properly exported, either using a license or an exemption, and there is a reason to change either the end-use or the end-user, the requirements of § 123.9 of this subchapter apply.

Dated: March 25, 1999.

John D. Holum,

Acting Under Secretary of State for Arms Control and International Security Affairs and Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 99–9033 Filed 4–9–99; 8:45 am]

BILLING CODE 4710–25–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 201

RIN 0412–AA41

Rules and Procedures Applicable to Commodity Transactions Financed by USAID: Administrative Revisions

AGENCY: United States Agency for International Development.

ACTION: Final rule.

SUMMARY: USAID Regulation 1 is being amended to update the coverage and the expiration date on OMB's approval of information collection requirements in accordance with the Paperwork Reduction Act. The name and address of the responsible USAID office is updated. Also, ZIP Codes and office name are being changed.

DATES: Effective May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Procurement, Policy Division (M/OP/P) USAID, Washington, DC 20523–7801. Telephone: (202) 712–4759, facsimile: (202) 216–3395, e-mail address: kohara@usaid.gov.

SUPPLEMENTARY INFORMATION: This amendment is editorial in nature and, therefore, is being published as a final rule with an effective date thirty days from publication since all the changes are already in effect. This rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is not a major rule under 5 U.S.C. 804. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

List of Subjects in 22 CFR Part 201

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly 22 CFR part 201 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart A—Definitions and Scope of This Part

2. Section 201.03 is revised to read as follows:

§ 201.03 OMB approval under the Paperwork Reduction Act.

(a) OMB has approved the following information collection and recordkeeping requirements established by this part 201 (OMB Control No. 0412–0514, expiring July 31, 2000):

Sec.
201.13(b)(1)
201.13(b)(2)
201.15(c)
201.31(f)
201.31(g)
201.32(b)
201.32(c)
201.51(c)
201.52(a)
201.74

(b) USAID will use the information requested in these sections to verify compliance with statutory and regulatory requirements and to assist in the administration of USAID-financed commodity programs. The information is required from suppliers in order to receive payment for commodities or commodity-related services. The public reporting burden for this collection of information is estimated to average a half hour per response, including the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Procurement, Policy Division (M/OP/P), U.S. Agency for International Development, 1300 Pennsylvania Avenue, Washington, DC 20523–7801, and the Office of Management and Budget, Paperwork Reduction Project (0412–0514), Washington, DC 20503.

Subpart C—Procurement Procedures Responsibilities of Importers

§ 201.23 [Amended]

3. In § 201.23, paragraph (c) is amended by removing ''20523–1414'' from the second sentence and adding ''20523–7700 in its place.

Subpart D—Responsibilities of Suppliers

§ 201.301 [Amended]

4. Section 201.31 is amended by removing ''20523–1419'' from the last sentence in paragraph (f) and adding ''20523–7900'' in its place, and by removing ''20523–0208'' from the second sentence in paragraph (g) and adding ''20523–7702'' in its place.

§ 201.302 [Amended]

5. Section 201.32 is amended by removing ''20523–0280'' in the first sentence of paragraph (b) and adding ''20523–7792'' in its place, and by removing ''20523–1415'' from paragraph (c) and adding ''20523–7900'' in its place.

Subpart F—Payment and Reimbursement

§ 201.51 [Amended]

6. Section 201.51 is amended by removing ''Letter of Commitment Branch'' and ''20523–0208'' from the fourth sentence in paragraph (c)(4) and adding ''Cash Management and Payment Division (M/FM/CMP)'' and ''20523–7702,'' respectively, in their places.

§ 201.52 [Amended]

7. Section 201.52 is amended by removing ''20523–1419'' in paragraph (a)(2)(iii)(C) and adding ''20523–7900'' in its place; by removing ''20523–1415'' is paragraph (a)(4)(iii) and adding ''20523–7900'' in its place; and by removing ''20523–0208'' in paragraph (a)(4)(iii)(B) and adding ''20523–7702'' in its place.

Subpart G—Price Provisions

§ 201.67 [Amended]

8. Section 201.67 is amended by removing ''20523–0209'' in paragraph (a)(5)(ii) and adding ''20523–7702'' in its place.

Dated: March 8, 1999.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 99–8890 Filed 4–9–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 291

RIN 1076–AD87

Class III Gaming Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department is issuing regulations prescribing procedures to permit Class III gaming when a State interposes its immunity from suit by an Indian tribe in which the tribe accuses the state of failing to negotiate in good faith. The rule announces the Department's determination that the Secretary may promulgate Class III gaming procedures under certain specified circumstances. It also sets forth the process and standards pursuant to which any procedures would be adopted.

EFFECTIVE DATE: These regulations take effect on May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Indian Gaming Management Staff, Bureau of Indian Affairs, Department of the Interior, MS 2070–MIB, 1849 C Street NW, Washington, DC 20240, Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721, to provide a statutory basis for the operation and regulation of Indian gaming and to protect Indian gaming as a means of generating revenue for tribal governments. Prior to the enactment of IGRA, states generally were precluded from any regulation of gaming on Indian reservations. See *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). The IGRA, by offering States an opportunity to participate with Indian tribes in developing regulations for Indian gaming, ''extends to the States a power withheld from them by the Constitution.'' *Seminole Tribe of Florida* v. *State of Florida,* 517 U.S. 44, 58 (1996).

Since IGRA's passage in 1988, more than 200 compacts in 24 States have been successfully negotiated by tribes and States, and approved by the Secretary. Today, Indian gaming generates significant revenue for Indian tribes. As required by IGRA, gaming revenues are being devoted primarily to providing essential government services such as roads, schools, and hospitals, as well as economic development.

The IGRA divides Indian gaming into three categories. This rule addresses only the conduct of Class III gaming, which primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries. 25 U.S.C. 2703(8); 25 CFR 502.4. Under IGRA, the conduct of ''Class III gaming activities'' is lawful on Indian lands only if such activities: (1) Are authorized by an ordinance adopted by the governing body of the tribe and approved by the Chairman of the National Indian Gaming Commission (NIGC), (2) are located in a State that permits such gaming for any purpose by any person, organization, or entity, and (3) are conducted in conformance with a Tribal-State compact. 25 U.S.C. 2710(d)(1)(B). The regulations that follow relate primarily to this third requirement, i.e., the Tribal-State compact.

Under IGRA, a tribe interested in operating Class III gaming initiates the compacting process by requesting the State to enter into negotiations to develop the Tribal-State compact. 25 U.S.C. 2710(d)(3)(A). Upon receiving such a request, the State is obliged ''to negotiate with the Indian tribe in good faith to enter into such a compact.'' Id. If the State fails to negotiate in good faith, the tribe may initiate an action against the State in Federal district court. 25 U.S.C. 2710(d)(7)(A)(i). If the court finds that the State has failed to negotiate in good faith, it must order the State and the tribe to conclude a compact within 60 days. 25 U.S.C. 2710(d)(7)(B)(iii). If the State and tribe fail to conclude a compact within that period, each side must submit their last best offer to a court-appointed mediator, who selects one of the proposals. 25 U.S.C. 2710(d)(7)(B)(iv). If the State consents to the mediator's proposal it is treated as a Tribal-State compact. 25 U.S.C. 2710(d)(7)(B)(vi). If the State does not consent, the Secretary of the Interior (Secretary) shall prescribe procedures (1) which are consistent with the proposed compact selected by the mediator, the provisions of IGRA, and the relevant provisions of State laws, and (2) under which Class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction. 25 U.S.C. 2710(d)(7)(B)(vii).

In *Seminole Tribe of Florida* v. *Florida,* the Supreme Court held that a State may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a tribe alleging that the State did not negotiate in good faith. After the Seminole decision, some States have signaled their intention to assert immunity to any suit in Federal court. Claiming immunity will, if no further action is taken, create an effective State veto over IGRA's dispute resolution system and therefore will stalemate the compacting process. This rule contemplates that the Secretary may prescribe Class III gaming procedures to end the stalemate.

On May 10, 1996, the Bureau of Indian Affairs (BIA) published an Advance Notice of Proposed Rulemaking (ANPR) in response to the United States Supreme Court's decision in *Seminole Tribe of Florida* v. *Florida.* 61 FR 21394 (May 10, 1996). In that ANPR, the Department posed, among others, the question of ''[w]hether and under what circumstances, the Secretary is empowered to prescribe 'procedures' for the conduct of Class III gaming when a State interposes an Eleventh Amendment defense to an action pursuant to 25 U.S.C. 2710(d)(7)(B).'' The Secretary, in consultation with the Solicitor, has determined that he possesses legal authority to promulgate procedures setting out the terms under which Class III gaming may take place when a State asserts its immunity from suit. The Secretary's authority arises from the statutory delegation of powers contained in 25 U.S.C. 2710(d)(7)(B)(vii) of IGRA and 25 U.S.C. 2 and 9.

Summary of the Rule

The rule tracks IGRA's negotiation and mediation process, adjusted only to the extent necessary to reflect the unavailability of tribal access to Federal court where a State refuses to waive sovereign immunity. The rule applies only where a tribe asserts that a State is not negotiating in good faith, files suit against the State in Federal court in accordance with IGRA, but cannot proceed in Federal court because the State refuses to waive its sovereign immunity from suit. In cases in which a State chooses not to assert a sovereign immunity defense, the rule will not apply. Instead, the negotiation and mediation process set forth in section 2710(d)(7) of IGRA would continue under the supervision of the court.

In those cases in which a State interposes a sovereign immunity defense to a tribal lawsuit in Federal court, the regulation establishes a process for obtaining State participation in the compacting process, prior to the Secretary's identification of procedures.

The steps set forth in the rule include:

1. Following dismissal on grounds of sovereign immunity of a tribe's suit brought pursuant to 25 U.S.C. 2710(d)(7) against a State, the tribe will have the opportunity to submit a request to the Department to establish gaming procedures. The procedures submitted by the tribe will be required to address all of the issues identified in the rule, including the scope of the gaming activities being requested by the tribe and detailed mechanisms for regulation of the gaming, including assurances that games will be conducted fairly and that the financial integrity of the entire operation will be safeguarded. The tribe will be asked to provide a legal analysis supporting the proposed scope of gaming in view of State prohibitions and other policies on specific types of gaming.

2. The Department will notify the tribe within 15 days that it has received the proposal and whether it is complete. Within

30 days the Department will notify the tribe whether it is eligible for procedures.

3. Following issuance of a notice of completeness and eligibility, the Department will notify the State of the tribe's request for the issuance of procedures, and solicit the State's comments on the tribe's proposed procedures, including any comments on the proposed scope of gaming. The State will also be invited to submit alternative proposed procedures within 60 days.

4. Based on its review of the submissions of the tribe and the State, and if the State has not submitted an alternative proposal, the Department will advise the State and Indian tribe of: (a) its approval of the tribe's proposal if the Secretary determines that there are no objections to the proposals; (b) its convening of an informal conference with the State and tribe within 30 days for the purpose of resolving any areas of disagreement.

5. If the State offers an alternative proposal, the Secretary will appoint a mediator who will receive ''last best offers'' from the State and tribe. The mediator must then submit to the Secretary the proposed procedures that best comport with applicable Federal and State law. Within 60 days of receipt of the mediator's recommendation, the Secretary must notify the State and tribe of his decision to approve or disapprove the procedures submitted by the mediator, or prescribe such procedures as he determines appropriate that are consistent with State law and the provisions of IGRA.

Review of Public Comments

Sixty-seven (67) comments were submitted in response to the January 22, 1998, **Federal Register** publication of the proposed rule, 25 CFR 291.

Section 291.1 Purpose and Scope

Nearly all of the comments from the States reiterated or expanded on comments previously submitted arguing that the Secretary lacks legal authority to promulgate these regulations. Comments from the Indian tribes likewise reiterated prior comments in support of the Secretary's authority to adopt the proposed regulation.

Response: The Department adheres to the reasoning set forth in the January 22, 1998 **Federal Register** publication in support of the Secretary's authority to adopt the proposed regulation. In addition, a recent case, *Spokane Tribe of Indians* v. *Washington State,* 139 F.3d 1297 (9th Cir. 1998)(Spokane II), casts doubt on the legal authority relied upon by the States in their comments to the proposed rule. In Spokane II, the court noted that an earlier opinion (*Spokane Tribe of Indians* v. *Washington State,* 28 F.3d 991 9th Cir. 1994)(Spokane I)) questioned the Eleventh Circuit court of appeals' statement in *Seminole Tribe of Florida* v. *Florida,* 11 F.3d 1016 (1994) supporting the approach subsequently taken in our proposed rule. The Spokane II court noted that the statement in Spokane I: was in the context of our (incorrect) assumption that tribes could sue states. We were pointing out that the Eleventh Circuit's suggestion would not be as close to the Congress' intent as the scheme Congress in fact passed. True. But the Supreme Court has now told us that Congress' scheme is unconstitutional; the Eleventh Circuit's suggestion is a lot closer to Congress' intent than mechanically enforcing IGRA against tribes even when states refuse to negotiate. 139 F.3d at 1301–02.

As an adjunct to the argument that the Secretary lacks authority, the States assert that the Secretary's authority under the statute is limited to circumstances where a court has made a finding that a State has failed to negotiate in ''good faith'' with an Indian tribe over Class III gaming procedures. The State strenuously objects to any role for the Secretary in evaluating whether a State has negotiated in ''good faith.'' Their objection is based on alleged bias that the Secretary might have due to the trust responsibility owed by the Federal government to the Indian tribes. The States also assert that the Secretary lacks expertise to make such a finding. The final regulation eliminates the requirement that the Secretary make a finding on the ''good faith'' issue. States will be invited to participate in mediation if they wish. They can also submit comments on the proposed scope of gaming (the issue most often contested in negotiations) and on any other matter pertaining to an Indian tribe's proposed procedures. The Secretary will take those views into account in his decision-making process. Congress' intent was to ensure a role for the States in developing the terms and conditions under which Class III Indian gaming would take place. The approach taken in the regulation is consistent with that intent.

Several comments suggested that the rule be expanded to explicitly include compact renewals.

Response: This recommendation was adopted because the authority granted the Secretary in IGRA to issue Class III gaming procedures speaks only in terms of entire compacts, and a renewal of an entire compact falls within this authority. Section 291.2(b) was added in the definition section to make clear the term ''compact'' as used in the regulations includes compact renewals.

Several comments suggested the scope be expanded to include compact amendments.

Response: This recommendation was not adopted because the authority granted to the Secretary in IGRA to issue Class III gaming procedures speaks only in terms of entire compacts, not to amendments.

One comment suggested the scope was too narrow because it limits the application to when the tribe has brought an action in Federal court and the State has asserted its immunity from such suit, and the court has dismissed the action.

One comment suggested that if the State issues a letter of intent to raise its immunity defense, then this should suffice to trigger the Class III gaming procedures.

Response: These recommendations were not adopted because the statutory trigger in IGRA for the Secretary to issue Class III gaming procedures is the filing of a lawsuit.

One comment suggested the proposed scope would clog the courts in futile litigation and stonewall the IGRA process for several years. The comment suggested it should be sufficient for the State to assert its immunity in just one tribe's lawsuit.

Response: This recommendation was not adopted because the statutory trigger in IGRA for the Secretary to issue Class III gaming procedures is the filing of a lawsuit because of the particular parties' failure to conclude a compact. The regulation cannot dispense with the requirement that each tribe be involved in a lawsuit. The regulation must be the same for each tribe.

Section 291.2 Definitions

Paragraph (b) was added to make clear the regulations apply to compact renewals as suggested by several comments. See *Summary of Comments* under section 291.1.

Section 291.3 When May an Indian Tribe Ask the Secretary To Issue Class III Gaming Procedures?

One comment recommended that paragraph (b) be revised to state that if the tribe and State failed to negotiate a compact 180 days after the State received the tribe's request, or if the State previously asserted its Eleventh Amendment immunity in an action brought by any tribe, or if the State unequivocally refused to enter into or continue negotiations.

Response: This recommendation was not adopted because the regulation tracks the statutory requirements in 25 U.S.C. 2710(d)(7)(A) and (B).

One comment suggested that section (c) be reworded.

Response: This recommendation was not adopted because the words track the statutory language in 25 U.S.C. 2710(d)(7)(A)(i) and (B)(ii)(II).

One comment suggested broadening paragraph (d) to included *any* tribal action in which the State declined to waive its immunity.

Response: This recommendation was not adopted for the same reason expressed for one comment under § 291.1, which is that the statute requires the particular parties to be unable to conclude a compact and a lawsuit is initiated as a result. The regulation must have the same criteria for each tribe.

Several comments suggested broadening paragraph (d) to include the State's assertion of any immunity, whether it be the Eleventh Amendment, Tenth Amendment, or otherwise.

Response: These recommendations were not adopted because the regulation explicitly deals with Eleventh Amendment immunity, and not with other potential barriers.

One comment recommended that paragraph (d) require the State to either choose the court process or the Secretarial process out of concern that the Eleventh Amendment immunity defense could be raised late in the appeal process.

Response: This recommendation was not adopted because the regulation explicitly deals with the Secretarial process once the State successfully asserts its Eleventh Amendment immunity.

Several comments suggested that instead of requiring an actual assertion of the State's immunity, the regulation should only require documentation of the State's intention to assert such immunity.

Response: This recommendation was not adopted because the statutory trigger for the Class III gaming procedures is an initiation of a lawsuit. The scope of the regulations provides for procedures where the State actually raised its Eleventh Amendment immunity and the case was dismissed as a result.

Numerous comments suggested deleting paragraph (e) because the requirement that the action be dismissed for each tribe is burdensome, wasteful and time consuming.

One comment suggested that the requirement that each action be dismissed could place tribal attorneys in an awkward position under Rule 11 of the Federal Rules of Civil Procedure.

Several comments recommended that in place of requiring a dismissal for each lawsuit, require clear proof of the State's intention to raise its Eleventh Amendment immunity.

Response: These recommendations were not adopted because the Secretary's authority under IGRA for Class III gaming procedures is only triggered by a lawsuit and the regulatory trigger must be the same for each tribe.

The words ''because of lack of jurisdiction'' were deleted from paragraph (e) to clarify that the scope of the regulations is limited to when the State actually raises its Eleventh Amendment immunity and the case was dismissed on that ground. One comment agreed that the scope of section 291.3 is consistent with the suggestions made by the 11th Circuit in the *Seminole* decision.

Section 291.4 What Must the Proposal Requesting Class III Gaming Procedures Contain?

One comment suggested adding the words ''if any'' at the end of paragraph (c) because a tribe's gaming ordinance or resolution need not be approved by the NIGC prior to the negotiation and completion of a gaming compact.

Response: This recommendation was adopted because approval of the tribe's ordinance or resolution by the NIGC is not required before Class III gaming procedures are approved, but the ordinance or resolution must be approved by the NIGC before gaming is conducted.

Two comments suggested adding the words ''if any'' at the end of paragraph (d) because not all tribes have organic documents.

Response: These recommendations were adopted.

A few comments suggested clarifying paragraph (g) because a ''copy of court proceedings'' is ambiguous and provides no useful guidance on what exact documents need to be submitted.

Response: These recommendations were adopted, and paragraph (g) was amended to include a list of specific documents in language suggested by one of the comments.

One comment suggested revising paragraph (h) to enumerate specific examples of factual and legal authority for the scope of gaming.

Response: This recommendation was not adopted because the regulations leave it up to a tribe's discretion what it wishes to submit for the factual and legal authority.

One comment stated paragraph (i) was ambiguous, unnecessary and onerous because the regulation appeared to expand the NIGC's existing monitoring and enforcement authority.

Another comment suggested paragraph (i) be revised to include only a regulatory scheme for a federal agency role. One comment stated the NIGC is the proper monitoring and enforcement agency and other designation was unnecessary.

Another comment suggested the BIA is precluded from compelling a State to participate in monitoring and enforcement in the absence of a voluntary agreement.

Response: To accommodate the concerns raised by the comments, the term ''federal'' was deleted from paragraph (i) to make clear that if the tribe envisions the State to have a role in monitoring and enforcement by mutual and voluntary agreement, the tribe must submit this regulatory scheme to the Secretary in its Class III gaming procedures proposal. In addition, a new section 291.12 is added to the regulations to clarify the NIGC's monitoring and enforcement roles.

One comment suggested it was unreasonable for tribes to have to submit an accounting system under paragraph (j)(1). The comment recommended having the tribes submit a certification that it will operate its accounting system in accordance with the specified standards, principals and NIGC regulations.

One comment suggested the provision was perplexing because a tribe should not have to submit applicable NIGC regulations. The drafters did not intend either of these interpretations.

Response: Both recommendations were adopted, and the language and punctuation in paragraph (j)(1) was changed for clarification.

One comment recommended referencing the NIGC regulations for internal control standards in paragraph (j)(4).

Response: This recommendation was adopted.

Several comments suggested that the requirements under paragraph (j)(8) were beyond the statutory requirements, beyond NIGC regulatory requirements, and created low thresholds.

Response: These recommendations have been adopted, and paragraph (j)(8) has been amended to be more consistent with 25 U.S.C. 2710(b)(2)(D) and NIGC regulations.

A few comments suggested the Secretary will be inundated with background information documents, licensing documents and the like; but, the regulation only requires submission of rules governing these issues.

One comment recommended deleting the words ''all gaming activities . . . count rooms'' in paragraph (j)(10) as being duplicative because they were already covered under (j)(4).

Response: This recommendation was adopted.

Several comments addressed the need for flexibility in how tribes handle disputes under paragraph (j)(11).

One comment recommended adding the words ''and/or tribal judicial process'' in addition to the administrative process in paragraph (j)(11) to accommodate different tribal processes.

Response: This recommendation was adopted.

One comment under paragraph (j)(11) recommended adding a provision for tribes acquiring insurance and a waiver of tribal sovereign immunity thereunder.

Response: This recommendation was not adopted because it is beyond the scope of these regulations.

One comment under paragraph (j)(15) suggested adding language in case a tribe chooses not to serve liquor at the gaming facility.

Response: This recommendation was adopted. For clarification, reference to the statutory definition of liquor under a Secretarially approved ordinance/resolution was incorporated.

Several comments recommended deleting the word autonomous from paragraph (j)(16) as being confusing because tribal gaming commissions are to some degree subject to the jurisdiction of the Tribal Council or other tribal governing body, and the Secretary should not be making that determination.

Response: This recommendation was adopted and the language deleted for clarification.

Several comments suggested changing the word ''commission'' to accommodate the variety of tribal regulatory structures, such as departments, individuals, and offices.

Response: These recommendations were adopted and the word was changed to ''entity.''

One comment suggested paragraph (j)(17) is vague and recommended providing reasonable standards that dictate when a tribe must provide administrative appeal rights, including what facts trigger the process, what due process rights attach and remedies available.

Response: This recommendation was not adopted because the regulations should not impose particular administrative appeal processes on the tribes. The regulations provide for such an appeal process while accommodating tribal flexibility of its own administration.

One comment suggested paragraph (j)(17) was partially unnecessary because the NIGC already had enforcement and investigatory mechanisms.

Response: To clarify the intent of paragraph (j)(17), the word ''tribal'' was added to make clear this provision relates to tribal enforcement and investigatory mechanisms, not Federal or State. Paragraph (j)(18) was added in response to a comment on the duration of the Class III gaming procedures. See Summary of Comments under section 291.15.

Section 291.5 Where must the proposal requesting Class III gaming procedures be filed?

No comments were received on this section.

Section 291.6 What must the Secretary do upon receiving the proposal?

Several comments suggested changing the time frames in sections 291.3, 4 and 6 to be the same.

Response: In response to this comment, language has been added to make clear that the review in paragraph (a) is not substantive, but instead a limited review as to whether all the information required under section 291.4 is present in the application. The review in paragraph (b) is substantive and as such requires a longer period of time than the review in paragraph (a). A 60-day time frame is reasonable and necessary to make the substantive determination.

Section 291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?

Numerous comments recommended deleting the requirement that the State be notified once the Secretary determines the tribe is eligible for Class III gaming procedures.

One comment suggested it was beyond the Secretary's authority because IGRA explicitly provides for consultation with the tribe, but does not require consultation with the State.

Many commentors suggested that the State should not be involved in the Class III gaming procedures process because they believe it would give the State another opportunity to stonewall, delay or subvert the IGRA process after it already asserted its Eleventh Amendment immunity in the lawsuit.

Response: These recommendations were not adopted because IGRA does not prohibit the consultation of the States. Further, the regulations attempt to track the IGRA process in which the participation of all parties is contemplated.

Several comments supported section 291.7 as written to ensure and encourage State involvement in the process and to maintain fairness in the process as contemplated by IGRA.

One comment suggested that the Governor and Attorney General may not be the proper authorities in the particular State with whom to consult, and that the Governor and Attorney General may have opposing views.

Response: This recommendation was not adopted because the Attorney General is invited to participate in the procedures since he/she represented the State in the lawsuit which was dismissed due to the Eleventh Amendment immunity. It is anticipated that in situations where the Governor is not the proper official, the Governor may notify the Secretary if actual authority has been delegated and/or rests with another State official, department, commission, or other entity.

Several comments suggested that the 60 days in paragraph (b) is too long.

One comment recommended that absent good cause shown, the State should be allowed no more than 30 days.

Response: These recommendations were not adopted because 60 days allows time for the State to conduct a thorough and substantive review of the tribe's proposal.

Numerous comments were received on paragraph (b)(2) from both the states and tribes.

One comment suggested that by transferring to the Secretary the authority to determine a State's good faith, the tribes have no incentive to negotiate in good faith and will often proceed directly to the Class III gaming procedures.

Many comments suggested deleting this paragraph because the Secretary has no authority to pass judgment in a quasi-judicial determination upon the State's conduct.

Some comments suggested that the Secretary would not be able to make such a determination in the absence of cross-examining witnesses and judging credibility.

Some comments suggested a good faith determination by the Secretary will destroy the neutrality of the Class III gaming procedures.

One comment suggested the paragraph be deleted because the Secretary would be making a judicial determination without any of the safeguards of a judicial proceeding, contrary to the IGRA scheme.

Response: These recommendations have been adopted and paragraph (b)(2) has been deleted.

One comment noted that the regulations were ambiguous, and appeared to grant the Secretary authority to proceed with the Class III gaming procedures irrespective of the good faith determination outcome.

The comment suggested that the good faith determination be made at the outset in order to proceed with the procedures process.

One comment suggested the paragraph provided no standard for the Secretary to follow in making a good faith determination, and suggested placing the burden on the State to prove good faith.

Response: These recommendations were not adopted because the good faith determination has been deleted from the regulations.

One comment suggested deleting paragraph (b)(3) because State law does not apply to activities conducted on Indian lands except regarding the scope of gaming.

This recommendation was not adopted because the language in paragraph (b)(3) tracks the requirement and language in IGRA, section 2710 (d)(7)(B)(vii)(I).

One comment suggested revising paragraph (c) to require the State to address all the issues listed in section 291.4 when it submits an alternate proposal.

Response: This recommendation was not adopted because 291.4 is applicable only to the tribal applicant.

One comment suggested deleting paragraph (c) because the State should not be allowed to submit a proposal if the Secretary determines the State did not negotiate in good faith.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

Section 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

One comment suggested deleting the 60-day reference to the comment period in section 291.7.

Response: This recommendation was not adopted in order to retain clarity.

Several comments objected to the discussion of the ''scope of gaming'' as being either too broad, or too narrow.

Response: These recommendations were not adopted, because the applicable scope of gaming must be determined on a case-by-case basis. The summary of the law and the United States' position as set forth in the proposed rule remains the standard for analyzing the scope of gaming issue. 63 FR 3289, 3292–3293 (January 22, 1998).

Several comments suggested deleting paragraph (a)(4) as being troubling, unnecessary and inappropriate.

Response: These recommendations have not been adopted because this paragraph is consistent with the requirement as set forth in IGRA, section 2710(b)(7)(B)(vii)(I).

Numerous comments were received from both States and tribes under paragraph (a)(8) similar to those received under section 291.7(b)(2).

Several comments suggested eliminating this paragraph as being beyond the authority of the Secretary, unnecessary, unclear and irrelevant.

Several comments suggested the Secretary could not impartially and properly adjudicate the issue because of the trust responsibility to tribes, a conflict of interest, and a lack of knowledge concerning the intricacies of the negotiation between the State and tribe.

Response: These recommendations were adopted and paragraph (a)(8) has been deleted.

One comment suggested that the Secretary publish his/her determination on the good faith issue.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

One comment suggested paragraph (a)(8) appeared to be a drafting error.

Response: This comment's concern is alleviated because the paragraph has been deleted.

One comment suggested the paragraph be revised to include specific examples of State action which would be considered as evidence of bad faith.

Response: This recommendation was not adopted because the good faith determination has been deleted from the regulations.

Several comments suggested changing the 60-day time frame in paragraph (b) because it was too long or unnecessary if a State does not submit an alternate proposal.

Response: These recommendations were not adopted because the 60-day time frame is reasonable for a substantive review if the State submits comments under section 291.7(b). If the State does not submit comments, the Secretary may not need the entire 60 days.

One comment suggested deleting the requirement that the Secretary notify the State.

Response: This recommendation was not adopted because the State is an involved party in the Class III gaming procedures process as contemplated by IGRA. Paragraph (b)(2) was deleted as unnecessary. If the Secretary determines that the State's alternative proposal contains no objections to the tribe's proposal, the proposal is approved. If the Secretary determines there are unresolved issues and areas of disagreement between the State's alternative proposal and the tribal proposal, then the parties will be invited to participate in an informal conference.

One comment suggested paragraph (b)(3) is confusing because if the State does not submit an alternative proposal, then how can the Secretary make a determination of unresolved issues and areas of disagreement.

Response: This recommendation was not adopted because the State can comment on the tribe's proposal under section 291.7(b) without necessarily submitting an alternative proposal. Further, if the Secretary makes a determination that there are no objections to the tribe's proposal, he/she can approve the proposal.

One comment suggested it was inappropriate under paragraph (b)(3) to invite the State to participate in an informal conference because the unresolved issues and areas of disagreement may be exclusively tribal.

Response: This recommendation was not adopted because the unresolved issues and areas of disagreement are between the parties.

One comment suggested revising paragraph (b)(3) to include a time frame in which the informal conference would be held.

Response: This recommendation was adopted and language was added to state that the parties will be invited to participate in an informal conference within 30 days of receiving the Secretary's notice.

Several comments suggested the 30-day time frame in paragraph (c) was excessive and should be shortened.

Response: This recommendation was not adopted because 30 days is reasonable and necessary for the Secretary to prepare a written report summarizing the informal conference and making a final decision either setting forth the procedures or disapproving the proposal.

One comment suggested deleting the requirement that the Secretary prepare and mail the report and final decision to the State in paragraph (c).

Response: This recommendation was not adopted because the State is an involved party in the Class III gaming procedures process as contemplated by IGRA.

Section 291.9 What must the Secretary do at the end of the 60-day comment period if the State provides comments offering an alternative proposal for Class III gaming procedures?

Several comments suggested deleting section 291.9 as unnecessary and inconsistent with the IGRA scheme.

One comment suggested it served no legitimate purpose since it adds an additional 60 days to a process which

will ultimately end up in mediation anyway where the parties can present their objections and counter-proposals.

Reponse: These recommendations were adopted and the section has been deleted and rewritten to provide automatic appointment of a mediator.

One comment received under 291.10 recommended specifying the number of days in which the mediator will be appointed.

Response: This recommendation was adopted under the newly revised Section 291.9 and language was added saying the mediator shall be appointed within 30 days of the Secretary receiving the State's alternative proposal. See Summary of Comments under section 291.10.

Section 291.10 What must the Indian tribe do when it receives the State's alternative proposal for Class III gaming procedures?

Several comments recommended this section be deleted as unnecessary and inconsistent with the IGRA scheme or be revised to provide for automatic appointment of a mediator.

Response: The recommendation to delete as unnecessary and inconsistent was adopted, and the recommendation to revise is adopted under the new revised section 291.9.

The comment further recommended to revise the section and specify the number of days in which the mediator will be appointed.

Response: This recommendation was adopted and language was added to the new revised section 291.9 saying the mediator shall be appointed within 30 days of receiving the State's alternative proposal. See Summary of Comments under section 291.9.

One comment recommended revising the section to provide for a mechanism that establishes procedures if the Secretary disapproves the State's alternative proposal.

Response: This comment was not adopted because this paragraph has been deleted.

Section 291.11 What must the Secretary do if the Indian tribe files timely objections to the State's alternative proposal?

Several comments recommended setting forth qualifications of the mediator. One comment recommended requiring the mediator have familiarity and knowledge of IGRA.

Response: This recommendation was not adopted because it is unnecessary.

One comment recommended that the tribe have considerable input into the Secretary's selection.

Response: This recommendation was not adopted to maintain a fairness and timeliness in the process.

One comment recommended conflict of interest standards.

Response: This recommendation was adopted and the new revised section 291.9 includes such standards.

Several comments recommended the section be revised to include a specific time period in which the Secretary must appoint the mediator. One comment recommended 20 days.

Response: These recommendations were partially adopted, and the new revised section 291.9 includes a 30-day time period as being reasonable and necessary.

One comment suggested revising the section to include a time frame in which the mediator issues a decision.

Response: This recommendation was not adopted in order to remain consistent with IGRA requirements, to maintain flexibility in the mediation process and to avoid imposition of time constraints on the mediator. During the mediation process, the parties are free to mutually consent to self-imposed time constraints. The IGRA does not impose such constraints on the mediator or mediation process. This section was deleted as unnecessary due to the automatic appointment of a mediator under revised section 291.9 and the sections were renumbered accordingly.

Section 291.12 What is the role of the mediator appointed by the Secretary?

This section was renumbered section 291.10 due to the deletion of sections 291.9 and 291.10 of the proposed rule.

Several comments recommended imposing specific procedural guidelines and specific time lines on the mediator and mediation process.

Response: These recommendations were not adopted in order to be consistent with IGRA and to maintain flexibility in the mediation process. During the mediation process, the parties are free to mutually consent to self-imposed procedures and/or time lines. The IGRA does not impose procedures or deadlines on the mediator or mediation process.

One comment recommended revising the section to include the requirement that the mediator apply the canons of construction by which all ambiguities should be resolved in favor of the tribe.

Response: This recommendation was not adopted because the mediator's discharge of his or her responsibilities will be guided by applicable law, including canons of statutory construction which will be applied by the mediator as applicable.

One comment suggested the words ''opportunity to be heard'' as being ambiguous and recommended specifying whether it requires an oral hearing unless the parties waive the requirement.

Response: This recommendation was not adopted because the mediation process is not a formal administrative or adjudicatory process. The mediation process requires flexibility and the parties are free to mutually consent to self-imposed procedures.

Section 291.13 What must the Secretary do upon receiving the proposal selected by the mediator?

This section was renumbered section 291.11 due to the deletion of sections 291.9 and 291.10 of the proposed rule.

One comment suggested changing the 60-day requirement to 45 days which IGRA provides for approval or disapproval of gaming compacts.

Response: This recommendation was not adopted because 60 days is reasonable and necessary to make substantive determinations regarding the mediator's selected proposal.

One comment recommended that paragraph (b) be revised to list only the disapproval criteria for compacts as set forth in IGRA, section 2710(b)(8).

Response: This recommendation was not adopted because the Class III gaming procedures must comply not only with section 2710(b)(8) of IGRA but also must comply with the requirements for Class III gaming procedures in section 291.4 and the requirements in section 2710(b)(7)(B)(vii).

One comment recommended providing for automatic approval of the mediator's selected proposal because under IGRA, the compact must be approved except for enumerated reasons set forth in section 2710(b)(8).

Response: This recommendation was not adopted because the Class III gaming procedures must comply not only with section 2710(b)(8) of IGRA, but also with the requirements for Class III gaming procedures in section 291.4 and the requirements in section 2710(b)(7)(B)(vii) of IGRA.

One comment recommended revising the section to include the requirement that when deciding whether to approve or disapprove the proposal selected by the mediator, the Secretary must apply the canons of construction by which all ambiguities should be resolved in favor of the tribe.

Response: This recommendation was not adopted because the Secretary's discharge of his or her responsibilities will be guided by applicable law, including canons of statutory

construction which will be applied by the Secretary as applicable.

Several comments recommended changing paragraph (c) to require the Secretary to issue procedures if the mediator's proposal is rejected.

Response: This recommendation was adopted and the word ''may'' in paragraph (c) was replaced by the word ''shall'' to more closely track the statutory language in 25 U.S.C. 2710(d)(7)(B)(vii).

One comment recommended specifying a time frame within which the Secretary prescribes procedures under paragraph (c).

Response: This recommendation was adopted and a 60-day requirement has been added.

One comment suggested paragraph (c) was confusing because it appeared the Secretary was adopting the mediator's selected proposal even though he/she was rejecting it.

Response: This recommendation was adopted and language was added to clarify that the Secretary will use the mediator's selected proposal as much as possible while comporting with IGRA and relevant provisions of State law.

One comment recommended under paragraph (c) the Secretary be required to explain in writing the specific reasons for disapproval.

Response: This recommendation was not adopted because that requirement is already specified in paragraph (a). The words ''in the event'' were changed to ''if'' for clarification.

Section 291.14 When do Class III gaming procedures for an Indian tribe become effective?

This section was renumbered section 291.13 due to the deletions of sections 291.9 and 291.10 of the proposed rule.

Language referencing section 291.10(b)(1) was deleted because section 291.10 has been deleted due to the new revised section 291.9.

One comment recommended specifying that the Secretary shall have 15 days to publish the procedures in the **Federal Register**.

Another comment recommended adding the words ''as soon as possible'' to make sure there is no delay.

Response: These recommendations were not adopted as being unnecessary or too vague, and to remain consistent with IGRA's language. The IGRA does not provide for a specific publication time, but it is the Secretary's intention to publish the notice expeditiously.

Section 291.15 How can Class III gaming procedures approved by the Secretary be amended?

This section was renumbered section 291.14 due to the deletions of sections 291.9 and 291.10 of the proposed rule.

One comment suggested the section is unwieldy if the regulations do not take the States out of the Class III gaming procedures process.

Response: This recommendation was not adopted because it cannot be assumed that the States will fail to participate in amendments. States are involved parties as contemplated by IGRA.

One comment suggested this section erroneously made amendments to the Class III gaming procedures subject to the process in section 291.3.

Response: This recommendation was adopted and the section was clarified to explicitly exclude procedures amendments to the requirements of section 291.3.

One comment recommended a two-tiered approach to Class III gaming procedures amendments.

Response: This recommendation was not adopted in order to keep the same process applicable to amendments as to original proposals.

One comment suggested specifying the duration of Class III gaming procedures. The comment recommended stating the procedures would be valid in perpetuity or for a term certain, unless the Secretary either approves an amendment to the procedures or repeals them, or unless the Indian tribe requires cancellation. The comment recommended that procedures remain in effect regardless of any changes in state law during the length of the term.

Response: This recommendation was partially adopted and a new section 291.15 was added to provide that procedures will remain in effect for the duration specified in the procedures themselves, or until amended. In addition, section 291.4(j) was amended to require the Indian tribe's proposal to address the length of time the procedures will remain in effect. Finally, this new section will not address the effect of any changes in state law on existing procedures because the effect of any such change is not explicitly resolved by IGRA, and has not been settled by the courts. Accordingly, the Department has determined not to take a position on this issue in these regulations.

One comment suggested the regulations do not state whether the Secretary's decisions can be appealed or if the decisions are considered final.

Response: This recommendation was not adopted because the Department of the Interior (Department) already has regulations specifying appealability in 25 CFR § 2 *et seq.*

Executive Order 12866

This is a significant rule under Executive Order (E.O.) 12866 and has been reviewed by Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Department 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 this Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability to U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Act of 1995

This regulation imposes no unfunded mandate on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Executive Order 12630

The Department has determined that this rule does not have significant ''takings'' implications. The rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects.

As explained above, the Secretary has determined that he has the statutory authority to adopt procedures to permit Indian gaming in appropriate circumstances. Secretarial authority was expressly provided in IGRA with respect to the judicially-supervised mediation scheme. It would be exercised under the rule in a manner consistent with the statutory directive

and congressional intent. The rule provides the opportunity for States to voluntarily participate in a mediation process under the auspices of the Secretary. As the Supreme Court noted in *Seminole*, Congress may, under the Constitution, choose to withhold from States any authority over Indian gaming. Under the rule, the Secretary would be tracking the scheme set forth by Congress and the rule would afford the States as much opportunity to participate as where it does not claim immunity from suit.

Executive Order 12988

The Department has certified to OMB that these regulations meet the applicable standards provided in sections (3)(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

Sections 291.4, 291.10, 291.12, and 291.15 contain information collection requirements. The BIA has submitted a request for emergency clearance by OMB for this collection of information.

The information requested will be unique for each tribe and may be changed when necessary to fit the needs of the tribe.

All information is to be collected upon the submission of a request by a tribe for Class III gaming procedures. The annual reporting and record keeping burden for the collection of information is estimated to average 1,000 hours for each response and we estimate there will be approximately 12 respondents. The collection will include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. The total annual burden is estimated to be 12,000 hours.

The Paperwork Reduction Act of 1995 requires us to tell you that a Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

NEPA Statement

The Department 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.

Drafting Information: The primary author of this proposed rule is George Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 291

Indians—business and finance, Indians—Gaming

For the reasons given in the preamble, part 291 is added to Title 25, Chapter 1 of the Code of Federal Regulations to read as set forth below.

PART 291—Class III Gaming Procedures

Sec.

Authority: 5 U.S.C. 301; 25 U.S.C. sections 2,9 and 2710.

§ 291.1 Purpose and scope.

The regulations in this part establish procedures that the Secretary will use to promulgate rules for the conduct of Class III Indian gaming when:

(a) A State and an Indian tribe are unable to voluntarily agree to a compact and;

(b) The State has asserted its immunity from suit brought by an Indian tribe under 25 U.S.C. 2710(d)(7)(B).

§ 291.2 Definitions

(a) All terms have the same meaning as set forth in the definitional section of IGRA, 25 U.S.C. section 2703(1)–(10).

(b) The term ''compact'' includes renewal of an existing compact.

§ 291.3 When may an Indian tribe ask the Secretary to issue Class III gaming procedures?

An Indian tribe may ask the Secretary to issue Class III gaming procedures when the following steps have taken place:

(a) The Indian tribe submitted a written request to the State to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities;

(b) The State and the Indian tribe failed to negotiate a compact 180 days after the State received the Indian tribe's request;

(c) The Indian tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian tribe to negotiate such a compact;

(d) The State raised an Eleventh Amendment defense to the tribal action; and

(e) The Federal district court dismissed the action due to the State's sovereign immunity under the Eleventh Amendment.

§ 291.4 What must a proposal requesting Class III gaming procedures contain?

A proposal requesting Class III gaming procedures must include the following information:

(a) The full name, address, and telephone number of the Indian tribe submitting the proposal;

(b) A copy of the authorizing resolution from the Indian tribe submitting the proposal;

(c) A copy of the Indian tribe's gaming ordinance or resolution approved by the NIGC in accordance with 25 U.S.C. 2710, if any;

(d) A copy of the Indian tribe's organic documents, if any;

(e) A copy of the Indian tribe's written request to the State to enter into compact negotiations, along with the Indian tribe's proposed compact, if any;

(f) A copy of the State's response to the tribal request and/or proposed compact, if any;

(g) A copy of the tribe's Complaint (with attached exhibits, if any); the State's Motion to Dismiss; any Response by the tribe to the State's Motion to Dismiss; any Opinion or other written documents from the court regarding the State's Motion to Dismiss; and the Court's Order of dismissal;

(h) The Indian tribe's factual and legal authority for the scope of gaming specified in paragraph (j)(13) of this section;

(i) Regulatory scheme for the State's oversight role, if any, in monitoring and enforcing compliance; and

(j) Proposed procedures under which the Indian tribe will conduct Class III gaming activities, including:

(1) A certification that the tribe's accounting procedures are maintained in accordance with American Institute of Certified Public Accountants Standards for Audits of Casinos, including maintenance of books and records in accordance with Generally Accepted Accounting Principles and applicable NIGC regulations;

(2) A reporting system for the payment of taxes and fees in a timely manner and in compliance with Internal Revenue Code and Bank Secrecy Act requirements;

(3) Preparation of financial statements covering all financial activities of the Indian tribe's gaming operations;

(4) Internal control standards designed to ensure fiscal integrity of gaming operations as set forth in 25 CFR Part 542;

(5) Provisions for records retention, maintenance, and accessibility;

(6) Conduct of games, including patron requirements, posting of game rules, and hours of operation;

(7) Procedures to protect the integrity of the rules for playing games;

(8) Rules governing employees of the gaming operation, including code of conduct, age requirements, conflict of interest provisions, licensing requirements, and such background investigations of all management officials and key employees as are required by IGRA, NIGC regulations, and applicable tribal gaming laws;

(9) Policies and procedures that protect the health and safety of patrons and employees and that address insurance and liability issues, as well as safety systems for fire and emergency services at all gaming locations;

(10) Surveillance procedures and security personnel and systems capable of monitoring movement of cash and chips, entrances and exits of gaming facilities, and other critical areas of any gaming facility;

(11) An administrative and/or tribal judicial process to resolve disputes between gaming establishment, employees and patrons, including a process to protect the rights of individuals injured on gaming premises by reason of negligence in the operation of the facility;

(12) Hearing procedures for licensing purposes;

(13) A list of gaming activities proposed to be offered by the Indian tribe at its gaming facilities;

(14) A description of the location of proposed gaming facilities;

(15) A copy of the Indian tribe's liquor ordinance approved by the Secretary if intoxicants, as used in 18 U.S.C. 1154, will be served in the gaming facility;

(16) Provisions for a tribal regulatory gaming entity, independent of gaming management;

(17) Provisions for tribal enforcement and investigatory mechanisms, including the imposition of sanctions, monetary penalties, closure, and an administrative appeal process relating to enforcement and investigatory actions;

(18) The length of time the procedures will remain in effect; and

(19) Any other provisions deemed necessary by the Indian tribe.

§ 291.5 Where must the proposal requesting Class III gaming procedures be filed?

Any proposal requesting Class III gaming procedures must be filed with the Director, Indian Gaming Management Staff, Bureau of Indian Affairs, U.S. Department of the Interior, MS 2070-MIB, 1849 C Street NW, Washington, DC 20240.

§ 291.6 What must the Secretary do upon receiving a proposal?

Upon receipt of a proposal requesting Class III gaming procedures, the Secretary must:

(a) Within 15 days, notify the Indian tribe in writing that the proposal has been received, and whether any information required under § 291.4 is missing;

(b) Within 30 days of receiving a complete proposal, notify the Indian tribe in writing whether the Indian tribe meets the eligibility requirements in § 291.3. The Secretary's eligibility determination is final for the Department.

§ 291.7 What must the Secretary do if it has been determined that the Indian tribe is eligible to request Class III gaming procedures?

(a) If the Secretary determines that the Indian tribe is eligible to request Class III gaming procedures and that the Indian tribe's proposal is complete, the Secretary must submit the Indian tribe's proposal to the Governor and the Attorney General of the State where the gaming is proposed.

(b) The Governor and Attorney General will have 60 days to comment on:

(1) Whether the State is in agreement with the Indian tribe's proposal;

(2) Whether the proposal is consistent with relevant provisions of the laws of the State;

(3) Whether contemplated gaming activities are permitted in the State for any purposes, by any person, organization, or entity.

(c) The Secretary will also invite the State's Governor and Attorney General to submit an alternative proposal to the Indian tribe's proposed Class III gaming procedures.

§ 291.8 What must the Secretary do at the expiration of the 60-day comment period if the State has not submitted an alternative proposal?

(a) Upon expiration of the 60-day comment period specified in § 291.7, if the State has not submitted an alternative proposal, the Secretary must review the Indian tribe's proposal to determine:

(1) Whether all requirements of § 291.4 are adequately addressed;

(2) Whether Class III gaming activities will be conducted on Indian lands over which the Indian tribe has jurisdiction;

(3) Whether contemplated gaming activities are permitted in the State for any purposes by any person, organization, or entity;

(4) Whether the proposal is consistent with relevant provisions of the laws of the State;

(5) Whether the proposal is consistent with the trust obligations of the United States to the Indian tribe;

(6) Whether the proposal is consistent with all applicable provisions of IGRA; and

(7) Whether the proposal is consistent with provisions of other applicable Federal laws.

(b) Within 60 days of the expiration of the 60-day comment period in § 291.7, the Secretary must notify the Indian tribe, the Governor, and the Attorney General of the State in writing that he/she has:

(1) Approved the proposal if the Secretary determines that there are no objections to the Indian tribe's proposal; or

(2) Identified unresolved issues and areas of disagreements in the proposal, and invite the Indian tribe, the Governor and the Attorney General to participate in an informal conference, within 30 days of notification unless the parties agree otherwise, to resolve identified unresolved issues and areas of disagreement.

(c) Within 30 days of the informal conference, the Secretary must prepare and mail to the Indian tribe, the Governor and the Attorney General:

(1) A written report that summarizes the results of the informal conference; and

(2) A final decision either setting forth the Secretary's proposed Class III gaming procedures for the Indian tribe, or disapproving the proposal for any of the reasons in paragraph (a) of this section.

§ 291.9 What must the Secretary do at the end of the 60-day comment period if the State offers an alternative proposal for Class III gaming procedures?

Within 30 days of receiving the State's alternative proposal, the Secretary must appoint a mediator who:

(a) Has no official, financial, or personal conflict of interest with respect to the issues in controversy; and

(b) Must convene a process to resolve differences between the two proposals.

§ 291.10 What is the role of the mediator appointed by the Secretary?

(a) The mediator must ask the Indian tribe and the State to submit their last best proposal for Class III gaming procedures.

(b) After giving the Indian tribe and the State an opportunity to be heard and present information supporting their respective positions, the mediator must select from the two proposals the one that best comports with the terms of IGRA and any other applicable Federal law. The mediator must submit the proposal selected to the Indian tribe, the State, and the Secretary.

§ 291.11 What must the Secretary do upon receiving the proposal selected by the mediator?

Within 60 days of receiving the proposal selected by the mediator, the Secretary must do one of the following:

(a) Notify the Indian tribe, the Governor and the Attorney General in writing of his/her decision to approve the proposal for Class III gaming procedures selected by the mediator; or

(b) Notify the Indian tribe, the Governor and the Attorney General in writing of his/her decision to disapprove the proposal selected by the mediator for any of the following reasons:

(1) The requirements of § 291.4 are not adequately addressed;

(2) Gaming activities would not be conducted on Indian lands over which the Indian tribe has jurisdiction;

(3) Contemplated gaming activities are not permitted in the State for any purpose by any person, organization, or entity;

(4) The proposal is not consistent with relevant provisions of the laws of the State;

(5) The proposal is not consistent with the trust obligations of the United States to the Indian tribe;

(6) The proposal is not consistent with applicable provisions of IGRA; or

(7) The proposal is not consistent with provisions of other applicable Federal laws.

(c) If the Secretary rejects the mediator's proposal under paragraph (b) of this section, he/she must prescribe appropriate procedures within 60 days under which Class III gaming may take place that comport with the mediator's selected proposal as much as possible, the provisions of IGRA, and the relevant provisions of the laws of the State.

§ 291.12 Who will monitor and enforce tribal compliance with the Class III gaming procedures?

The Indian tribe and the State may have an agreement regarding monitoring and enforcement of tribal compliance with the Indian tribe's Class III gaming procedures. In addition, under existing law, the NIGC will monitor and enforce tribal compliance with the Indian tribe's Class III gaming procedures.

§ 291.13 When do Class III gaming procedures for an Indian tribe become effective?

Upon approval of Class III gaming procedures for the Indian tribe under either § 291.8(b), § 291.8(c), or § 291.11(a), the Indian tribe shall have 90 days in which to approve and execute the Secretarial procedures and forward its approval and execution to the Secretary, who shall publish notice of their approval in the **Federal Register**. The procedures take effect upon their publication in the **Federal Register**.

§ 291.14 How can Class III gaming procedures approved by the Secretary be amended?

An Indian tribe may ask the Secretary to amend approved Class III gaming procedures by submitting an amendment proposal to the Secretary. The Secretary must review the proposal by following the approval process for initial tribal proposals, except that the requirements of § 291.3 are not applicable and he/she may waive the requirements of § 291.4 to the extent they do not apply to the amendment request.

§ 291.15 How long do Class III gaming procedures remain in effect?

Class III gaming procedures remain in effect for the duration specified in the procedures or until amended pursuant to § 291.14.

Dated: April 1, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–8910 Filed 4–9–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 863

Leasing U.S. Air Force Aircraft and Related Equipment to Nongovernment Organizations

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending the Code of Federal Regulations (CFR) by removing its rule on Leasing U.S. Air Force Aircraft and Related Equipment to Nongovernmental Organizations. This rule is removed, as the current information contained in it does not reflect current policy of AFI 64–103, May 1997.

EFFECTIVE DATE: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Kattner, Headquarters, U.S. Air Force, SAF/AQCP, 1500 Wilson Blvd., 7th Floor, Arlington, VA 22209–2404, (703) 588–7059.

List of Subjects in 32 CFR Part 863

Aircraft, Government Property

PART 863—[REMOVED]

Accordingly, and under the authority of 10 U.S.C. 2667, 32 CFR, Chapter VII is amended by removing Part 863.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–8981 Filed 4–9–99; 8:45 am]

BILLING CODE 5001–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 68–7143–a; FRL–6322–5]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the revisions to the Washington State Implementation Plan (SIP) submitted by the Washington Department of Ecology on March 2, 1999 amending two portions of the Spokane County Air Pollution Control Agency's (SCAPCA) Regulation I, Article IV. The revisions to the SIP for the Spokane particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) nonattainment area simply adds a