



DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 522

RIN 3141-AA87

Submission of Gaming Ordinance or Resolution

AGENCY: National Indian Gaming Commission.

ACTION: Direct final rule.

SUMMARY: For the purposes of gaming ordinance or amendment submissions, the National Indian Gaming Commission is removing the requirement for a tribe to submit a copy of its procedures for resolving disputes between the gaming public and the tribe or the management contractor.

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 If this direct final rule is withdrawn because of such comments, timely notice of the withdrawal will be published in the Federal Register.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.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, on October 17, 1988, establishing the National Indian Gaming Commission (Commission) and creating a comprehensive framework for the regulation of gaming on

Indian lands. Before conducting gaming on Indian lands, a tribe must adopt a gaming ordinance or resolution that is submitted to and approved by the NIGC Chair. 25 U.S.C. 2710(b)(1)(B), (b)(2), (d)(1)(A), and (d)(2)(A). In 1993, the Commission promulgated gaming ordinance submission regulations that required “a description of procedures for resolving disputes between the gaming public and the tribe or the management contractor.” 58 FR 5810. In 2022, the Commission modified the requirement, mandating that tribes submit a copy of the procedures. 87 FR 57593. When tribes amend their ordinances, they must provide certain ordinance submission requirements, including a copy of their dispute resolution procedures. 25 C.F.R. § 522.3(b)(2).

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.

In the spirit of Executive Order 14219 and the Presidential Memorandum, the Commission removes the requirement for tribes to submit a copy of its procedures for resolving disputes with the gaming public and the tribe or management contractor, because IGRA contains no directive about such procedures for ordinances. All but one of the other submission requirements relate to IGRA’s mandatory content for ordinances: criminal history check, background investigation, and licensing procedures; approved tribal-state compacts or Class III procedures (for approval of Class III ordinances); and environmental and public health and safety documents. 25 U.S.C. 2710(b)(2)(E) and (F), (d)(1)(A)(ii) and (2)(A); 25 C.F.R. § 522.2 (b) – (d), (g) & (h). The sole outlier is a copy

of the tribe's designation of an agent for service, but that corresponds with IGRA's empowerment of the NIGC Chair to issue complaints against tribal operators and management contractors as well as levy civil fines and/or temporary closure orders for violations of the Act, its implementing regulations, or tribal ordinances. 25 U.S.C. 2713(a)(1) and (3), (b). If the Chair takes such actions, a tribe's authorized representative or agent must receive them expeditiously to enable the tribe to appeal the Chair's decisions to the full Commission and/or request a hearing before the full Commission about them. Both the appeals to the Commission and hearings before it are explicitly permitted by IGRA. 25 U.S.C. 2713(a)(2), (b)(2).

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 dispute resolution procedures from an ordinance or amendment submission is noncontroversial and unlikely to result in an adverse comment. Therefore, the Commission may directly publish this direct final rule eliminating the requirement to submit a copy of dispute resolution procedures with an ordinance or amendment submission. 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 3141-0003.

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 the Commission is abolishing the requirement to submit a copy of dispute resolution procedures with an ordinance or an amendment for the Chair’s

approval, controversy over this change and/or adverse comments are unlikely.

Accordingly, the Commission proceeds with the issuance of this direct final rule.

List of Subjects in 25 CFR Part 522

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends 25 CFR part 522 as follows:

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

1. The authority citation for part 522 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

2. Revise § 522.2 to read as follows:

§ 522.2 Submission requirements.

A tribe must submit to the Chair via electronic or physical mail all of the following information with a request for approval of a class II or class III ordinance or resolution, or amendment thereto:

(a) One copy of an ordinance or resolution certified as authentic by an authorized tribal official that meets the approval requirements in § 522.5(b) or § 522.7.

(b) A copy of the procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A copy of the procedures to issue tribal licenses to primary management officials and key employees promulgated in accordance with § 558.3 of this chapter;

(d) When an ordinance or resolution concerns class III gaming, a copy of any approved tribal-state compact or class III procedures as prescribed by the Secretary that are in effect at the time the ordinance or amendment is passed;

(e) A copy of the designation of an agent for service under § 519.1 of this chapter;
and

(f) Identification of the entity that will take fingerprints and a copy of the procedures for conducting a criminal history check. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(g) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair may request in the Chair's discretion. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

3. In § 522.3, revise paragraph (b)(2) to read as follows:

§ 522.3 Amendment.

* * * * *

(b) * * *

(2) Any submission under § 522.2(b) through (g) that has been modified since its prior conveyance to the Chair for an ordinance, resolution, or amendment approval; and

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Sharon M. Avery,
Acting Chair.

Jean Hovland,
Vice Chair.