SUBCHAPTER N—ECONOMIC ENTERPRISES

PART 286—INDIAN BUSINESS DEVELOPMENT PROGRAM

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AUTHORITY: 25 U.S.C. 1524.

SOURCE: 39 FR 44748, Dec. 27, 1974, unless otherwise noted. Redesignated at 47 FR 13328, Mar. 30, 1982.

§ 286.1 Definitions.

As used in this part 286:

Area Director means the Bureau of Indian Affairs official in charge of an area office or his authorized representative.

Assistant Secretary means the Assistant Secretary—Indian Affairs of the United States Department of the Interior or the official in the Bureau of Indian Affairs to whom the Assistant Secretary has delegated authority to act on behalf of the Assistant Secretary.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Economic enterprise means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise.

Grantee(s) means the recipient(s) of a nonreimburseable grant under this part.

Indian means a person who is a member of an Indian tribe or a person of Alaska Native descent who is a shareholder in a corporation organized under the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain.

Profits means the net income earned after deducting operating expenses from operating revenues.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Superintendent means the Bureau official in charge of a Bureau agency office or other local office reporting to an Area Director.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[55 FR 36273, Sept. 5, 1990]

§ 286.2 Purpose.

The purpose of this part 286 is to prescribe the regulations and procedures under which non-reimbursable grants may be made to eligible applicants to stimulate and increase Indian entrepreneurship and employment through establishment, acquisition or expansion of profit-making Indian-owned economic enterprises which will contribute to the economy of a reservation.

§ 286.3 Eligible applicants.

Applications for grants may be accepted only from individual Indians, Indian tribes, Indian partnerships, corporations or cooperative associations authorized to do business under State, Federal, or Tribal law. These applicants must have a form of organization acceptable to the Assistant Secretary and unable to meet their total financing needs from their own resources and by loans from other sources such as banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, and Federal Land Banks. Associations, corporations or partnerships shall be at least fifty-one percent owned by eligible Indians or an eligible Indian tribe. This Indian ownership must actively participate in the management and operation of the economic enterprise by representation on the board of directors of a corporation or cooperative association proportionate to the Indian ownership which will enable the Indian owner(s) to control management decisions. The legal organization documents will provide for the number of Indians which are to be on the board of directors, how they along with other directors will be elected or appointed and qualifications required as a condition for becoming a member of the board of directors. The legal organization documents shall provide safeguards which will prevent Indian ownership and control from decreasing below fifty-one percent. Evidence of Indian ownership in a cooperative association or corporation will be evidenced by stock ownership, if stock is or has been issued, or by other evidence satisfactory to the Assistant Secretary. Partnerships will be evidenced by written partnership agreements which show the percentage of Indian ownership, role and authority in making management decisions in controlling the operation of the economic enterprise.

§ 286.4 Eligible economic enterprises.

An economic enterprise as defined in § 286.1(k) is eligible to receive equity capital through non-reimbursable grants if it is or will be self-sustaining and profit-oriented and will create employment for Indians. In the case of Indian-owned cooperative associations, they must distribute or allocate profits for later distribution, to members who are patrons, unless prohibited from doing so by law.

§ 286.5 Information collection.

(a) The collections of information contained in §§ 286.12 and 286.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0093. The information will be used to rate applicants in accordance with the priority criteria listed at 25 CFR 286.8. Response to this request is required to obtain a benefit in accordance with 25 U.S.C. 1521.

(b) Public reporting for this information is estimated to average 45 minutes per response, including the time 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 the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0093), Washington, DC 20503.

[55 FR 36273, Sept. 5, 1990]

§ 286.6 [Reserved]

§ 286.7 Location of enterprise.

To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by

providing employment to tribal members residing thereon or by expending a portion of its income for materials or services on the reservation. Economic enterprises which are or will be operated on a reservation must comply with the requirements of applicable rules, resolutions or ordinances adopted by the governing body of the tribe, if applicable.

§ 286.8 Priority criteria.

The following priority will be used in selecting economic enterprises for grant funding:

(a) *First priority*. First priority will be given to economic enterprises located on a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Create the highest ratio of income to a tribe or its members in relation to the total amount of dollars to be invested, including market value of materials or equipment contributed to the project.

(4) Generate the most non-Bureau financing.

(b) *Second priority*. Second priority will be given to projects located in the immediate vicinity of a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Generate the most non-Bureau financing.

§ 286.9 Environmental and flood disaster protection.

Grant funds will not be advanced until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), the National Environmental Policy Act (Pub. L. 91–190), 42 U.S.C. 4321 and Executive Order 11514.

§ 286.10 Preservation of historical and archeological data.

The Assistant Secretary before approving a grant where the grant funds and/or the loan funds will be used to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites, will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220 (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93–291, 88 Stat. 174), relating to the preservation of historical and archeological data.

§ 286.11 Management and technical assistance.

(a) Prior to and concurrent with the making of a grant to finance an Indian economic enterprise, the Assistant Secretary—Indian Affairs will insure that competent management and technical assistance is available to the grantee in the preparation of the application for a grant and/or administration of the funds granted, consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed. The competence of the management and technical assistance provided will be determined by the local agency superintendent after consultation with the applicant concerning his business needs.

(b) The lender providing the loan funds under § 286.17(b) to finance an economic enterprise will include with the grantee's application the need for equity capital, the lender's evaluation of the applicant's need for management and technical assistance, specific areas of need and whether the lender will provide such assistance to the applicant.

[39 FR 44748, Dec. 27, 1974. Redesignated at 47 FR 13328, Mar. 30, 1982, as amended at 55 FR 36274, Sept. 5, 1990]

§ 286.12 Content of application.

Applications shall be on a form prescribed by the Assistant Secretary which shall at the minimum include:

(a) Total capital requirement, including operating capital required until such time as the cash generated from

operations will be sufficient to make the enterprise self-sustaining.

(b) Amount of total financing required as well as what is obtainable from other sources, including the applicant's personal resources, and a statement of terms and conditions under which any borrowed portion is obtainable.

(c) Capital deficiency, which will be the basis for the amount of grant requested.

(d) Pro forma balance sheets and operating statements showing estimated expenses, income and net profit from operations for three years following receipt of the requested grant.

(e) Annual operating statements and balance sheets, audited if available, for the prior two years or applicable years for enterprises already in operation.

(f) Current financial statements, consisting of a balance sheet and operating statement.

(g) A plan of operation which shall be acceptable to the lender making the loan and the Assistant Secretary.

§§ 286.13–286.14 [Reserved]

§ 286.15 Application procedures.

Applications are to be submitted to the Superintendent having administrative jurisdiction over the reservation on which an enterprise will be or is located. If the enterprise site is near two or more reservations, application is to be made to the Superintendent having administrative jurisdiction over the reservation nearest to the location of the enterprise which the enterprise will benefit economically.

§ 286.16 Grant approval authority.

Applications for grants require approval by the Assistant Secretary.

§ 286.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Assistant Secretary the applicant is unable to obtain adequate financing from other sources. Prior to making any grant, the Assistant Secretary shall assure that, to the extent practical, the applicant's own resources have been invested in the proposed project. The applicant shall not be required to invest own resources to the extent that they are already committed to endeavors deemed by the Assistant Secretary to be essential to the welfare of the applicant. If the information in an application, which must include personal financial statements, indicates that it may be possible for the applicant to obtain financing without a grant, the Assistant Secretary will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purpose, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

(b) A grant may be made only to an applicant who is able to obtain at least 75 percent of the necessary financing from other sources.

(c) No grant in excess of $250,000 may be made to an Indian tribe or in excess of $100,000 to an Indian individual, partnership, corporation, or cooperative association.

(d) Revolving loan funds as prescribed in title I of the Indian Financing Act of 1974 and guaranteed or insured loans as prescribed in title II of said Act may not be used as the sources of the loan portion of the total financing requirement if financing from other governmental or institutional lenders is available on reasonable terms and conditions. If a loan is not available from other sources, guaranteed or insured loans under the provisions of title II of said Act may then be considered. If a guaranteed or insured loan is not available loans under the provisions of title I of said Act may then be considered. Applicants for a loan from either source must meet the eligibility requirements for such loans.

(e) A grant will not be approved unless there is assurance the applicant can and will be provided with needed competent technical and management assistance commensurate with the nature of the enterprise to be funded and the knowledge and management skills of the applicant.

(f) Grant funds may not be used for refinancing or debt consolidation unless approval is justified and required

due to the applicant's financial position and is clearly to the advantage of the grant applicant.

(g) Ordinarily, not more than one grant will be made for a project. Nevertheless, in certain circumstances a second grant may be made to applicants for a new project or expansion of the original project. An additional grant will not be approved for an economic enterprise previously funded under the provisions of title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grants made shall not exceed $250,000 to an Indian tribe and $100,000 to an Indian individual, partnership, corporation, or cooperative association.

(h) An application for a second grant will not be approved if the applicant:

(1) Has not complied with the reporting requirements in connection with the first grant, or

(2) Has not followed the plan of operation, if any, developed for the management and operation of the economic enterprise, or

(3) Did not follow and use the management and technical assistance furnished, or

(4) Is in violation of one or more provisions of the loan agreement entered into between the applicant and the lender who furnished the loan portion of the financing in connection with the first grant.

(i) An applicant for an expansion grant must meet the same eligibility requirements as an original applicant.

(j) A grantee will be required to return all or a portion of the grant if the business or enterprise for which the grant was utilized is sold within three years of the date on which the grant was disbursed to the grantee, unless the proceeds from the sale are re-invested in a new business or business expansion which will benefit the Indian reservation economy. Such sale and reinvestment must have the prior approval of the local agency superintendent. The grantee shall refund the lessor of the grant amount or a pro rata portion of sales proceeds. The pro rata portion of sales proceeds shall be based on the ratio of grant amount to its corresponding matching financing. The new business or business expansion utilizing such sale proceeds must meet the same criteria for eligibility as an original grant.

[39 FR 44748, Dec. 27, 1974. Redesignated at 47 FR 13328, Mar. 30, 1982, as amended at 55 FR 36274, Sept. 5, 1990; 56 FR 12436, Mar. 25, 1991]

§ 286.18 Written notice.

The applicant for a grant which is disapproved will be notified by letter, stating the reasons for disapproval and the right of appeal pursuant to 25 CFR 2. A copy of the letter will be sent to the prospective lender.

[39 FR 44748, Dec. 27, 1974. Redesignated at 47 FR 13328, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 286.19 [Reserved]

§ 286.20 Disbursement of grant funds.

Unless otherwise provided by an agreement between a lender and the grantee, the Assistant Secretary may in his discretion advance grant funds directly to a grantee. He may require the funds to be deposited in a special account at the appropriate Agency headquarters office or deposited in a joint account in a bank and disbursed as needed by the grantee. The terms of a lender's loan agreement may require the lender's approval before disbursement of the funds. Grant funds will not be disbursed to a grantee until the Assistant Secretary has been informed by the lender that a loan has been approved for the grantee in the amount of the loan financing needed.

§ 286.21 Return of unused funds.

Grantees will be required to return unused grant funds to the Assistant Secretary if the economic enterprise for which the grant was approved is not initiated, i.e., lease obtained, if needed, construction started, equipment purchased or other, within the time stated in the grant agreement. The Assistant Secretary may, if warranted by circumstances beyond the control of the grantee, extend the time to allow for initiation of the enterprise, provided there is assurance the enterprise will be initiated forthwith within the extended time period. The Assistant Secretary will notify the lender in writing

of a proposed action to require the return of grant funds or of a proposal to extend the time.

§ 286.22 Reports.

(a) Grantees are required to furnish the Assistant Secretary comparative balance sheets and profit and loss statements semi-annually for the first two years of operation following receipt of the grant, and annually thereafter for the succeeding three years. These may be copied of financial statements required by and furnished to the lender which provided the loan portion of the total financing required. If the lender does not require financial statements, the grantee must prepare and furnish copies of comparative balance sheets and profit and loss statements to the Assistant Secretary.

(b) The Assistant Secretary will establish accounting and reporting systems which will appropriately show the status of the Indian Business Development Program at all times.

PART 290—TRIBAL REVENUE ALLOCATION PLANS

Sec.

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290.25 What is the liability of the United States under this part?
290.26 Are previously approved tribal revenue allocation plans, revisions or amendments subject to review in accordance with 25 CFR part 290?

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

SOURCE: 65 FR 14467, Mar. 17, 2000, unless otherwise noted.

§ 290.1 Purpose.

This part contains procedures for submitting, reviewing, and approving tribal revenue allocation plans for distributing net gaming revenues from tribal gaming activities. It applies to review of tribal revenue allocation plans adopted under IGRA.

§ 290.2 Definitions.

Appropriate Bureau official (ABO) means the Bureau official with delegated authority to approve tribal revenue allocation plans.

IGRA means the Indian Gaming Regulatory Act of 1988 (Public Law 100–497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701–2721(1988)) and any amendments.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as:

(1) Eligible for the speci al programs and services provided by the United States to Indians because of their status as Indians; and

(2) Having powers of self-government.

Legal incompetent means an individual who is eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal justice systems or as established by the tribe.

Member of an Indian tribe means an individual who meets the requirements established by applicable tribal law for enrollment in the tribe and—

(1) Is listed on the tribal rolls of that tribe if such rolls are kept or

(2) Is recognized as a member by the tribal governing body if tribal rolls are not kept.

Minor means an individual who is eligible to participate in a per capita payment and who has not reached the age of 18 years.

Per capita payment means the distribution of money or other thing of value to all members of the tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity. This definition does not apply to payments which have been set aside by the tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing or other similar, specifically identified needs.

Resolution means the formal document in which the tribal governing body expresses its legislative will in accordance with applicable tribal law.

Secretary means the Secretary of the Interior or his/her authorized representative.

Superintendent means the official or other designated representative of the BIA in charge of the field office which has immediate administrative responsibility for the affairs of the tribe for which a tribal revenue allocation plan is prepared.

Tribal governing body means the governing body of an Indian tribe recognized by the Secretary.

Tribal revenue allocation plan or *allocation plan* means the document submitted by an Indian tribe that provides for distributing net gaming revenues.

You or your means the Indian tribe.

§ 290.3 Information collection.

The information collection requirements contained in §§ 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number 1076–0152.

§ 290.4 What is a tribal revenue allocation plan?

It is the document you must submit that describes how you will allocate net gaming revenues.

§ 290.5 Who approves tribal revenue allocation plans?

The ABO will review and approve tribal revenue allocation plans for compliance with IGRA.

§ 290.6 Who must submit a tribal revenue allocation plan?

Any Indian tribe that intends to make a per capita payment from net gaming revenues must submit one.

§ 290.7 Must an Indian tribe have a tribal revenue allocation plan if it is not making per capita payments?

No, if you do not make per capita payments, you do not need to submit a tribal revenue allocation plan.

§ 290.8 Do Indian tribes have to make per capita payments from net gaming revenues to tribal members?

No. You do not have to make per capita payments.

§ 290.9 How may an Indian tribe use net gaming revenues if it does not have an approved tribal revenue allocation plan?

Without an approved tribal revenue allocation plan, you may use net gaming revenues to fund tribal government operations or programs; to provide for the general welfare of your tribe and its members; to promote tribal economic development; to donate to charitable organizations; or to help fund operations of local government agencies.

§ 290.10 Is an Indian tribe in violation of IGRA if it makes per capita payments to its members from net gaming revenues without an approved tribal revenue allocation plan?

Yes, you are in violation of IGRA if you make per capita payments to your tribal members from net gaming revenues without an approved tribal revenue allocation plan. If you refuse to comply, the DOJ or NIGC may enforce the per capita requirements of IGRA.

§ 290.11 May an Indian tribe distribute per capita payments from net gaming revenues derived from either Class II or Class III gaming without a tribal revenue allocation plan?

No, IGRA requires that you have an approved tribal revenue allocation plan.

§ 290.12 What information must the tribal revenue allocation plan contain?

(a) You must prepare a tribal revenue allocation plan that includes a percentage breakdown of the uses for which you will allocate net gaming revenues. The percentage breakdown must total 100 percent.

(b) The tribal revenue allocation plan must meet the following criteria:

(1) It must reserve an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe or its members;

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government.

(2) It must contain detailed information to allow the ABO to determine that it complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development.

(3) It must protect and preserve the interests of minors and other legally incompetent persons who are entitled to receive per capita payments by:

(i) Ensuring that tribes make per capita payments for eligible minors or incompetents to the parents or legal guardians of these minors or incompetents at times and in such amounts as necessary for the health, education, or welfare of the minor or incompetent;

(ii) Establishing criteria for withdrawal of the funds, acceptable proof and/or receipts for accountability of the expenditure of the funds and the circumstances for denial of the withdrawal of the minors' and legal incompetents' per capita payments by the parent or legal guardian; and

(iii) Establishing a process, system, or forum for dispute resolution.

(4) It must describe how you will notify members of the tax liability for per capita payments and how you will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR part 31.

(5) It must authorize the distribution of per capita payments to members according to specific eligibility requirements and must utilize or establish a tribal court system, forum or administrative process for resolution of disputes concerning the allocation of net gaming revenues and the distribution of per capita payments.

§ 290.13 Under what conditions may an Indian tribe distribute per capita payments?

You may make per capita payments only after the ABO approves your tribal revenue allocation plan.

§ 290.14 Who can share in a per capita payment?

(a) You must establish your own criteria for determining whether all members or identified groups of members are eligible for per capita payments.

(b) If the tribal revenue allocation plan calls for distributing per capita payments to an identified group of members rather than to all members, you must justify limiting this payment to the identified group of members. You must make sure that:

(1) The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary;

(2) The distinction does not discriminate or otherwise violate the Indian Civil Rights Act; and

(3) The justification complies with applicable tribal law.

§ 290.15 Must the Indian tribe establish trust accounts with financial institutions for minors and legal incompetents?

No. The tribe may establish trust accounts with financial institutions but should explore investment options to structure the accounts to the benefit of their members while ensuring compliance with IGRA and this part.

§ 290.16 Can the per capita payments of minors and legal incompetents be deposited into accounts held by BIA or OTFM?

No. The Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by BIA or OTFM.

§ 290.17 What documents must the Indian tribe include with the tribal revenue allocation plan?

You must include:

(a) A written request for approval of the tribal revenue allocation plan; and

(b) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies you have adopted the tribal revenue allocation plan in accordance with applicable tribal law.

§ 290.18 Where should the Indian tribe submit the tribal revenue allocation plan?

You must submit your tribal revenue allocation plan to your respective Superintendent. The Superintendent will review the tribal revenue allocation plan to make sure it has been properly adopted in accordance with applicable tribal law. The Superintendent will then transmit the tribal revenue allocation plan promptly to the ABO.

§ 290.19 How long will the ABO take to review and approve the tribal revenue allocation plan?

The ABO must review and act on your tribal revenue allocation plan within 60 days of receiving it. A tribal revenue allocation plan is not effective without the ABO's written approval.

(a) If the tribal revenue allocation plan conforms with this part and the IGRA, the ABO must approve it.

(b) If the tribal revenue allocation plan does not conform with this part and the IGRA, the ABO will send you a written notice that:

(1) Explains why the plan doesn't conform to this part of the IGRA; and

(2) Tells you how to bring the plan into conformance.

(c) If the ABO doesn't act within 60 days, you can appeal the inaction under 25 CFR part 2. A tribal revenue allocation plan is not effective without the express written approval of the ABO.

§ 290.20 When will the ABO disapprove a tribal revenue allocation plan?

The ABO will not approve any tribal revenue allocation plan for distribution of net gaming revenues from a tribal gaming activity if:

(a) The tribal revenue allocation plan is inadequate, particularly with respect to the requirements in § 290.12 and IGRA, and you fail to bring it into compliance;

(b) The tribal revenue allocation plan is not adopted in accordance with applicable tribal law;

(c) The tribal revenue allocation plan does not include a reasonable justification for limiting per capita payments to certain groups of members; or

(d) The tribal revenue allocation plan violates the Indian Civil Rights Act of 1968, any other provision of Federal law, or the United States' trust obligations.

§ 290.21 May an Indian tribe appeal the ABO's decision?

Yes, you may appeal the ABO's decision in accordance with the regulations at 25 CFR part 2.

§ 290.22 How does the Indian tribe ensure compliance with its tribal revenue allocation plan?

You must utilize or establish a tribal court system, forum or administrative process in the tribal revenue allocation plan for reviewing expenditures of net gaming revenues and explain how you will correct deficiencies.

§ 290.23 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?

You must utilize or establish a tribal court system, forum or administrative process for resolving disputes arising from the allocation of net gaming revenue and the distribution of per capita payments.

§ 290.24 Do revisions/amendments to a tribal revenue allocation plan require approval?

Yes, revisions/amendments to a tribal revenue allocation plan must be submitted to the ABO for approval to ensure that they comply with § 290.12 and IGRA.

§ 290.25 What is the liability of the United States under this part?

The United States is not liable for the manner in which a tribe distributes funds from net gaming revenues.

§ 290.26 Are previously approved tribal revenue allocation plans, revisions, or amendments subject to review in accordance with this part?

No. This part applies only to tribal revenue allocation plans, revisions, or amendments submitted for approval after April 17, 2000.

(a) If the ABO approved your tribal revenue allocation plan, revisions, or amendments before April 17, 2000, you need not resubmit it for approval.

(b) If you are amending or revising a previously approved allocation plan, you must submit the amended or revised plan to the ABO for review and approval under this part.

PART 291—CLASS III GAMING PROCEDURES

Sec.

291.1 Purpose and scope.
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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?
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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. sections 2,9 and 2710.

SOURCE: 64 FR 17543, Apr. 12, 1999, unless otherwise noted.

§ 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.

PART 292—GAMING ON TRUST LANDS ACQUIRED AFTER OCTOBER 17, 1988

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Sec.

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292.2 How are key terms defined in this part?

Subpart B—Exceptions to Prohibition on Gaming on Newly Acquired Lands

292.3 How does a tribe seek an opinion on whether its newly acquired lands meet, or will meet, one of the exceptions in this subpart?
292.4 What criteria must newly acquired lands meet under the exceptions regarding tribes with and without a reservation?

SETTLEMENT OF A LAND CLAIM'' EXCEPTION

292.5 When can gaming occur on newly acquired lands under a settlement of a land claim?

''INITIAL RESERVATION'' EXCEPTION

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RESTORED LANDS'' EXCEPTION

292.7 What must be demonstrated to meet the ''restored lands'' exception?
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292.10 How does a tribe qualify as having been restored to Federal recognition?
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AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 2, 9, 2719, 43 U.S.C. 1457.

SOURCE: 73 FR 29375, May 20, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 292.1 What is the purpose of this part?

The Indian Gaming Regulatory Act of 1988 (IGRA) contains several exceptions under which class II or class III gaming may occur on lands acquired by the United States in trust for an Indian tribe after October 17, 1988, if other applicable requirements of IGRA are met. This part contains procedures that the Department of the Interior will use to determine whether these exceptions apply.

§ 292.2 How are key terms defined in this part?

For purposes of this part, all terms have the same meaning as set forth in the definitional section of IGRA, 25 U.S.C. 2703. In addition, the following terms have the meanings given in this section.

Appropriate State and local officials means the Governor of the State and local government officials within a 25-mile radius of the proposed gaming establishment.

BIA means Bureau of Indian Affairs.

Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point.

Former reservation means lands in Oklahoma that are within the exterior boundaries of the last reservation that was established by treaty, Executive Order, or Secretarial Order for an Oklahoma tribe.

IGRA means the Indian Gaming Regulatory Act of 1988, as amended and codified at 25 U.S.C. 2701–2721.

Indian tribe or tribe means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized by the Secretary as having a government-to-government relationship with the United States and is eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as evidenced by inclusion of the tribe on the list of recognized tribes published by the Secretary under 25 U.S.C. 479a–1.

Land claim means any claim by a tribe concerning the impairment of title or other real property interest or loss of possession that:

(1) Arises under the United States Constitution, Federal common law, Federal statute or treaty;

(2) Is in conflict with the right, or title or other real property interest claimed by an individual or entity (private, public, or governmental); and

(3) Either accrued on or before October 17, 1988, or involves lands held in trust or restricted fee for the tribe prior to October 17, 1988.

Legislative termination means Federal legislation that specifically terminates or prohibits the government-to-government relationship with an Indian tribe or that otherwise specifically denies the tribe, or its members, access to or eligibility for government services.

Nearby Indian tribe means an Indian tribe with tribal Indian lands located within a 25-mile radius of the location of the proposed gaming establishment, or, if the tribe has no trust lands, within a 25-mile radius of its government headquarters.

Newly acquired lands means land that has been taken, or will be taken, in trust for the benefit of an Indian tribe

by the United States after October 17, 1988.

Office of Indian Gaming means the office within the Office of the Assistant Secretary-Indian Affairs, within the Department of the Interior.

Regional Director means the official in charge of the BIA Regional Office responsible for BIA activities within the geographical area where the proposed gaming establishment is to be located.

Reservation means:

(1) Land set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent;

(2) Land of Indian colonies and rancherias (including rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland;

(3) Land acquired by the United States to reorganize adult Indians pursuant to statute; or

(4) Land acquired by a tribe through a grant from a sovereign, including pueblo lands, which is subject to a Federal restriction against alienation.

Secretarial Determination means a two-part determination that a gaming establishment on newly acquired lands:

(1) Would be in the best interest of the Indian tribe and its members; and

(2) Would not be detrimental to the surrounding community.

Secretary means the Secretary of the Interior or authorized representative.

Significant historical connection means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.

Surrounding community means local governments and nearby Indian tribes located within a 25-mile radius of the site of the proposed gaming establishment. A local government or nearby Indian tribe located beyond the 25-mile radius may petition for consultation if it can establish that its governmental functions, infrastructure or services will be directly, immediately and significantly impacted by the proposed gaming establishment.

Subpart B—Exceptions to Prohibitions on Gaming on Newly Acquired Lands

§ 292.3 How does a tribe seek an opinion on whether its newly acquired lands meet, or will meet, one of the exceptions in this subpart?

(a) If the newly acquired lands are already in trust and the request does not concern whether a specific area of land is a ''reservation,'' the tribe may submit a request for an opinion to either the National Indian Gaming Commission or the Office of Indian Gaming.

(b) If the tribe seeks to game on newly acquired lands that require a land-into-trust application or the request concerns whether a specific area of land is a ''reservation,'' the tribe must submit a request for an opinion to the Office of Indian Gaming.

§ 292.4 What criteria must newly acquired lands meet under the exceptions regarding tribes with and without a reservation?

For gaming to be allowed on newly acquired lands under the exceptions in 25 U.S.C. 2719(a) of IGRA, the land must meet the location requirements in either paragraph (a) or paragraph (b) of this section.

(a) If the tribe had a reservation on October 17, 1988, the lands must be located within or contiguous to the boundaries of the reservation.

(b) If the tribe had no reservation on October 17, 1988, the lands must be either:

(1) Located in Oklahoma and within the boundaries of the tribe's former reservation or contiguous to other land held in trust or restricted status for the tribe in Oklahoma; or

(2) Located in a State other than Oklahoma and within the tribe's last recognized reservation within the State or States within which the tribe is presently located, as evidenced by the tribe's governmental presence and tribal population.

SETTLEMENT OF A LAND CLAIM'' EXCEPTION

§ 292.5 When can gaming occur on newly acquired lands under a settlement of a land claim?

This section contains criteria for meeting the requirements of 25 U.S.C. 2719(b)(1)(B)(i), known as the ''settlement of a land claim'' exception. Gaming may occur on newly acquired lands if the land at issue is either:

(a) Acquired under a settlement of a land claim that resolves or extinguishes with finality the tribe's land claim in whole or in part, thereby resulting in the alienation or loss of possession of some or all of the lands claimed by the tribe, in legislation enacted by Congress; or

(b) Acquired under a settlement of a land claim that:

(1) Is executed by the parties, which includes the United States, returns to the tribe all or part of the land claimed by the tribe, and resolves or extinguishes with finality the claims regarding the returned land; or

(2) Is not executed by the United States, but is entered as a final order by a court of competent jurisdiction or is an enforceable agreement that in either case predates October 17, 1988 and resolves or extinguishes with finality the land claim at issue.

INITIAL RESERVATION'' EXCEPTION

§ 292.6 What must be demonstrated to meet the "initial reservation" exception?

This section contains criteria for meeting the requirements of 25 U.S.C. 2719(b)(1)(B)(ii), known as the ''initial reservation'' exception. Gaming may occur on newly acquired lands under this exception only when all of the following conditions in this section are met:

(a) The tribe has been acknowledged (federally recognized) through the administrative process under part 83 of this chapter.

(b) The tribe has no gaming facility on newly acquired lands under the restored land exception of these regulations.

(c) The land has been proclaimed to be a reservation under 25 U.S.C. 467 and is the first proclaimed reservation of the tribe following acknowledgment.

(d) If a tribe does not have a proclaimed reservation on the effective date of these regulations, to be proclaimed an initial reservation under this exception, the tribe must demonstrate the land is located within the State or States where the Indian tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and within an area where the tribe has significant historical connections and one or more of the following modern connections to the land:

(1) The land is near where a significant number of tribal members reside; or

(2) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or

(3) The tribe can demonstrate other factors that establish the tribe's current connection to the land.

RESTORED LANDS'' EXCEPTION

§ 292.7 What must be demonstrated to meet the "restored lands" exception?

This section contains criteria for meeting the requirements of 25 U.S.C. 2719(b)(1)(B)(iii), known as the ''restored lands'' exception. Gaming may occur on newly acquired lands under this exception only when all of the following conditions in this section are met:

(a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;

(b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;

(c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and

(d) The newly acquired lands meet the criteria of ''restored lands'' in § 292.11.

§ 292.8 How does a tribe qualify as having been federally recognized?

For a tribe to qualify as having been at one time federally recognized for purposes of § 292.7, one of the following must be true:

(a) The United States at one time entered into treaty negotiations with the tribe;

(b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;

(c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;

(d) The United States at one time acquired land for the tribe's benefit; or

(e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.

§ 292.9 How does a tribe show that it lost its government-to-government relationship?

For a tribe to qualify as having lost its government-to-government relationship for purposes of § 292.7, it must show that its government-to-government relationship was terminated by one of the following means:

(a) Legislative termination;

(b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or

(c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.

§ 292.10 How does a tribe qualify as having been restored to Federal recognition?

For a tribe to qualify as having been restored to Federal recognition for purposes of § 292.7, the tribe must show at least one of the following:

(a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);

(b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or

(c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.

§ 292.11 What are "restored lands"?

For newly acquired lands to qualify as ''restored lands'' for purposes of § 292.7, the tribe acquiring the lands must meet the requirements of paragraph (a), (b), or (c) of this section.

(a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:

(1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or

(2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.

(b) If the tribe is acknowledged under § 83.8 of this chapter, it must show that it:

(1) Meets the requirements of § 292.12; and

(2) Does not already have an initial reservation proclaimed after October 17, 1988.

(c) If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.

§ 292.12 How does a tribe establish connections to newly acquired lands for the purposes of the "restored lands" exception?

To establish a connection to the newly acquired lands for purposes of § 292.11, the tribe must meet the criteria in this section.

(a) The newly acquired lands must be located within the State or States

where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:

(1) The land is within reasonable commuting distance of the tribe's existing reservation;

(2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;

(3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or

(4) Other factors demonstrate the tribe's current connection to the land.

(b) The tribe must demonstrate a significant historical connection to the land.

(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:

(1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or

(2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

Subpart C—Secretarial Determination and Governor's Concurrence

§ 292.13 When can a tribe conduct gaming activities on newly acquired lands that do not qualify under one of the exceptions in subpart B of this part?

A tribe may conduct gaming on newly acquired lands that do not meet the criteria in subpart B of this part only after all of the following occur:

(a) The tribe asks the Secretary in writing to make a Secretarial Determination that a gaming establishment on land subject to this part is in the best interest of the tribe and its members and not detrimental to the surrounding community;

(b) The Secretary consults with the tribe and appropriate State and local officials, including officials of other nearby Indian tribes;

(c) The Secretary makes a determination that a gaming establishment on newly acquired lands would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community; and

(d) The Governor of the State in which the gaming establishment is located concurs in the Secretary's Determination (25 U.S.C. 2719(b)(1)(A)).

§ 292.14 Where must a tribe file an application for a Secretarial Determination?

A tribe must file its application for a Secretarial Determination with the Regional Director of the BIA Regional Office having responsibility over the land where the gaming establishment is to be located.

§ 292.15 May a tribe apply for a Secretarial Determination for lands not yet held in trust?

Yes. A tribe can apply for a Secretarial Determination under § 292.13 for land not yet held in trust at the same time that it applies under part 151 of this chapter to have the land taken into trust.

APPLICATION CONTENTS

§ 292.16 What must an application for a Secretarial Determination contain?

A tribe's application requesting a Secretarial Determination under § 292.13 must include the following information:

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

(b) A description of the location of the land, including a legal description supported by a survey or other document;

(c) Proof of identity of present ownership and title status of the land;

(d) Distance of the land from the tribe's reservation or trust lands, if any, and tribal government headquarters;

(e) Information required by § 292.17 to assist the Secretary in determining

whether the proposed gaming establishment will be in the best interest of the tribe and its members;

(f) Information required by § 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community;

(g) The authorizing resolution from the tribe submitting the application;

(h) The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C. 2710, if any;

(i) The tribe's organic documents, if any;

(j) The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated;

(k) If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment; and

(l) A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under 25 U.S.C. 2711 and part 533 of this title, if any.

§ 292.17 How must an application describe the benefits and impacts of the proposed gaming establishment to the tribe and its members?

To satisfy the requirements of § 292.16(e), an application must contain:

(a) Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe;

(b) Projected tribal employment, job training, and career development;

(c) Projected benefits to the tribe and its members from tourism;

(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income;

(e) Projected benefits to the relationship between the tribe and non-Indian communities;

(f) Possible adverse impacts on the tribe and its members and plans for addressing those impacts;

(g) Distance of the land from the location where the tribe maintains core governmental functions;

(h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States;

(i) Evidence of significant historical connections, if any, to the land; and

(j) Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any:

(1) Consulting agreements relating to the proposed gaming establishment;

(2) Financial and loan agreements relating to the proposed gaming establishment; and

(3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.

§ 292.18 What information must an application contain on detrimental impacts to the surrounding community?

To satisfy the requirements of § 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:

(a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA);

(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;

(c) Anticipated impacts on the economic development, income, and employment of the surrounding community;

(d) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;

(e) Anticipated cost, if any, to the surrounding community of treatment

programs for compulsive gambling attributable to the proposed gaming establishment;

(f) If a nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land; and

(g) Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments.

CONSULTATION

§ 292.19 How will the Regional Director conduct the consultation process?

(a) The Regional Director will send a letter that meets the requirements in § 292.20 and that solicits comments within a 60-day period from:

(1) Appropriate State and local officials; and

(2) Officials of nearby Indian tribes.

(b) Upon written request, the Regional Director may extend the 60-day comment period for an additional 30 days.

(c) After the close of the consultation period, the Regional Director must:

(1) Provide a copy of all comments received during the consultation process to the applicant tribe; and

(2) Allow the tribe to address or resolve any issues raised in the comments.

(d) The applicant tribe must submit written responses, if any, to the Regional Director within 60 days of receipt of the consultation comments.

(e) On written request from the applicant tribe, the Regional Director may extend the 60-day comment period in paragraph (d) of this section for an additional 30 days.

§ 292.20 What information must the consultation letter include?

(a) The consultation letter required by § 292.19(a) must:

(1) Describe or show the location of the proposed gaming establishment;

(2) Provide information on the proposed scope of gaming; and

(3) Include other information that may be relevant to a specific proposal, such as the size of the proposed gaming establishment, if known.

(b) The consultation letter must include a request to the recipients to submit comments, if any, on the following areas within 60 days of receiving the letter:

(1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts;

(2) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;

(3) Anticipated impact on the economic development, income, and employment of the surrounding community;

(4) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;

(5) Anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment; and

(6) Any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

EVALUATION AND CONCURRENCE

§ 292.21 How will the Secretary evaluate a proposed gaming establishment?

(a) The Secretary will consider all the information submitted under §§ 292.16–292.19 in evaluating whether the proposed gaming establishment is in the best interest of the tribe and its members and whether it would or would not be detrimental to the surrounding community.

(b) If the Secretary makes an unfavorable Secretarial Determination, the Secretary will inform the tribe that its application has been disapproved, and set forth the reasons for the disapproval.

(c) If the Secretary makes a favorable Secretarial Determination, the Secretary will proceed under § 292.22.

§ 292.22 How does the Secretary request the Governor's concurrence?

If the Secretary makes a favorable Secretarial Determination, the Secretary will send to the Governor of the State:

(a) A written notification of the Secretarial Determination and Findings of Fact supporting the determination;

(b) A copy of the entire application record; and

(c) A request for the Governor's concurrence in the Secretarial Determination.

§ 292.23 What happens if the Governor does not affirmatively concur with the Secretarial Determination?

(a) If the Governor provides a written non-concurrence with the Secretarial Determination:

(1) The applicant tribe may use the newly acquired lands only for non-gaming purposes; and

(2) If a notice of intent to take the land into trust has been issued, then the Secretary will withdraw that notice pending a revised application for a non-gaming purpose.

(b) If the Governor does not affirmatively concur in the Secretarial Determination within one year of the date of the request, the Secretary may, at the request of the applicant tribe or the Governor, grant an extension of up to 180 days.

(c) If no extension is granted or if the Governor does not respond during the extension period, the Secretarial Determination will no longer be valid.

§ 292.24 Can the public review the Secretarial Determination?

Subject to restrictions on disclosure required by the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905), the Secretarial Determination and the supporting documents will be available for review at the local BIA agency or Regional Office having administrative jurisdiction over the land.

INFORMATION COLLECTION

§ 292.25 Do information collections in this part have Office of Management and Budget approval?

The information collection requirements in §§ 292.16, 292.17, and 292.18 have been approved by the Office of Management and Budget (OMB). The information collection control number is 1076–0158. A Federal agency may not collect or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control.

Subpart D—Effect of Regulations

§ 292.26 What effect do these regulations have on pending applications, final agency decisions, and opinions already issued?

These regulations apply to all requests pursuant to 25 U.S.C. 2719, except:

(a) These regulations do not alter final agency decisions made pursuant to 25 U.S.C. 2719 before the date of enactment of these regulations.

(b) These regulations apply to final agency action taken after the effective date of these regulations except that these regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming Commission (NIGC) issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.

PART 293—CLASS III TRIBAL STATE GAMING COMPACT PROCESS

Sec.

293.1 What is the purpose of this part?
293.2 How are key terms defined in this part?
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293.13 Who can withdraw a compact or amendment after it has been received by the Secretary?
293.14 When may the Secretary disapprove a compact or amendment?
293.15 When does an approved or considered-to-have-been-approved compact or amendment take effect?
293.16 How does the Paperwork Reduction Act affect this part?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 2710.

SOURCE: 73 FR 74009, Dec. 5, 2008, unless otherwise noted.

§ 293.1 What is the purpose of this part?

This part contains procedures that:

(a) Indian tribes and States must use when submitting Tribal-State compacts and compact amendments to the Department of the Interior; and

(b) The Secretary will use for reviewing such Tribal-State compacts or compact amendments.

§ 293.2 How are key terms defined in this part?

(a) For purposes of this part, all terms have the same meaning as set forth in the definitional section of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2703 and any amendments thereto.

(b) As used in this part:

(1) *Amendment* means an amendment to a class III Tribal-State gaming compact.

(2) *Compact* or *Tribal-State Gaming Compact* means an intergovernmental agreement executed between Tribal and State governments under the Indian Gaming Regulatory Act that establishes between the parties the terms and conditions for the operation and regulation of the tribe's Class III gaming activities.

(3) *Extensions* means changes to the timeframe of the compacts or amendments.

§ 293.3 What authority does the Secretary have to approve or disapprove compacts and amendments?

The Secretary has the authority to approve compacts or amendments ''entered into'' by an Indian tribe and a State, as evidenced by the appropriate signature of both parties. See § 293.14 for the Secretary's authority to disapprove compacts or amendments.

§ 293.4 Are compacts and amendments subject to review and approval?

(a) Compacts are subject to review and approval by the Secretary.

(b) All amendments, regardless of whether they are substantive amendments or technical amendments, are subject to review and approval by the Secretary.

§ 293.5 Are extensions to compacts subject to review and approval?

No. Approval of an extension is not required if the extension of the compact does not include any amendment to the terms of the compact. However, the tribe must submit the extension executed by both the tribe and the State along with the documents required under paragraphs (b) and (c) of § 293.8.

§ 293.6 Who can submit a compact or amendment?

Either party (Indian tribe or State) to a compact or amendment can submit the compact or amendment to the Secretary for review and approval.

§ 293.7 When should the Indian Tribe or State submit a compact or amendment for review and approval?

The Indian tribe or State should submit the compact or amendment after it has been legally entered into by both parties.

§ 293.8 What documents must be submitted with a compact or amendment?

Documentation submitted with a compact or amendment must include:

(a) At least one original compact or amendment executed by both the tribe and the State;

(b) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies that the tribe has approved the compact or amendment in accordance with applicable tribal law;

(c) Certification from the Governor or other representative of the State that he or she is authorized under State law to enter into the compact or amendment;

(d) Any other documentation requested by the Secretary that is necessary to determine whether to approve or disapprove the compact or amendment.

§ 293.9 Where should a compact or amendment be submitted for review and approval?

Submit compacts and amendments to the Director, Office of Indian Gaming, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 3657, Main Interior Building, Washington, DC 20240. If this address changes, a notice with the new address will be published in the FEDERAL REGISTER within 5 business days.

§ 293.10 How long will the Secretary take to review a compact or amendment?

(a) The Secretary must approve or disapprove a compact or amendment within 45 calendar days after receiving the compact or amendment.

(b) The Secretary will notify the Indian tribe and the State in writing of the decision to approve or disapprove a compact or amendment.

§ 293.11 When will the 45-day timeline begin?

The 45-day timeline will begin when a compact or amendment is received and date stamped in the Office of Indian Gaming at the address listed in § 293.9.

§ 293.12 What happens if the Secretary does not act on the compact or amendment within the 45-day review period?

If the Secretary neither affirmatively approves nor disapproves a compact or amendment within the 45-day review period, the compact or amendment is considered to have been approved, but only to the extent it complies with the provisions of the Indian Gaming Regulatory Act.

§ 293.13 Who can withdraw a compact or amendment after it has been received by the Secretary?

To withdraw a compact or amendment after it has been received by the Secretary, the Indian tribe and State must submit a written request to the Director, Office of Indian Gaming at the address listed in § 293.9.

§ 293.14 When may the Secretary disapprove a compact or amendment?

The Secretary may disapprove a compact or amendment only if it violates:

(a) Any provision of the Indian Gaming Regulatory Act;

(b) Any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands; or

(c) The trust obligations of the United States to Indians.

§ 293.15 When does an approved or considered-to-have-been-approved compact or amendment take effect?

(a) An approved or considered-to-have-been-approved compact or amendment takes effect on the date that notice of its approval is published in the FEDERAL REGISTER.

(b) The notice of approval must be published in the FEDERAL REGISTER within 90 days from the date the compact or amendment is received by the Office of Indian Gaming.

§ 293.16 How does the Paperwork Reduction Act affect this part?

The information collection requirements contained in this part have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned control number 1076–0172. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PARTS 294–299 [RESERVED]