the former United States Information Agency are hereby removed pursuant to the Foreign Affairs Reform and Restructuring Act of 1998.

List of Subjects in 22 CFR Part 11

Foreign Service.

As stated in the preamble, the Department of State amends 22 CFR part 11 as follows:

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

1. The authority citation for part 11 is revised to read as follows:

Authority: 22 U.S.C. 3926, 3941.

2. Amend § 11.1 to revise paragraphs (e)(4) and (5) and the second sentence in paragraph (f) as follows:

§ 11.1 Junior Foreign Service officer career candidate appointments.

* * * * *

(e) * * *

(4) *Determination.* The Medical Director of the Department of State will determine, on the basis of the report of the physician(s) who conducted the medical examination, whether the candidate has met the required medical standards for appointment (see section 1930, Volume 3, Foreign Affairs Manual).

(5) *Waiver of worldwide availability requirement.* When authorized and requested by the candidate, the Director General of the Foreign Service, or the Director General's delegatee, will review the case of any Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide, and determine whether or not the candidate should be appointed despite the medical disqualification. Decisions of the Director General of the Foreign Service, or the Director General's delegatee, are final and are not subject to further appeal by the candidate.

(f) * * * Candidates who have completed the examination process; have passed their medical examination, or have obtained a waiver from the Director General of the Foreign Service, or his or her delegatee, or the equivalent in accordance with the procedures of the other participating agencies; and on the basis of their background investigation, have been found suitable to represent the United States abroad, will have their names placed on the functional rank-order register(s), or a special register, for the agency or agencies for which they have been found qualified. * * *

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Grant S. Green, Jr.,

*Under Secretary for Management,
Department of State.*

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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: Interpretive rule.

SUMMARY: The Indian Gaming Regulatory Act established the National Indian Gaming Commission (NIGC or Commission) as an independent federal regulatory agency responsible for federal oversight of Indian gaming. This interpretive rule explains the Commission's understanding of its oversight authority in the area of environment, public health and safety.

EFFECTIVE DATE: This rule is effective August 12, 2002.

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

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701-21 (IGRA or Act), creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands to shield Indian tribes from organized crime and other corrupting influences; ensure that Indian tribes are the primary beneficiaries of gaming revenues; and assure that gaming is conducted fairly and honestly by both operators and players. To effect these goals, the Commission was granted, among other things, oversight and enforcement authority, including the authority to monitor tribal compliance with the Act, the Commission's regulations, and tribal gaming ordinances, 25 U.S.C. 2713.

A tribal government, as a condition precedent to the lawful operation of gaming activities on Indian lands, must adopt an ordinance governing gaming activities on its Indian lands, 25 U.S.C. 2710. The Act specifies a number of mandatory provisions to be contained in each tribal gaming ordinance and subjects such ordinances to agency review and the Chairman's approval. Approval by the Chairman is predicated on the inclusion of each of the specified mandatory provisions in the tribal gaming ordinance. Among these is a requirement that the ordinance must contain a provision ensuring that "the construction and maintenance of the gaming operation, and the operation of that gaming is conducted in a manner that adequately protects the environment and the public health and safety," 25 U.S.C. 2710 (b)(2)(E).

The Act further extends authority to the Commission to impose sanctions, including civil fines and closure orders, if the Commission finds that gaming on Indian lands is being conducted in violation of the provisions contained in

the authorizing tribal gaming ordinance, 25 U.S.C. 2713. Thus, it is clear that Congress intended the Commission to exercise at least some degree of general oversight authority with respect to whether or not a gaming facility is being operated in compliance with the Congressionally mandated provisions in tribal gaming ordinances. Otherwise, Congress would not have extended the Commission enforcement authority in relation to compliance matters arising under "tribal" gaming ordinances.

Since 1993, when the Commission became operational, the Chairman has required each tribal gaming ordinance to include an express statement that gaming facilities under the control of the tribal government submitting the ordinance would be constructed, operated and maintained in a manner that adequately protects the environment, public health and safety. In 1999, the Commission undertook the development of regulations governing the method of oversight it will use in determining tribal compliance with this provision of IGRA.

The Commission recognizes that tribal governments, as an incident of inherent tribal sovereignty, have broad autonomy and authority over internal tribal affairs, including, in particular, matters pertaining to tribal lands and the health and welfare of the people and the community. Moreover, the Commission is aware that the principle of tribal self-determination is a cornerstone of federal Indian law and policy and has remained so for more than a quarter century. Accordingly, federal or other incursions upon tribal authority in such matters receive careful scrutiny by the courts. Cognizant of these facts, and bound by such federal laws and policies, the Commission approached this rulemaking effort with no small degree of caution and concern. Given the primacy of tribal regulation over the environment, public health and safety as well as federal policies regarding tribal consultation in matters directly affecting tribes, the Commission established a tribal advisory committee to assist in the development of an appropriate process through which the Commission could carry out its oversight responsibility under IGRA without improperly encroaching upon the authority of tribal government.

Tribal Advisory Committee

In November 1999, a Tribal-Commission Advisory Committee was formed to consult on the project and develop recommendations to the Commission. The Advisory Committee, was comprised of representatives of tribal governments and the Commission.

It began its work in November 1999, producing a recommendation for the full Commission's consideration in May 2000. The Advisory Committee met four times to develop a regulatory proposal; an additional meeting was held 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 and republish the proposal for additional comment.

The Advisory Committee through a consensus process produced a recommended rule for submission to the Commission. The recommendation was approved by the Commission for publication in the **Federal Register** as a proposed rule. Essentially, the regulation established a process for oversight based on tribal submissions of "Environment, Public Health & Safety Plans" (Plan) for review by the Commission. The Plans would then form the basis for the Commission's oversight activities. Each Plan was to contain a narrative specific to five distinct areas of concern: (1) Emergency preparedness; (2) food & water; (3) construction & maintenance; (4) hazardous and other materials; and (5) sanitation.

The approach taken by the Committee reflects an effort to balance the need for a uniform system of oversight with the need for flexibility given the widely varying circumstances and geographic dispersion of Indian gaming operations. The proposal also reflects an effort to appropriately narrow and define the Commission's role given the fact that the Commission lacks the technical expertise and the capacity to review and evaluate tribal standards or programs or to itself establish and promulgate specific technical standards appropriate to the industry. It was the view of the Committee that Congress intended a narrow role for the Commission, particularly since the Act contains no other provisions pertinent to this issue, nor does the legislative history suggest that the Commission has the responsibility to develop expansive programs relative to the environment, public health and safety. Accordingly, the Committee concluded that the Commission's role is properly confined to ensuring that tribal standards are in place in each of the five key areas identified by the Committee and ensure that such standards are enforced through an on-going process of monitoring and oversight by qualified personnel.

The purpose of the Plan was to provide the Commission with a tribe-

specific description of the systems in place in order that the Commission would have a means of understanding the mechanisms specific to each tribe and tailor its oversight activities accordingly. Since tribal law and governmental structures may vary substantially as well as climate and geography, it was felt that the only way the Commission could fairly and appropriately conduct oversight is to ensure that it is based on a sound understanding of the circumstances, systems, and standards applicable to each gaming tribe.

Initial Comment Period

At the close of the initial comment period the Commission had received 127 comments, all suggesting substantial changes to the proposed rule and many challenging the Commission's authority to promulgate the rule in the first instance. The comments reflected a widespread view that the proposed rule was both burdensome and intrusive, and questioned the need for it. State and local governments requested that they be given a role in deciding what was to be included in tribal Plans.

The general thrust of the comments led the Commission to conclude that in order to reflect the general purpose and intent of the rule, revision was warranted. The Commission also perceived the need for greater clarity with regard to its view that regulatory primacy and primary responsibility for ensuring compliance with the environment, public health and safety provision rests with tribal government. The Committee was re-convened to assist the Commission to revise the proposal in such a way to make clear that the purpose of the rule is to establish an appropriate process through which the Commission may carry out its discrete and limited oversight responsibility.

Second Comment Period

Upon reviewing the comments, the Advisory Committee recommended a number of revisions to the proposed rule, but left largely intact the provisions utilizing the Plan process. The revised proposal was published in the fall of 2000, allowing for a thirty-day comment period, which was later extended through December 29, 2001. In response, the Commission again received well over a hundred comments, largely raising the same objections, with the same polarization between tribal and state governments. A number of comments, however, further developed some of the issues that had been referenced in the first round of

comments, drawing the Commission's interest.

The Commission's Oversight Role

The overwhelming majority of tribal commenters reasserted the view that the proposal was unduly burdensome and constituted an unwarranted intrusion into the governmental prerogatives of tribes so as to exceed the statutory authority delegated by the Congress in IGRA. Many commenters asserted that Congress could not have intended an extensive role for the Commission given the very limited reference to the environment, public health & safety within the Act. Moreover, the commenters pointed out, the Commission lacks appropriate expertise to properly evaluate tribal environment, public health and safety standards and practices as well as the capacity to do so. These Commenters also asserted that matters pertaining to the environment, public health and safety are more properly within the purview of other governmental agencies, both tribal and federal. It was also asserted that there was no explicit Congressional authority to impose additional enforceable burdens on tribal governments and that in doing so the Commission had run afoul of federal policies restricting the imposition of unfunded mandates in agency rulemaking.

The foregoing arguments are not without a degree of merit. In fact, these points were at the forefront of the Advisory Committee's concerns in developing its recommendation and by the Commission in its deliberations as well. While the Commission does not agree that it is without authority or responsibility altogether, it does accept Congress intended the Commission to play a limited, rather than expansive role. IGRA explicitly accords the Commission a role in ensuring compliance with the environment, public health and safety provision of IGRA. The question, therefore, is not whether the Commission has a responsibility in this regard, but rather the nature and extent of its responsibility.

The Commission does not agree that its responsibility is merely to ensure that each tribal gaming ordinance contains a rote recitation of the language set forth in 25 U.S.C. 2710 (b)(2)(E). Such interpretation would render this provision of the Act superfluous and constitute a breach of an agency's a fundamental duty to give full effect to the plain language of the Act in determining Congressional intent related thereto. Moreover, because IGRA authorizes the Commission to enforce compliance with tribal gaming

ordinances and to sanction incidents of non-compliance through civil fine assessment and orders of temporary closure, it is impossible to conclude that Congress intended the Commission's role to be constrained to the degree suggested in some comments.

At the same time, the Commission recognizes that as a fundamental principle of federal law and policy, tribal governments have the right and authority to make their own choices in exercising their governmental powers. Tribal governmental powers are inherent and not derived from the federal government. As such, when a federal agency seeks to exert itself into an arena routinely controlled by tribal authority, the relevant inquiry is whether a statute, treaty or judicial decision authorizes federal activity in the particular area. Federal statutes affecting Indian affairs require broad construction when the rights of Indians are established or preserved and narrow construction when the rights of Indians are limited or abrogated.

In balancing the Commission's responsibility against the inherent rights of tribal governments the Commission has endeavored to find an objective method for meeting its oversight responsibility in a non-intrusive, non-burdensome manner respectful of tribal primacy in the environmental, public health and safety arenas. Having now had the benefit of the views and thoughts contained in nearly 300 comments, as well as opportunity for in-depth study of the issues and related federal law and policy, the Commission is of the view that the Plan process is more burdensome and intrusive than originally projected. It is further concerned that the estimation of the costs associated with the preparation of a Plan may have been underestimated. In considering the burden and financial impact the proposed rule may have had on tribal governments, the Commission recognizes that existing federal policy discourages the imposition of unfunded mandates on tribal, state, and local governments.

In the final analysis, the Commission has concluded that a simpler, less programmatic approach is warranted. This final rule represents the Commission's interpretation of its responsibility under 25 U.S.C. 2710(b)(2)(E) and provides guidance to tribal governments as to the oversight standard the Commission will apply in determining tribal compliance with this provision of the Act.

What Is the Commission's Responsibility Under Section 2710 (b)(2)(E) in the Area of Environment, Public Health and Safety?

The Commission interprets section 2710 (b)(2)(E) of IGRA to mean that the Commission has a limited and discrete responsibility to provide regulatory oversight in relation to tribal compliance with this provision. The Commission discerns nothing within the Act or the legislative history to suggest that Congress intended a more extensive role for the Commission or manifesting any intent to relieve tribal government of any measure of authority or regulatory primacy over issues concerning the environment, public health and safety in any area within the authority of the tribe or to shift, alter, or otherwise effect any transfer of responsibility from tribal government to the National Indian Gaming Commission.

What Is the Commission's Interpretation With Regard to the Duties and Responsibilities of Tribal Governments Under Section 2710(b)(2)(E) of the Act?

It is the Commission's view that section 2710 (b)(2)(E) requires tribal governments electing to conduct gaming on tribal lands to apply, adopt or issue standards designed to ensure that gaming operations on Indian lands are constructed, operated and maintained in a manner that adequately protects the environment, public health and safety, and, furthermore, to enforce compliance with such standards through an ongoing system of monitoring, conducted by qualified personnel. At a minimum, such standards must address: (1) Emergency preparedness; (2) food & water; (3) construction & maintenance; (4) hazardous and other materials; and (5) sanitation.

How Would a Tribal Government Satisfactorily Assert Its Compliance With Section 2710 (b)(2)(E) of IGRA?

The Commission recognizes that tribal governments vary dramatically in terms of size, structure, and organization. Accordingly, compliance may be effected in any number of ways. For example, departments or agencies within tribal government may issue rules or procedures, conduct inspections, and bring enforcement actions. Another tribal government may enter into intergovernmental compacts with state, local or federal government to carry out such activities while others may contract privately for such functions. In the Commission's view, the particular manner in which compliance with tribal environment,

public health and safety standards is enforced is not so important. The key objective is to confirm that standards and enforcement systems are in place.

What Action May the Commission Take if the Commission Determines That a Gaming Operation Is Not Subject to Environmental, Public Health and/or Safety Standards or That Such Standards Are Not Routinely Enforced?

If the Commission determines that a tribal government has failed to apply, adopt, issue or enforce environmental, public health and/or safety standards covering gaming operations on Indian lands, the Commission will first notify the governing body of the tribe of its concern. If the absence of standards or failure to enforce does not present imminent jeopardy to the environment, public health or safety, the Commission will refer the matter to the appropriate tribal regulatory authority for appropriate action. The Commission will proceed to enforcement only where no corrective action has been undertaken within a reasonable time and such inaction results in a condition of imminent jeopardy to the environment, public health and safety.

What is Imminent Jeopardy?

A finding of imminent jeopardy represents the standard the Commission will apply in determining that a condition poses a threat of such severity to the environment or the public health or safety as to warrant the Commission's intervention. For purposes of this regulation, imminent jeopardy exists where conditions are present that pose a real and immediate threat: (1) To the environment, which, if uncorrected, would result in actual harm to life or destruction of property; or (2) to human health and well being, which, if uncorrected, could result in serious illness or death.

Signed this 3rd day of July, 2002.

Montie R. Deer,
Chairman.

Elizabeth L. Homer,
Vice-Chair.

Teresa E. Poust,
Commissioner.

[FR Doc. 02-17151 Filed 7-11-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 02-191]

Reorganization of the Office of Media Relations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to reflect the new organizational structure of the Office of Media Relations of the Federal Communications Commission, identifying their new functions.

DATES: Effective July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Beth Richards, Office of the Chairman, 202/418-1514 or Yvette Barrett, Office of the Managing Director, 202/418-0603.

SUPPLEMENTARY INFORMATION: This Order adopted June 26, 2002 and released July 9, 2002 by the Commission amends its rules to reflect the new structure of the Office of Media Relations to include the management of audio and visual support services for the Commission.

Authority for the adoption of the foregoing revisions is contained in sections 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 201(b) and 303 (r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

Accordingly, *it is ordered* that part 0 of the Commission rules, set forth in Title 47 of the Code of Federal Regulations, *are amended* as set forth in the rule changes to be effective July 15, 2002.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.15 is amended by adding paragraph (f) to read as follows:

§ 0.15 Functions of the Office.

* * * * *

(f) Manage the FCC's audio/visual support services and maintain liaison with outside parties regarding the broadcast of Commission proceedings.

[FR Doc. 02-17574 Filed 7-11-02; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

[DFARS Case 2002-D010]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide contract action reporting requirements for Fiscal Year 2003. The rule makes changes to the Individual Contracting Action Report and the corresponding reporting instructions.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2002-D010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains Fiscal Year 2003 requirements for completion of DD Form 350, Individual Contracting Action Report. DoD uses this form to collect statistical data on its contracting actions. The rule includes reporting changes related to indefinite-delivery contracts; performance-based service contracts; the SBA/OFPP pilot program for acquisition of services from small business concerns; purchases made using the Governmentwide purchase card; and purchases made by a DoD agency on behalf of another DoD or non-