



## **DEPARTMENT OF THE INTERIOR**

### **National Indian Gaming Commission**

#### **25 CFR Part 559**

#### **RIN 3141-AA83**

#### **Facility License Notifications**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The National Indian Gaming Commission is modifying the deadline for a tribe to submit notice that it is considering issuing a new facility license.

**DATES:** This direct final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless significant adverse comments are received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If this direct final rule is withdrawn because of such comments, timely notice of the withdrawal will be published in the Federal Register.

**ADDRESSES:** National Indian Gaming Commission, 1849 C Street, NW, Mail Stop 1621, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Jo-Ann M. Shyloski at 202-632-7003 or write to [info@nigc.gov](mailto:info@nigc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Class II and Class III gaming conducted under the Indian Gaming Regulatory Act (IGRA) must occur on Indian lands as defined by the IGRA, 25 U.S.C. 2703(4), 2710(a)(2) and (d)(1). Also, gaming on lands acquired into trust by the United States for the benefit of a tribe after the IGRA's effective date of October 17, 1988, is generally prohibited, unless one of several exceptions in 25 U.S.C. 2719 are met. Importantly, the

National Indian Gaming Commission possesses jurisdiction only over gaming facilities and operations on Indian lands and therefore must establish its jurisdiction as a prerequisite to monitoring them and enforcing the IGRA. 25 U.S.C. 2702(3), 2710(a)(2) and (d)(1)(A)(iii), 2713(a)(1). In 2008, the National Indian Gaming Commission (Commission) promulgated Facility License Notification Standards in part to ensure that each place, facility, or location where Class II or Class III gaming will occur is located on Indian lands eligible for gaming as required by the IGRA.

## **II. Development of the Rule**

Presidential Executive Order 14219, entitled *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, directed agencies to review all regulations for consistency with law and Administration policy; identify certain classes of regulations; and rescind or modify these regulations. Subsequently, Presidential Memorandum, *Directing the Repeal of Unlawful Regulations*, instructed agencies to immediately effectuate the repeal of any regulation, or the portion thereof, that exceeds the agency's statutory authority or is otherwise unlawful.

IGRA explicitly mandates tribes issue a separate license for each place, facility, or location on Indian lands at which Class II and Class III gaming is conducted. 25 U.S.C. 2710(b)(1) and (d)(1)(A)(ii). In the spirit of Executive Order 14219 and the Presidential Memorandum, the Commission removes the 120-day notice requirement for tribes considering the issuance of a facility license, because the 120-day notice period is not explicitly required in the IGRA. Instead, notice that a tribe intends to issue a new facility license is due any time before opening any new place, facility, or location.

## **III. Regulatory Matters**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866, as reaffirmed by Executive Order 13563, provides that the Office of Management and Budget's (OMB's) Office of Information and Regulatory

Affairs (OIRA) will review all rules to determine if they are significant. OIRA has determined that this rule is not significant.

#### *Notice and Comment*

The APA permits agencies to finalize some rules without first publishing a proposed rule in the Federal Register. This exception is limited to cases where the agency has “good cause” to find that the notice-and-comment process would be “impracticable, unnecessary, or contrary to the public interest.” Here, the Commission possesses good cause to conclude that a notice and comment period is unnecessary since the removal of the exact deadline in the facility license notification and submission regulations is noncontroversial and unlikely to result in an adverse comment. Consequently, the Commission may directly publish this direct final rule replacing the precise deadline of the facility license notification with a broader and more flexible deadline. This action will be effective 60 days from the date of this Federal Register document unless significant adverse comments are received within 30 days. If this direct final rule is withdrawn because of such comments, timely notice of the withdrawal will be published in the Federal Register and the NIGC will begin new rulemaking by announcing a proposed rule.

#### *Regulatory Flexibility Act*

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

#### *Small Business Regulatory Enforcement Fairness Act*

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

#### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *National Environmental Policy Act*

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

#### *Paperwork Reduction Act*

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., and assigned OMB Control Number 3141-0012.

#### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its relatively new Consultation Policy, adopted October 31, 2022. The NIGC’s consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe’s formal relationship with the Commission; or the consideration of the Commission’s trust responsibilities to Indian tribes.

Because 25 CFR § 559.2 currently has a 120-day-before-opening notice requirement for all facility licenses under consideration, the removal of that deadline to any time before-opening is uncontroversial. Also, given the removal of the 120-day-before-opening notice, the expedited 60-day review period is no longer necessary and is removed as well. And adverse comments are unlikely. Consequently, the Commission proceeds with the issuance of this direct final rule.

#### **List of Subjects in 25 CFR Part 559**

Gambling, Indian—Indian lands, Indians—tribal government, Notification and submission requirements—facility licenses.

For the reasons discussed in the preamble, the Commission amends 25 CFR part 559 as follows:

#### **PART 559—FACILITY LICENSE NOTIFICATIONS AND SUBMISSIONS**

1. The authority citation for part 559 continues to read as follows:

**Authority:** 25 U.S.C. 2701, 2702(3), 2703(4), 2705, 2706(b)(10), 2710, 2719.

2. Amend § 559.2 by revising paragraph (a) to read as follows:

**§559.2 When must a tribe notify the Chair that it is considering issuing a new facility license?**

(a) A tribe shall submit to the Chair a notice that a facility license is under consideration for issuance before opening any new place, facility, or location on Indian lands where class II or III gaming will occur.

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**Sharon M. Avery,**  
*Acting Chair.*

**Jean Hovland,**  
*Vice Chair.*

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