planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–192–AD.

Applicability: Model 757–200 series airplanes, line numbers 1 through 57 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of the cargo door frames, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 22,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspections specified in paragraph (a)(1) and (a)(2) of this AD, per Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000.

(1) For all airplanes: Do detailed and high frequency eddy current (HFEC) inspections for cracking of the door frames of the number 1 and 2 cargo doors (includes the frame webs, frame inner and outer chords, bear strap, and skin panels between the upper and lower sills of the cargo door). Repeat the detailed inspections every 3,000 flight cycles, and the HFEC inspections every 12,000 flight cycles.

(2) For Group 3 airplanes: Do a detailed inspection for cracking of the door frame of the number 3 cargo door. Repeat the inspection every 3,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repair

(b) Before further flight, repair any cracking found in the frame webs per Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000. If any cracking is found in any other area and the service bulletin specifies to contact Boeing for disposition of those repairs, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 3: There is no terminating action currently available for the repetitive inspections required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17549 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 504

RIN 3141–AA04

Classification of Games

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule withdrawal.

SUMMARY: The National Indian Gaming Commission hereby gives notice that the proposed regulations establishing a formal process for the classification of games published in the **Federal Register** on November 10, 1999, 64 FR 61234, are withdrawn.

DATES: The proposed rule published on November 10, 1999, at 64 FR 61234 is withdrawn as of July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman, Deputy General Counsel, NIGC, Suite 9100, 1441 L St. NW., Washington, DC 20005. Telephone: 202–632–7003; and fax, 202–632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (IGRA or Act), creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal

value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations, 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games, 25 U.S.C. 2703 (7)(A). Class II gaming, however, does not include any banking card games, electronic or electromechanical facsimiles of any game of chance or slot machines of any kind, 25 U.S.C. 2703 (7)(B). Tribal governments and the NIGC share regulatory authority over Class II gaming without the involvement of state government.

Class III gaming, on the other hand, may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. For a compact to be effective, the approval of the Secretary of the Interior of the compact terms must be obtained. ''Class III gaming'' includes all forms of gaming that do not constitute Class I or II gaming, 25 U.S.C. 2703 (8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming, such as slot machines, roulette and pari-mutuel wagering, and banking card games, such as blackjack.

Game classification is the key feature around which the legal and regulatory framework of tribal gaming is centered. Any doubts or confusion as to the proper classification of a game, therefore, will raise serious questions as to the legality of play of a particular game and may subject a gaming operation to an enforcement action. While Congress outlined the basic parameters for the classification of games, the Commission was left the task of defining certain key terms, *see,* 25 U.S.C. 2703(6)–(8), which was completed on April 9, 1992, with the publication of a final rule setting forth the operational definitions, 57 FR 12382.

Notwithstanding the Commission's best efforts to produce clear, comprehensive definitions, issues in relation to the classification of games continued to emerge throughout the 1990's, resulting in a series of disputes between federal, state, and tribal government. Further complicating the situation, these disputes are not readily subject to judicial resolution because courts have generally recognized immunities among such sovereigns against suits by others, *Seminole Tribe* v. *Florida,* 517 U.S. 44 (1996); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505 (1991). Additionally, the United States has occasionally taken positions on the classification of games that federal courts subsequently deemed incorrect, causing substantial consternation among tribes and states and subjecting the government to criticism by the courts. *See United States* v. *162 Megamania Gambling Devices,* 231 F.3d 713 (10th Cir. 2000); *United States* v. *103 Electronic Gambling Devices,* 223 F.3d 1091 (9th Cir. 2000).

The proposed rule represents the Commission's first attempt to confront these difficulties through the establishment of a formal process for the classification of games. In large measure this approach was in response to increases in the volume of disputes related to the classification of games. As this rulemaking effort got underway, decisions in the courts began to make it increasingly clear that some of the Commission's definitions were out of alignment with judicial interpretation of the Act. The definitions pertaining to games featuring the use of technological aids were particularly troublesome. Advances in technology had produced devices that in the view of the Commission blurred the distinction between simple technological aids and electromechanical facsimiles of games of chance, the earlier permissible without a compact, the latter unlawful without a compact. The analytical unanimity of the courts with regard to these cases impressed upon the Commission the need to reexamine its definitional regulations.

Early in 2001, the Commission undertook a thorough reexamination of its definitional regulations. Due to the interrelationship between the definitional rules and the proposed game classification procedural regulation, action on the proposed procedural rule was stayed pending a final determination with regard to the definitions. Having now issued a final rule amending the Commission's definitions for technological aids, electromechanical facsimile, and games similar to bingo, the Commission is now in a position to address the issue of procedure. 67 FR 41166, June 17, 2002.

Currently, there are three methods available to the Commission for addressing the classification of games. One is classification through formal notice and comment rulemaking. While such method produces certainty and finality, the process is slow, cumbersome, and insufficiently nimble to be practical for use on a routine basis. Another method is through the use of advisory opinions prepared and issued by the Commission's Office of General Counsel upon request by an interested party. To date, the Office General Counsel has issued more than thirty such opinions regarding the classification of individual games. These opinions, however, are merely advisory in nature and not the result of formal administrative processes. They are not, thus, entitled to the level of deference that must be accorded to final decisions of the Commission, though the courts have accorded them limited deference in certain circumstances. *United States* v. *162 Megamania Gambling Devices,* 231 F.3d 713, 719, 720, 722–23 (10th Cir. 2000); *see also Diamond Game Enterprises, Inc.* v. *Reno,* 230 F.3d 365 (D.C. Cir. 2000) (relying on Commission's advisory opinion on the Tab Force Validation System).

The third method is through formal administrative enforcement action. These actions may be brought in instances where the Chairman determines that the games offered constitute Class III games and no compact is in place. While such administrative adjudications can provide reliable results, the process is cumbersome, time-consuming and resource-intensive for both the Commission and the affected party. A single enforcement action may be pending for many months or years before the administrative process produces a final agency determination, after which, the matter may be subject to another lengthy proceeding in the federal courts.

The Commission is of the view that none of the three methods presently available is ideal. As a matter of sound public policy as well as in the interest of fairness and due process, a regulated industry ought not to be forced to risk enforcement action in order to obtain a legally binding and judicially reviewable classification opinion from the Commission. Absent a fair, carefully thought-out procedure for classifying games, however, the Commission has no alternative but to follow the status quo, which has been unsatisfactory to all concerned.

The Commission's proposed rule establishing a classification procedure was severely criticized by tribal governments in written comments as well as in the testimony at the hearing on the proposal held January 24, 2000 in Tulsa, Oklahoma. The most vehement criticism was that the rule failed to recognize that the Commission shares responsibility for the regulation of Class

II gaming with tribal governments. Tribal governments, as the primary regulators of Indian gaming, have an important role to play in the classification of games. Many felt that the procedure would exacerbate rather than reduce conflict because the process minimizes the role of tribal gaming commissions in making classification determinations in the first instance.

A second major criticism was that the rule was far too sweeping in that no game, even those games unquestionably falling within the Class II criteria, could be introduced for play without first receiving a classification decision from the Commission. Critics felt that given the large number of Class II games, the Commission would not be able to produce classification decisions in a reasonable or timely fashion. Many felt that the Commission's capacity to produce decisions under the rule would be overwhelmed by the sheer volume of the workload. The Commission itself has concerns in this regard. Grandfathering those games in common play at the time of issuance was considered, but this approach also has its faults and the Commission has yet to discern a way of effecting a workable solution to the myriad of issues involved in resolving this difficulty.

Commenters raised a number of other significant questions, many of which possess great merit. The Commission is particularly sensitive to the concern that its workload capacity could be detrimentally affected. Indeed, classification decisions often present difficult technical issues and the process may be highly time intensive. In some cases, the expense may be substantial. On the other hand, the Commission recognizes that its lack of a uniform process for making gaming classification decisions fosters a climate of uncertainty, exacerbating disputes and increasing the likelihood of long, drawn out litigation.

The Commission recognizes that Congress intended a partnership between it and tribal gaming regulators. IGRA clearly anticipates that tribal and federal regulators must work collaboratively to insure the integrity of Indian gaming. The Commission believes that a middle ground can be found with regard to a formal mechanism for game classification; however, the current proposal does not satisfy this objective.

It is the Commission's view that the proposed rule would have more likely satisfied the concerns of all if there had been greater opportunity for tribal input during its development. The Commission has utilized collaborative processes in rulemaking for a number of years with favorable result. Given the joint system of tribal and federal regulation and the on-going relationship between tribal and federal regulators, the expertise and experience of tribal regulators would have greatly aided the Commission's effort to develop a proposal in better alignment with the concerns and needs of tribal governments and to assist in resolving the problems that remain outstanding. If, at a future time, the Commission reconsiders promulgation of a rule establishing a formal procedure for the classification of games, a tribal advisory committee should be established to advise the Commission as to the nature and content of such rule.

History of the Rulemaking

A proposed rule establishing a process for classification of games was published in the **Federal Register** on November 10, 1999. 64 FR 61234.

Sixty-nine (69) comments were submitted in response to that publication. Comments were initially due on January 10, 2000. On December 27, 1999, the Commission issued a Notice of Extension of Time and Notice of Hearing. Written and oral testimony was submitted to the Commission at a public hearing on January 24, 2000, in Tulsa, Oklahoma. Following the extension, comments were due February 24, 2000.

Notice

The National Indian Gaming Commission (Commission) hereby gives notice that the proposed regulations establishing a formal process for the classification of games published in the **Federal Register** on November 10, 1999, 64 FR 61234, are withdrawn. If, at a future time, the Commission elects to proceed with the promulgation of a rule establishing a formal procedure for the classification of games, it will establish a tribal advisory committee to advise the Commission as to the nature and content of such rule.

Signed this 3rd day of July, 2002.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

Chairman's Dissent

I respectfully dissent from the Commission's statement that attempts to bind a future Commission to establish a formal tribal advisory committee for the creation of a gaming classification rule. I believe strongly that tribal advisory committees are an effective way to obtain tribal input for rulemaking initiatives. Though I would prefer a mechanism that encourages even broader tribal participation in our rulemaking initiatives, I would encourage future Commissions to use tribal advisory committees in rulemaking initiatives. However, I believe that the current Commission simply lacks the power to bind future Commissions to a particular rulemaking process. Future Commissions are free to use the rulemaking approach that allows interested parties to participate in the process and that, ultimately, will produce the best rule under the circumstances.

Montie R. Deer,

Chairman.

[FR Doc. 02–17152 Filed 7–11–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1104–P]

RIN 1120–AB03

Infectious Disease Management: Voluntary and Involuntary Testing

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons proposes to revise its regulations on the management of infectious diseases. The changes address the circumstances under which the Bureau conducts voluntary and involuntary testing for HIV, tuberculosis, and other infectious diseases. We intend this amendment to provide for the health and safety of staff and inmates.

DATES: Comments due by September 10, 2002.

ADDRESSES: Submit comments to: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its regulations on the infectious disease management program (28 CFR, part 549, subpart A). These regulations were published in the **Federal Register** on October 5, 1995 (60 FR 52278) as interim final rules. We received no public comment on that interim rule. We had published an entry in the Unified Regulatory Agenda describing the finalization of that