

Proposed Rule BIA Class III Tribal State Gaming Compact Process-Comment period ends on Sept. 2, 2008

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 293

RIN 1076-AE99

Class III Tribal State Gaming Compact Process

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to establish procedures for Indian tribes and States to submit Tribal-State compacts and compact amendments, governing the conduct of class III gaming activities on the tribe's Indian lands located within that State, for review and approval by the Secretary of the Interior.

DATES: Comments must be received on or before September 2, 2008.

ADDRESSES: You may submit comments on the rule, identified by the number 1076-AE99, by any of the following methods:

Federal rulemaking portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Fax: 202-273-3153.

Mail: Ms. Paula Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary--Policy and Economic Development, 1849 C Street, NW, Mail Stop 3657-MIB, Washington, DC 20240.

Hand delivery: Office of Indian Gaming, Office of the Deputy Assistant Secretary--Policy and Economic Development, 1849 C Street, NW., Room 3657-MIB, Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Note that requests for comments on the rule and the information collection are separate. Comments on the information collection requirements should be sent to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, by e-mail at <http://www.OIRA> DOCKET@omb.eop.gov or, by facsimile at (202) 395-6566.

Please also send a copy of your comments on information collection requirements to the Office of Indian Gaming at the above address.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Acting Director, Office of Indian Gaming, (202) 219-4066.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 2710. The Secretary has delegated this authority to the

Assistant Secretary--Indian Affairs by part 209 of the Departmental Manual.

Background

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701-2721, was signed into law on October 17, 1988. IGRA, 25 U.S.C. 2710, authorizes class III gaming activities on Indian lands when authorized by an approved ordinance, located in a State that permits such gaming and conducted in conformance with a Tribal-State compact. IGRA, 25 U.S.C. 2710(d)(8)(A), (B) and (C), authorizes the Secretary to approve, disapprove or consider approved a Tribal-State compact or compact amendment and publish notice of that approval or considered approval in the Federal Register. The submission process for the Tribal-State compact or compact amendment is not clear. Therefore this proposed rule establishes procedures for submitting Tribal-State compacts and compact amendments.

Procedural Requirements

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

(a) This rule will not have an economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) This rule will not create serious inconsistencies or otherwise interfere with an action taken or planned by another Federal agency. BIA is the only governmental agency that approves Tribal-State compacts and compact amendments.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule sets out the procedures for the submission of Tribal-State compacts and compact amendments.

(d) This rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Indian tribes are not considered to be small entities for the purposes of this Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

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a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal government or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications. The rule does not pertain to the ``taking'' of private property interests, nor does it impact private property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13121, the Department has determined that this rule does not have significant Federalism implications because it does not substantially and directly affect the relationship between the Federal and State governments and does not impose costs on States or localities. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. The rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear standards, simplify procedures, reduces burden, and are clearly written. The rule does not preempt any statute.

National Environmental Policy Act

The Department has determined that this 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.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection requires displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. This regulation requires an information collection under the Paperwork

Reduction Act of 1955 at Sec. 293.9. The information is submitted to fulfill requirements for approval of a Tribal-State compact or compact amendment and it is used by the Bureau to determine whether the tribe has met the criteria required by 25 CFR part 293. All information is collected in the tribe's submission of a Tribal-State compact or compact amendment. It is estimated that a tribe's application will need 360 hours to complete. The tribe will maintain the records as would any business; the Bureau maintains official files. In accordance with 44 U.S.C. 3507(d), BIA has submitted the information and recordkeeping requirements of this proposed rule to OMB for review and approval.

The Bureau invites comments on the information collection requirements of this proposed rule. You may submit comments to the Desk Officer for the Department of Interior by e-mail at OIRA_

DOCKET@omb.eop.gov or by facsimile at (202) 365-6566. Please send a copy of your comments to BIA at the location specified under the heading ADDRESSES.

You can receive a copy of BIA's submission to OMB by contacting the person listed in the FOR FURTHER INFORMATION CONTACT section, or by requesting the information from the BIA Information Collection Clearance Officer, 625 Herndon Parkway, Herndon, VA 20970.

Comments should address: (1) Whether the collection of information is necessary for the proper performance of the Program, including the practical utility of the information to the BIA; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Organizations and individuals who submit comments on the information collection requirements should be aware that the Department keeps such comments available for public inspection during regular business hours. If you wish to have your name and address withheld from public inspection, you must state this prominently at the beginning of any comments you make. The Department will honor your request to the extent allowable by law. We may withhold the information for other reasons.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with the President's memorandum of May 14, 1988, ``Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655), and Executive Order 13175, we have conducted consultation sessions with tribal governments on the development of proposed regulations to establish procedures for submitting Tribal-State compacts and compact amendments. Consultation sessions with tribal governments were conducted on the following dates and at the following locations: April 9, 2008 in Albuquerque, New Mexico and on April 23, 2008 in San Diego, California. The draft regulation was modified to reflect comments received during the consultation, as well as written comments received from Indian tribes.

Effects on the Nation's Energy Supply (Executive Order 13211)

This rule does not have a significant effect on the nation's energy supply, distribution, or use as defined by Executive Order 13211.

Clarity of This Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ``section'' appears in bold type and is preceded by the symbol ``Sec. and a numbered heading; for example, Sec. 293.8 Who can submit a compact or amendment?)

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(5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Public Comment Solicitation

If you wish to comment on the rule, please see the different methods listed in the ADDRESSES section. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comments--including your personal identifying information--may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 293

Indians--business and finance, Indians--gaming.

Dated: May 22, 2008.

Carl J. Artman,
Assistant Secretary--Indian Affairs.

For reasons stated in the preamble, the Bureau of Indian Affairs proposes to amend 25 CFR chapter I by adding part 293, to read as follows:

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?

293.3 What is a compact?

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

293.5 When should the Indian tribe or State submit a compact or a compact amendment for review and approval?
293.6 Are technical amendments subject to review and approval?
293.7 Are extensions of compacts and amendments subject to review and approval?
293.8 Who can submit a compact or amendment?
293.9 What documents must be submitted with a compact or amendment?
293.10 Where should a compact or amendment be submitted for review and approval?
293.11 How long will the Secretary take to review a compact or amendment?
293.12 When will the 45-day timeline be triggered?
293.13 What happens if the Secretary does not act on the compact or amendment within the 45-day review period?
293.14 Who can withdraw a compact or amendment after it has been received by the Secretary?
293.15 When may the Secretary disapprove a compact or amendment?
293.16 When does an approved or considered-to-have-been-approved compact or amendment take effect?
293.17 How does the Paperwork Reduction Act affect this part?

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

Sec. 293.1 What is the purpose of this part?

This part contains:

- (a) Procedures that Indian tribes and States must use when submitting Tribal-State compacts and compact amendments to the Department of the Interior; and
- (b) Criteria that the Secretary will use for approval or disapproval of such Tribal-State compacts or compact amendments.

Sec. 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) Compact means a class III Tribal-State gaming compact, and
 - (2) Amendment means an amendment to a class III Tribal-State gaming compact.

Sec. 293.3 What is a compact?

A compact is an agreement negotiated between an Indian tribe and a State governing the conduct of class III gaming activities on the tribe's Indian lands located within that State.

Sec. 293.4 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.

Sec. 293.5 When should the Indian tribe or State submit a compact or a compact 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.

Sec. 293.6 Are technical amendments subject to review and approval?

No. Technical, non-substantive amendments can be agreed upon by the parties without requiring Secretarial approval under the Indian Gaming Regulatory Act. However, substantive amendments of the terms of the compact must be approved by the Secretary. A substantive amendment is one that potentially implicates any of the three statutory reasons available to the Secretary to disapprove a compact listed in Sec. 293.15.

Sec. 293.7 Are extensions of compacts and amendments subject to review and approval?

Yes. Extensions to compacts or amendments are subject to review and approval.

Sec. 293.8 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.

Sec. 293.9 What documents must be submitted with a compact or amendment?

(a) Documentation submitted with a compact or amendment must include:

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

(2) 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 adopted the compact or amendment in accordance with applicable tribal law;

(b) The Secretary may request any other documentation necessary to determine whether to approve or disapprove the compact or amendment.

Sec. 293.10 Where should a compact or amendment be submitted for review and approval?

Compacts and amendments must be submitted 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.

Sec. 293.11 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 consecutive calendar days after receiving the compact or amendment.

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

Sec. 293.12 When will the 45-day timeline be triggered?

The 45-day timeline will be triggered when a compact or amendment is received and date stamped in the Office of Indian Gaming at the address listed in Sec. 293.10.

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Sec. 293.13 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.

Sec. 293.14 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 Sec. 293.10.

Sec. 293.15 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.

Sec. 293.16 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.

Sec. 293.17 How does the Paperwork Reduction Act affect this part?

The information collection requirements contained in Sec. 293.9 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned control number 01XX. 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.

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