

## PART 293—CLASS III TRIBAL-STATE GAMING COMPACT

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

## **Subpart A – General Provisions and Scope**

### **§ 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) Procedures and criteria that the Secretary will use for reviewing such Tribal-State compacts or compact amendments.

### **§ 293.2 How are key terms defined in this part?**

This part relies on but does not restate all defined terms set forth in the definitional section of IGRA.

- (a) *Amendment* means a change to a class III Tribal-State gaming compact other than an extension.
- (b) *Compact* or *Tribal-State Gaming Compact* means an intergovernmental agreement executed between Tribal and State governments under IGRA that establishes between the parties the terms and conditions for the operation and regulation of the Tribe’s Class III gaming activities.
- (c) *Extension* means a change to the duration of a compact or amendment.
- (d) *Gaming activity* or *gaming activities* means the conduct of class III gaming involving the three required elements of chance, consideration, and prize.
- (e) *Gaming facility* means the physical building or space within a building where the gaming activity occurs and the spaces that are necessary for conduct of gaming including the casino floor, vault, count, surveillance, management, information technology, class III gaming device, and supplies storage areas.
- (f) *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.
- (g) *Tribe* means Indian Tribe as defined in 25 U.S.C. 2703(5).

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

The Secretary has the authority to approve a compact or amendment “entered into” by a Tribe and a State, as evidenced by the appropriate signature of both parties. See §293.15 for the Secretary’s authority to disapprove compacts or amendments.

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

- (a) Yes. All compacts, amendments, agreements, or other documents – including, but not limited to, any dispute resolutions, settlement agreements, or arbitration decisions – which establish, change, or interpret the terms and conditions for the operation and regulation of a Tribe’s class III gaming activities regardless of whether they are substantive or technical, must be submitted for review and approval by the Secretary.
- (b) If a Tribe or a State (including its political subdivisions) are concerned that their agreement may be considered a “compact” or “amendment,” either party may request in writing a determination from the Department if their agreement is a compact or amendment and therefore must be approved and a notice published in the Federal Register prior to the agreement becoming effective. If the Secretary determines that an agreement is or is not a compact or amendment, the Department will issue a letter stating this determination.

**§ 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 any of the other terms of the compact. However, the parties must submit the documents required by § 293.8. The extension becomes effective only upon publication in the Federal Register.

**Subpart B – Submission of Tribal-State Gaming Compacts**

**§ 293.6 Who can submit a compact or amendment?**

Either party (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 Tribe or State submit a compact or amendment for review and approval?**

The 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 they are authorized under State law to enter into the compact or amendment;

- (d) Any ancillary agreements, documents, ordinances, or laws required by the compact or amendment; and
- (e) 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 3543, 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. Compacts and amendments may also be submitted electronically to [OIG Compact email address] as long as the original copy is submitted to the address listed above.

**Subpart C – Secretarial Review of Tribal-State Gaming Compacts**

**§ 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 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 by the Office of Indian Gaming.

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

If the Secretary does not take action to approve or disapprove a compact or amendment within the 45-day review period, the compact or amendment is approved by operation of law, but only to the extent the compact or amendment complies with the provisions of IGRA. The Secretary, after the 45<sup>th</sup> day, may issue a guidance letter to the parties identifying certain provisions that are inconsistent with IGRA. The Secretary is not required to issue a letter, and if the Secretary does issue a letter, any such letter may offer guidance to the parties on the Department's interpretation of IGRA. The compact or amendment that is approved by operation of law becomes effective only upon publication in the Federal Register.

**§ 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 Tribe and the State must submit a written request to the Director, Office of Indian Gaming at the address listed in §293.9.

**§ 293.14 When does a compact or amendment take effect?**

- (a) A compact or amendment, that is affirmatively approved or approved by operation of law takes effect on the date that notice of its approval is published in the Federal Register.
- (b) The notice of affirmative approval or approval by operation of law 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.

**§ 293.15 Is the Secretary required to disapprove a compact or amendment that violates IGRA?**

No. The IGRA provides the Secretary with time limited authority to review a compact or amendment and discretionary disapproval authority. If the Secretary does not take action to approve or disapprove a compact or amendment within 45 days, it shall be considered to have been approved by the Secretary, but only to the extent the compact or amendment is consistent with IGRA.

**§ 293.16 When may the Secretary disapprove a compact or amendment?**

The Secretary may disapprove a compact or amendment only if:

- (a) it violates:
  - (1) Any provision of IGRA;
  - (2) Any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands;
  - (3) The trust obligations of the United States to Indians; or
- (b) If the documents required in §293.8 are not submitted.

**Subpart D – Scope of Tribal-State Gaming Compacts**

**§ 293.17 May a compact or amendment include provisions addressing the application of the Tribe’s or the State’s criminal and civil laws and regulations?**

Yes. A compact or amendment may include provisions addressing the application of the criminal and civil laws and regulations of the Tribe or the State that are directly related to, and necessary for, the licensing and regulation of the gaming activity. The parties must show that these laws and regulations are both directly related to and necessary for, the licensing and regulation of the gaming activity.

**§ 293.18 May a compact or amendment include provisions addressing the allocation of criminal and civil jurisdiction between the State and the Tribe?**

Yes. A compact or amendment may include provisions allocating criminal and civil jurisdiction between the State and the Tribe necessary for the enforcement of the laws and regulations described in section (293.17 above).

**§ 293.19 May a compact or amendment include provisions addressing the State’s costs for regulating gaming activities?**

Yes. If the compact or amendment includes a negotiated allocation of jurisdiction to the State for the regulation of the gaming activity, the compact or amendment may include provisions to defray the State’s actual and reasonable costs for regulating the specific Tribe’s gaming activity. If the State is unable to show actual expenses for regulating the specific Tribe’s gaming activity this is considered evidence of bad faith.

**§ 293.20 May a compact or amendment include provisions addressing the Tribe’s taxation of gaming?**

Yes. A compact or amendment may include provisions addressing the Tribe’s taxation of the gaming activity in amounts comparable to the State’s taxation of gaming activities. A compact may not include provisions addressing the Tribe’s taxation of other activities that may occur within or near the Tribe’s gaming facility. The inclusion of provisions addressing the Tribe’s taxation of other activities is considered evidence of bad faith.

**§ 293.21 May a compact or amendment include provisions addressing remedies for breach of the compact?**

Yes. A compact or amendment may include provisions addressing how the parties will resolve a breach of the compact or other disputes arising from the compact including mutual limited waivers of sovereign immunity. Any dispute resolution agreement, arbitration award, settlement agreement, or other resolution of a dispute outside of Federal court must be submitted for review and approval by the Secretary. The inclusion of provisions addressing dispute resolution in a manner that seeks to avoid the Secretary’s review is considered evidence of bad faith.

**§ 293.22 May a compact or amendment include provisions addressing standards for the operation of gaming activity and maintenance of the gaming facility?**

Yes. A compact or amendment may include provisions addressing the Tribe’s standards for the operation of the gaming activity as well as the Tribe’s standards for the maintenance of the gaming facility, including licensing.

**§ 293.23 What factors will be used to determine whether provisions in a compact or amendment are directly related to the operation of gaming activities?**

- (a) A compact or amendment may include provisions that are directly related to the operation of gaming activities. The parties must show that these provisions are directly connected to Tribe’s conduct of class III gaming. Subjects that address patron conduct within the gaming facility are generally regarded as directly related to gaming. Examples include:
  - (1) Service of alcohol to patrons;
  - (2) Providing a non-smoking area; or
  - (3) Patron self-exclusion.
- (b) Mutually beneficial proximity, or even co-management alone is insufficient to establish a “direct connection” between the Tribe’s class III gaming and adjacent business or amenities. Additionally, tribal infrastructure projects or economic development activities that are funded by gaming revenue and may service or otherwise provide an incidental benefit to the gaming facility are not directly related to the conduct of gaming without other evidence of a direct connection.
- (c) Provisions which are **not directly** related to the operation of gaming activities include, but are not limited to:
  - (1) Limiting third party Tribes’ rights to conduct gaming;
  - (2) Treaty rights;
  - (3) Tobacco sales;
  - (4) Compliance with or adoption of State environmental regulation of things unrelated to the Tribe’s operation of gaming activities and maintenance of the gaming facility;
  - (5) Non-gaming Tribal economic activities including activities in or adjacent to the gaming facility; or
  - (6) Tribal class I or class II gaming activities.
- (d) The inclusion of provisions which the parties cannot show a direct connection to the Tribe’s conduct of class III gaming is considered evidence of bad faith.

**§ 293.24 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. We begin with the presumption that a Tribe’s payment to a State or local government for anything beyond regulatory fees (section 293.19) are a prohibited “tax, fee, charge, or other assessment.” In order for the Department to approve revenue sharing the parties must show:
- (1) the State has offered meaningful concessions the State was otherwise not required to negotiate; and
  - (2) the value of the concessions provides substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the compact.
- (c) The inclusion of revenue sharing provisions to the State that is not justified by meaningful concessions of substantial economic benefit to the Tribe is considered evidence of bad faith.

**§ 293.25 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 to allow for negotiations to continue, is considered evidence of bad faith.

**§ 293.26 May a compact or amendment permit a Tribe to engage in any form of class III gaming activity?**

Yes. If the State allows any form of class III gaming, then the State is regulating all forms of class III gaming. A State’s refusal to negotiate in a compact over all forms of class III gaming, not prohibited in the State, is considered evidence of bad faith.

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

No. Any contract or other agreement between a Tribe and a State or its political subdivisions which 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. Any agreement which includes 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, should be submitted for a determination if the agreement is a compact or amendment under 293.4(b).

**§ 293.28 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.