

§ 293.27

(b) The Tribe regulates the gaming; and

(c) The player initiating the wager is not located on another Tribe's Indian lands within the State, unless that Tribe has lawfully consented.

§ 293.27 What factors will the Secretary analyze to determine if revenue sharing is lawful?

(a) A compact or amendment may include provisions that address revenue sharing in exchange for a State's meaningful concessions resulting in a substantial economic benefit for the Tribe.

(b) The Department reviews revenue sharing provisions with great scrutiny beginning with the presumption that a Tribe's payment to a State or local government for anything beyond § 293.18 regulatory fee is a prohibited "tax, fee, charge, or other assessment." In order for the Department to approve revenue sharing the parties must show through documentation, such as a market study or other similar evidence, that:

(1) The Tribe has requested and the State has offered specific meaningful concessions the State was otherwise not required to negotiate;

(2) The value of the specific meaningful concessions offered by the State provides substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the compact; and

(3) The Tribe is the primary beneficiary of the gaming measured by projected revenue to the Tribe against projected revenue shared with the State.

(c) The inclusion of revenue sharing provisions to the State that is not justified by meaningful concessions of substantial economic benefit to the Tribe may be considered evidence of a violation of IGRA.

§ 293.28 May a compact or extension include provisions that limit the duration of the compact?

Yes. However, IGRA anticipates compacts are long-term agreements between a Tribe and a State. These agreements reflect carefully negotiated compromises between sovereigns. A refusal to negotiate a long-term compact, or a short-term extension of at

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least one year to allow for negotiations to continue, may be considered evidence of a violation of IGRA.

§ 293.29 May any other contract outside of a compact regulate Indian gaming?

No. Subject to §§ 293.4(b) and 293.8(d), any contract or other agreement between a Tribe and a State, its agencies, or its political subdivisions that seeks to regulate a Tribe's right to conduct gaming—as limited by IGRA—is a gaming compact that must comply with IGRA and be submitted for review and approval by the Secretary consistent with § 293.8. A Tribe may submit any other agreement between the Tribe and the State, its agencies, or its political subdivisions for a determination if the agreement is a compact or amendment under § 293.4(c). This includes agreements mandated or required by a compact or amendment, which contain provisions for the payment from a Tribe's gaming revenue or restricts or regulates a Tribe's use and enjoyment of its Indian lands, including a Tribe's conduct of gaming.

§ 293.30 What effect does this part have on pending requests, final agency decisions already issued, and future requests?

(a) Compacts and amendments pending on March 22, 2024, will continue to be processed under this part, promulgated on December 5, 2008, and revised June 4, 2020, unless the Tribe or the State requests in writing to proceed under this part. Upon receipt of such a request, the Secretary shall process the pending compact or amendment under this part.

(b) This part does not alter final agency decisions made pursuant to this part before March 22, 2024.

(c) All compacts and amendments submitted after March 22, 2024 will be processed under this part.

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

The information collection requirements contained in this part have been approved by the Office of Management and Budget (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