

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127 or by email to [cpsec@cpsec.gov](mailto:cpsec@cpsec.gov). Comments should be captioned "ANPR for Bunk Beds." All comments and submissions should be received no later than April 7, 1998.

Dated: January 15, 1998.

**Sadye E. Dunn,**

Secretary, Consumer Product Safety Commission.

[FR Doc. 98-1457 Filed 1-21-98; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 140

#### Requests for Exemptive, No-Action and Interpretative Letters

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is proposing new regulations to establish procedures for the filing of requests for the issuance of exemptive, no-action and interpretative letters from the Commission's staff.

**DATES:** Comments on the proposed rule must be received on or before March 23, 1998.

**ADDRESSES:** Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Comments may be sent by facsimile transmission to (202) 418-5528, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to "Rule Proposal Re: Requests for Exemptive, No-Action, and Interpretative Letters."

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, or Helene D. Schroeder, Attorney-Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C., 20581. Telephone: (202) 418-5450.

#### SUPPLEMENTARY INFORMATION:

##### I. Requests for Exemptive, No-Action and Interpretative Letters

###### A. Background

In the course of administering the Commodity Exchange Act ("Act")<sup>1</sup> and the rules, regulations and orders promulgated thereunder by the Commission,<sup>2</sup> Commission staff receive written requests for advice on or interpretation of particular provisions of the Act or Commission rules to proposed conduct or transactions. If appropriate, Commission staff provide the advice or guidance sought through the issuance of exemptive, no-action or interpretative letters ("Letters").<sup>3</sup> Currently, there are no Commission rules setting forth procedures for requests for Letters.<sup>4</sup>

The Commission is of the view that establishment of uniform procedural rules governing these requests will significantly assist the Commission and its staff by assuring a focused presentation of the guidance sought, the issues raised thereby, and relevant precedent. The Commission is therefore now proposing uniform procedures for the filing of requests for exemptive, no-action or interpretative letters. These procedures are intended to elicit from the outset the information that staff will need to evaluate a request, and to minimize staff resources expended in seeking additional information.

Letters generally should be requested from (and, if appropriate, issued by) Commission staff in instances where the need for guidance or clarification of a rule's applicability arises from relatively routine circumstances. The Commission believes that the best mechanism for handling novel or complex issues, significant gaps in regulatory coverage, relief from regulatory requirements or initiatives for regulatory reform

generally is the notice and comment rulemaking process or, where appropriate, exemptive action by the Commission itself after notice and public comment. This is especially true where a perceived issue is likely to affect a large number of persons or entities. Accordingly, the Commission reminds registrants, counsel and the public that it is receptive to public and industry input (including, for example, petitions for rulemaking actions and petitions for Commission exemptive action or other orders) in the continuing process of adapting its regulatory framework to changing market circumstances. The Commission also notes that, notwithstanding the requirements for Letters set forth herein, registrants, other industry participants, counsel and members of the public should feel free to seek information from Commission staff in those situations where they do not require no-action relief, or a formal interpretation of statutory or regulatory provisions.

Although not required to do so (see II. Related Matters, below), the Commission invites public comment on this proposal.

###### B. The Proposed Rule

###### 1. Definitions

Paragraph (a) of the proposed rule sets forth definitions for exemptive, no-action and interpretative letters. The term "exemptive" letter is defined as a written grant of relief to a specified person from the applicability of a specific provision of the Act or a Commission rule, regulation or order. Exemptive letters may be issued by Commission staff only in those situations where: (a) the Commission itself has exemptive authority; and (b) that authority has been delegated to staff.<sup>5</sup>

A "no-action" letter is defined as a written statement that staff of a specific division will not recommend enforcement action to the Commission if a proposed transaction is undertaken or a proposed activity is conducted. A no-action letter represents the position of only the division issuing it and is binding only upon that division and not

<sup>1</sup> 7 U.S.C. § 1 *et seq.* (1994).

<sup>2</sup> Commission regulations are found at 17 C.F.R. Ch. I *et seq.*

<sup>3</sup> These types of letters are proposed to be defined in Rule 140.99 (a)(1), (a)(2), and (a)(3), respectively, and each is discussed in Part b, below.

<sup>4</sup> By contrast, since 1971, the Securities and Exchange Commission ("SEC") has required conformity with certain procedures by persons submitting requests for no-action or interpretative letters. See Securities Act Release No. 5127, 36 FR 2600 (Jan. 25, 1971) (prescribed procedures for requests under the Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Company Act of 1940 and Investment Advisers Act of 1940). Some of these procedures have been modified or supplemented by SEC staff. See, e.g., Securities Act Release No. 6253, 45 FR 72644 (Oct. 28, 1980) (institution of abbreviated response procedures by Division of Corporation Finance); and Securities Act Release No. 6269 (Dec. 5, 1980) (institution of seven-copy requirement for requests to Division of Corporation Finance).

<sup>5</sup> The proposed rule governs requests submitted to and processed by Commission staff. In certain circumstances, however, requests must be submitted to and processed by the Commission itself. For example, where exemptive authority has not been delegated to the staff, exemptive relief must be granted by Commission order (e.g., under Section 4(c) of the Act, 7 U.S.C. § 6(c) (1994)). The Commission intends that persons making exemption requests of it should comply with the requirements of the applicable section of the Act or Commission rules, regulations or orders, although paragraphs (b), (c), (f) and (h) of the proposed rule provide some useful guidance for such requests.

on the Commission or other divisions. Further, a no-action letter is only effective with respect to the person or persons to whom it was issued.

An "interpretative" letter refers to written advice or guidance with respect to the interpretation of a specific provision of the Act or a specific Commission rule, regulation or order, which advice or guidance is provided in the context of a proposed transaction or activity. These letters are usually issued by the staff of a particular division of the Commission or the Office of the General Counsel and, unless otherwise noted, reflect only the views of the division or the Office of the General Counsel.<sup>6</sup> Unlike no-action letters (or exemptive letters), an interpretative letter can be relied upon by persons other than those to whom the letter was issued, but it is binding only upon the Commission staff unit issuing it, and not upon the Commission itself.

Issuance of Letters is entirely within the discretion of Commission staff. A request may be denied, or staff may refuse to consider a request, without explanation. See paragraph (b)(1) of the proposed rule.

## 2. General Requirements

Paragraph (b) of the proposed rule sets forth the general requirements for requests for Letters. All requests must relate to a specific proposed activity or transaction and must set forth as completely as possible the particular facts and circumstances giving rise to the request.<sup>7</sup> The proposed rule codifies the policy adhered to by Commission staff of not providing responses to requests based on hypothetical situations. The request may be submitted by the person seeking a Letter or by that person's authorized representative. In any case, the person on whose behalf a Letter is sought must be identified. Consistent with current practice, Commission staff will not respond to requests submitted on behalf of unnamed persons.

If the Commission were to adopt the proposed rule, Commission staff would expect all requests for Letters to comply with the rule's requirements. A request that does not comply with the rule as

adopted may be rejected by Commission staff without further analysis.<sup>8</sup>

## 3. Information Requirements

Requests for Letters should contain the information set forth in paragraph (c). Specifically, each request should identify the requester's name, main business address, telephone number, and if applicable, National Futures Association registration identification number as well as corresponding information concerning any other persons on whose behalf the Letter is being sought. The request must also provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

Paragraph (c)(2) of the proposed rule requires that the specific section number of the Act and/or Commission rule, regulation or order to which the request relates be set forth in the upper right-hand corner of the first page of the request. This requirement will facilitate the proper routing of the request within the Commission.

Paragraph (c)(3) requires that all requests for exemptive, no-action or interpretative letters be accompanied by a certification that the representations contained in the request are true and accurate, along with an undertaking to supplement the request in the event any material fact changes or ceases to be true. The requester must make a complete and reliable presentation of the facts relevant to a request. A certification requirement is intended to assure that requesters fully review the facts and keep Commission staff advised of changed circumstances, without the need for repeated requests by staff for supplemental information.

Paragraph (c)(4) of the proposed rule requires that each request specify the particular type of Letter being sought along with a discussion of the reasons why the requester needs a Letter. In this regard, the request should identify not only the specific concerns underlying the proposed transaction or activity giving rise to the request, but also the legal or public policy reasons for granting the request. Failure to frame an identifiable issue or problem and a reasonable justification for the relief or interpretation sought will be grounds for rejection of a request.

<sup>8</sup> In proposing to codify the authority of its staff to reject non-conforming requests, the Commission is not proposing to alter the staff's current practice of declining to respond to requests in other circumstances, such as when legal, policy or practical considerations make it inappropriate to respond to the merits of a request. See paragraph (b)(1).

Paragraph (c)(5) of the proposed rule requires that requests make reference to all relevant authority, including the Act, Commission rules, regulations and orders, relevant case law, and any administrative decisions on the issue. In this regard, the request must identify and distinguish all adverse authority.

If Commission staff have previously issued a Letter in circumstances similar to those set forth in the request, paragraph (c)(6) requires that the request identify the prior Letter along with the conditions, if any, that were imposed by the division issuing the Letter. Requesters and their counsel must exercise due diligence in identifying and assembling the relevant authorities, including prior Letters of Commission staff.

Under paragraph (c)(7) of the proposed rule, it would be appropriate in a request Letter to ask for alternative relief if the primary relief requested is denied.

## 4. Filing Requirements

Paragraph (d) of the proposed rule establishes the procedures for filing requests for Letters. Specifically, paragraph (d)(1) requires that each request be made in writing and signed. "Draft" requests for Letters will not be considered.

Pursuant to paragraph (d)(2), the request must be filed with the Director of the Division of Trading and Markets, who will then forward the request to the appropriate division within the Commission. Under ordinary circumstances the Division of Trading and Markets and the Division of Economic Analysis will issue no-action letters, and the Office of the General Counsel will issue statutory interpretations. Interpretative letters concerning rules or regulations will be referred either to one of the Divisions or to the Office of the General Counsel depending upon the issue to be addressed.

The requirement that all requests be in writing codifies current agency practice. Oral requests for Letters will not be recognized.

Commenters specifically are requested to address whether the rule should permit requests to be filed electronically.

## 5. Form of Staff Response

Paragraph (e) of the proposed rule provides Commission staff with flexibility as to the level of detail necessary for a staff response to a request for a Letter. Paragraph (e) affords Commission staff the option of providing a responsive letter in an abbreviated or endorsement format that

<sup>6</sup> Statutory interpretations are issued by staff of the Office of the General Counsel. Requests for interpretations of rule provisions will be assigned on a case-by-case basis to staff of the Division of Trading and Markets, the Division of Economic Analysis or the Office of the General Counsel.

<sup>7</sup> Where charts or diagrams are likely to facilitate the staff's understanding of the relevant facts, requesters are encouraged to submit such materials with their initial correspondence.

merely sets forth the staff's position and does not contain a detailed recitation of the facts. In such cases, the Letter would provide that it is based on the facts and representations set forth in the request and thus would incorporate by reference those facts and representations. Use of this abbreviated format, where appropriate, may lessen the burden on Commission staff in responding to requests for Letters.<sup>9</sup> The Commission requests public comment on whether and in what circumstances it should utilize this abbreviated procedure.

As set forth in paragraph (e), no grant of any request governed by the proposed rule shall be effective unless it is in writing signed by responsible Commission staff and has been transmitted in final form to the requester. Oral indications from staff are not binding and should not be relied on.<sup>10</sup> Likewise, it is highly inappropriate for a requester to state in a request letter that the requester will assume relief has been granted and will proceed with the proposed transaction if the requester does not receive a negative response from Commission staff by a certain date. Failure by staff to respond to a request for a Letter does not constitute staff approval of the request.<sup>11</sup>

## 6. Withdrawal of Requests

Paragraph (f) of the proposed rule makes clear that any withdrawal of a request for a Letter may be accomplished only if: (1) the requester certifies in writing that the person making the request or on whose behalf the request has been made has determined not to proceed with the contemplated transaction or that intervening events have rendered the request moot;<sup>12</sup> or (2) the requester has sought confidential treatment in accordance with Rule 140.98 and Commission staff has determined that confidential treatment should not be granted (in which case Rule 140.98 permits the requester to withdraw within 30 days of being so notified). The

proposed rule is not intended to modify or affect the provisions of Rule 140.98.

In permitting withdrawal in limited circumstances only, the proposed rule is intended to eliminate the past practice of certain requesters of submitting requests (often in draft form) and then withdrawing them if it appeared likely that an adverse response would be received.<sup>13</sup>

Although the goal of the proposed rule is that initial requests will be as complete and thorough as possible, Commission staff from time to time will need to seek additional information from requesters in order to process a request. Where Commission staff asks for supplemental information or analysis, the requester should respond as quickly as practicable. Paragraph (g) of the proposed rule provides that an adverse response generally will be issued where the requester fails to provide additional information or analysis within 30 days of receiving a request for the same from Commission staff, unless an extension is granted by Commission staff considering the request.

## 7. Confidential Treatment

Paragraph (h) of the proposed rule makes clear that where confidential treatment is sought, it must be requested separately, in conformity with Rule 140.98 or Rule 145.9 as applicable. These sections pertain, respectively, to requests for confidential treatment of: (a) the request for a Letter as well as the Letter issued in response; and (b) information submitted to the Commission which may be sought under the Freedom of Information Act, 5 U.S.C. 552.

## 8. Applicability to Other Sections

Paragraph (i) of the proposed rule makes clear that the rule would not alter existing provisions of the Act or Commission rules, regulations or orders (such as Rules 4.5, 4.7 and 4.12(b)) under which specified exemptive relief is available upon the filing of a notice of claim of (or eligibility for) the particular exemption.

## II. Related Matters

### A. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553(b), sets forth an exemption from the generally applicable notice-and-comment requirement for informal rulemaking where the rules at issue concern agency organization, procedure or practice. Although the rule proposed

herein pertains exclusively to agency procedures and practice, the Commission is interested in receiving comment from the public on the proposal and, accordingly, is publishing the proposal for notice and public comment.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider in the course of proposing substantive rules, the effect of those rules on small entities. The proposed rule makes clear that requests may be made by any person, including those that would constitute "small entities" within the meaning of the RFA. The uniformity mandated by the rule will provide greater certainty to requesters as to the procedures to follow in seeking relief or advice and, to this extent, the rule removes a burden on all requesters, regardless of their size.

Additionally, the Commission has built maximum flexibility into the operation of the rule by making it clear that Commission staff "may," but are not required to, decline to respond to a request that does not meet the requirements of the rule. See paragraph (b)(2). When a non-conforming request is submitted by a person who lacks adequate financial resources to retain counsel (or in other circumstances where strict application of the rule would be inequitable), Commission staff may accommodate the requester by accepting the non-conforming request, by providing guidance to the requester in the proper formulation and filing of the request, or by other means.

The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. § 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

### C. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104-13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and

<sup>9</sup> This procedure is followed by the SEC's Divisions of Corporation Finance and Investment Management. The abbreviated procedure as adopted by the Division of Corporation Finance is set forth in Securities Act Release No. 6253, *supra* note 4.

<sup>10</sup> Commission staff field numerous telephone inquiries from the public and provide information and guidance as appropriate. These proposed rules are not intended to alter this practice. However, while statements made during those conversations are intended to be helpful, they are not binding on the staff or the Commission.

<sup>11</sup> See *Precious Metals Associates, Inc. v. CFTC*, 620 F.2d 900 (1st Cir. 1980).

<sup>12</sup> For example, a request for relief under Rule 4.7(a) notwithstanding participation by a person who is not a qualified eligible participant ("QEP") may become moot if the proposed participation becomes able to meet the QEP criteria.

<sup>13</sup> It is hoped that the provision in paragraph (c)(7) allowing for requests for relief in the alternatives should eliminate any perceived need for this practice.

assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget.

The burden associated with this proposed rule, is as follows:

*Average burden hours per response:* 7.

*Number of respondents:* 215.

*Frequency of response:* 1.3.

Persons wishing to comment on the information that would be required by this proposed/amended rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503 (202) 395-7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418-5160.

#### List of Subjects in 7 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular section 8(a) of the Act, as amended, 7 U.S.C. 12(a), the Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

#### PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 continues to read as follows:

**Authority:** 7 U.S.C. 7a(j) and 12a.

2. Section 140.99 is proposed to be added to read as follows:

##### § 140.99 Requests for Exemptive, No-Action and Interpretative Letters.

(a) *Definitions.* For the purpose of this section:

(1) *Exemptive letter* means a written grant of relief from the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission. An exemptive letter may only be issued

by Commission staff when the Commission itself has exemptive authority and that authority has been delegated by the Commission to the Division in question.

(2) *No-action letter* means a written statement from the staff of a Division of the Commission that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the person or persons who requested such letter. A no-action letter represents the position of only the Division that issued it and is applicable only with respect to the particular circumstances and binding only with respect to parties addressed by the letter. A no-action letter does not bind the Commission itself or any other division thereof.

(3) *Interpretative letter* means written advice or guidance from Commission staff (binding only upon the staff unit providing the advice or guidance and not upon the Commission itself) and may take the form of:

(i) Written advice or guidance from the staff of a particular Division of the Commission or the staff of the Office of the General Counsel with respect to the interpretation of a specific provision of a Commission rule, regulation or order in the context of a proposed transaction or a proposed activity; or

(ii) Written advice or guidance from the staff of the Office of the General Counsel with respect to the interpretation of a specific provision of the Act.

(4) *Letter* means an exemptive, no-action or interpretative letter.

(5) *Division* as used in this section means the Division of Trading and Markets or the Division of Economic Analysis.

(b) *General requirements*—(1) Issuance of Letters is entirely within the discretion of Commission staff. A request may be denied, or staff may refuse to consider or respond to a request without explanation.

(2) Each request for a Letter must comply with the requirements of this section. Commission staff may reject or decline to respond to a request that does not comply with the requirements of this section.

(3) The request must relate to a proposed activity or a proposed transaction. Absent extraordinary circumstances, Commission staff will not issue a Letter based upon past transactions or activities.

(4) The request may be made by a person seeking a Letter or by an authorized representative of such person. Commission staff will not

respond to a request for a Letter that is made by or on behalf of an unidentified person.

(5)(i) The request must set forth as completely as possible the particular facts and circumstances giving rise to the request.

(ii) Commission staff will not respond to a request based on a hypothetical situation.

(c) *Information requirements.* Each request for a Letter must comply with the following information requirements:

(1)(i) A request made by the person seeking a Letter must contain:

(A) The name, main business address, main telephone number and, as applicable, the National Futures Association registration identification number of such person; and

(B) The name and, as applicable, the National Futures Association registration identification number of each other person for whom the requester is seeking the Letter.

(ii) When made by an authorized representative of the person seeking a Letter, the request must contain:

(A) The name, main business address and main business telephone number of the representative;

(B) The name and, as applicable, the National Futures Association registration identification number of the person seeking a Letter; and

(C) The name, and as applicable, the National Futures Association registration identification number of each other person for whom the requester is seeking the Letter.

(iii) The request must provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

(2) The section numbers of the particular provisions of the Act and/or Commission rules, regulations in this chapter, or orders to which the request relates must be set forth in the upper right-hand corner of the first page of the request.

(3) The request must be accompanied by:

(i) A certification by a person with knowledge of the facts that the representations made in the request are accurate and complete. The following form of certification is sufficient for this purpose:

I hereby certify that the statements contained in the attached letter dated \_\_\_\_\_ are true and complete to the best of my knowledge.

(Name and Title)

and

(ii) An undertaking by such person on behalf of the person seeking a Letter that at such time as any material representation made in the request ceases to be accurate and complete, the person who has made the request or received the Letter will promptly submit a written supplement reflecting all material changed circumstances.

(4) The request must identify the type of relief requested and Letter sought and must clearly state why a Letter is needed. The request must identify all relevant legal and factual issues and must discuss the legal and public policy bases supporting issuance of the Letter.

(5) The request must contain references to all relevant authorities, including the Act, Commission rules, regulations in this chapter, and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements. Adverse authority must be cited and discussed.

(6) The request must identify prior Letters issued by Commission staff in response to circumstances similar to those surrounding the request (including adverse Letters), and must identify any conditions imposed by prior Letters as prerequisites for the issuance of those Letters.

(7) Requests may ask that, if the primary relief is denied, alternative relief be granted.

(d) *Filing requirements.* Each request for a Letter must comply with the following filing requirements:

(1) The request must be made in writing and signed.

(2) The request must be filed with the Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The Director will route the request to the appropriate division.

(e) *Form of staff response.* No grant of any request governed by this section is effective unless it is in writing signed by responsible Commission staff and has been transmitted in final form to the requester. Failure by Commission staff to respond to a request for a Letter does not constitute approval of the request. Nothing in this section shall preclude Commission staff from responding to a request for a Letter by way of endorsement or any other abbreviated, written form of response.

(f) *Withdrawal of requests.* Once filed, a request for a Letter may only be withdrawn if:

(1) A request for withdrawal is made in writing and makes the following representations, as applicable, together

with a certification that such representations are true:

(i) The person on whose behalf the request was made has determined not to proceed with the proposed transaction or activity, or

(ii) Intervening events have rendered the request moot; or

(2) The request is the subject of a request for confidential treatment pursuant to § 140.98 and Commission staff has notified the requester that the request for confidential treatment will be denied, in which event the requester may withdraw the letter within 30 days after such notification, as provided in § 140.98.

(g) *Failure to pursue a request.* If a requester fails to respond within 30 calendar days of the date of a request from Commission staff for additional information or analysis, Commission staff generally will issue an adverse response, unless an extension of time has been granted.

(h) *Confidential treatment.* If a requester seeks confidential treatment of a request for a Letter that it has filed, such treatment must be separately requested in accordance with § 140.98 or § 145.9 of this chapter, as applicable.

(i) *Applicability to other sections.* The provisions of this section shall not affect the requirements of, or otherwise be applicable to, notice filings required to be made to claim relief from the Act or from a Commission rule, regulation or order including, without limitation, §§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter.

Issued in Washington, D.C. on January 13, 1998 by the Commission.

**Catherine D. Dixon,**

*Assistant Secretary of the Commission.*

[FR Doc. 98-1138 Filed 1-21-98; 8:45 am]

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## 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:** Proposed rule.

**SUMMARY:** The Department has concluded that it has the authority to prescribe procedures permitting Class III gaming when a State interposes its immunity from suit by an Indian Tribe. The proposed 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.

**DATES:** Written comments must be submitted on or before April 22, 1998 to be considered.

**ADDRESSES:** Mail comments to Paula L. Hart, Indian Gaming Management Staff, Bureau of Indian Affairs (BIA), Department of the Interior, MS 2070-MIB, 1849 C Street, NW, Washington, DC 20240. Comments may be hand-delivered to the same address from 9:00 a.m. to 4:00 p.m. Monday through Friday or sent by facsimile to (202) 273-3153. Comments will be made available for public inspection at this address from 9:00 a.m. to 4:00 p.m. Monday through Friday beginning approximately two weeks after publication of the proposed rule.

#### FOR FURTHER INFORMATION CONTACT:

Paula L. 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:

##### Introduction

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). IGRA, by offering States an opportunity to participate with Indian Tribes in developing regulations for Indian gaming, "extends to States a power withheld from them by the Constitution." *Seminole Tribe of Florida v. State of Florida*, 116 S. Ct. 1114, 1124 (1996).

Since IGRA's passage in 1988, more than 150 compacts in more than 20 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.

IGRA divides Indian gaming into three categories. This proposed rule addresses only the conduct of Class III