

COURSE DESCRIPTION

Did you know that IGRA requires charitable gaming to be regulated? Are you doing enough? This course examines the legal ins and outs of regulating small and charitable gaming on Indian lands. Participants will learn what responsibilities the tribal gaming regulatory authority has for regulating gaming, and which exemptions apply to charitable and small gaming operations.

PARTICIPANT GUIDE

Chairman Simermeyer promotes four emphasis areas in the Agency's work, and he is committed to being more engaged and accountable to the Indian gaming industry and Indian Country.

Industry Integrity

Protecting the valuable tool of Indian gaming that in many communities creates jobs, is the lifeblood for tribal programs, and creates opportunities for tribes to explore and strengthen relationships with neighboring jurisdictions.

Agency Accountability

Meeting the public's expectation for administrative processes that uphold good governance practices and support efficient and effective decision making to protect tribal assets.

Preparedness

Promoting tribes' capacity to plan for risks to tribal gaming assets including natural disaster threats, the need to modernize and enhance regulatory and gaming operation workforces, or public health and safety emergencies.

Outreach

Cultivating opportunities for outreach to ensure well-informed Indian gaming policy development through diverse relationships, accessible resources, and government-to-government consultation.

This training reinforces these four emphasis areas and the agency's commitment to the Indian gaming industry and Indian Country.

Gaming is Gaming

- Charitable purposes do not affect classification.
 - Class I – Social games of minimal value and traditional games.
 - Class II – Bingo and non-house-banked card games.
 - Class III – All other gaming not Class I and Class II. 25 U.S.C. 2703
- As long as people are paying to play and prizes are offered
- If gaming on Indian lands, then IGRA and NIGC regulations apply.

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25 U.S.C. 2703(6) - The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

25 U.S.C. 2703(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and


(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

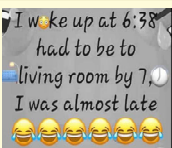
25 U.S.C. 2703(8) - The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

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Which regulations apply?

- Background and licensing
- Individually owned
- Fees and worksheets*
- Facility licenses*
- Annual audits*
- MICS*
- Technical Standards*



POLL QUESTION

Which regulations apply to small and charitable gaming?

- a. Parts 556 and 558
- b. Part 522
- c. Part 514
- d. Part 559
- e. Part 571
- f. Part 543
- g. Part 547
- h. All of the above

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See <https://www.nigc.gov/general-counsel/commission-regulations>

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Backgrounds & Licensing

- Background and licensing regulations apply to Primary Management Officials and Key Employees.
- PMOs and KEs are defined by function, not employment status (i.e., volunteers performing the functions still need to be licensed).

25 C.F.R. Parts 556 & 558

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§556.1 Scope of this part.


Unless a tribal-state compact assigns sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming. The procedures and standards of this part apply only to primary management officials and key employees. This part does not apply to any license that is intended to expire within 90 days of issuance.

§558.1 Scope of this part.

Unless a tribal-state compact assigns responsibility to an entity other than a tribe, the licensing authority for class II or class III gaming is a tribal authority. The procedures and standards of this part apply only to licenses for primary management officials and key employees. This part does not apply to any license that is intended to expire within 90 days of issuance.

See <https://www.nigc.gov/general-counsel/commission-regulations>

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Individually Owned Gaming

All gaming operations (even charitable) not owned by the Tribe must comply with IGRA's requirements for individually owned gaming.

- Tribal gaming ordinance specifically allows it
- 60% of net revenues must be given to Tribe*
- Licensing requirements as stringent as the state's

25 U.S.C. 2710(b)(4), NIGC Bulletin 98-1

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25 U.S.C. 2710(b)(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

25 U.S.C. 2710(b)(4)(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,


(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

See handout for NIGC Bulletin 98-1


<https://www.nigc.gov/compliance/detail/charitable-gaming>

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Fees and Worksheets

The Commission has never charged a fee to operations with less than \$1.5m in assessable gaming revenue, *but* all gaming operations must submit quarterly worksheets on time.



25 C.F.R. Part 514, and 82 F.R. 25,617

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25 C.F.R. 514.1 What is the purpose of this part?

Each gaming operation under the jurisdiction of the Commission, including a gaming operation operated by a tribe with a certificate of self-regulation, shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

25 C.F.R. 514.6(a) - Each gaming operation shall file with the Commission quarterly statements showing its assessable gross revenues for the assessed fiscal year.

See <https://www.nigc.gov/general-counsel/commission-regulations>


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Facility Licenses

Tribe must notify the NIGC at least 120 days in advance of issuing facility license. 25 C.F.R. 559.2(a)

Exception: Tribes are not required to notify NIGC in advance of occasional/charitable gaming events lasting not longer than one week 25 C.F.R. § 559.2(c)



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25 U.S.C. 2710(b)(1) – “A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.” *See also* 25 U.S.C. 2710(d)(1)(A) (“Class III gaming activities shall be lawful on Indian lands only if such activities are—(A) authorized by an ordinance or resolution that—...meets the requirements of subsection [2710(b)]”)

25 C.F.R. 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 at least 120 days before opening any new place, facility, or location on Indian lands where class II or III gaming will occur.

(1) A tribe may request an expedited review of 60 days and the Chair shall respond to the tribe's request, either granting or denying the expedited review, within 30 days.

(2) Although not necessary, a tribe may request written confirmation from the Chair.

(b) The notice shall contain the following:

(1) The name and address of the property;

(2) A legal description of the property;

(3) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices, if any;

(4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and

(5) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of the property's ownership.

(c) A tribe does not need to submit to the Chair a notice that a facility license is under consideration for issuance for occasional charitable events lasting not more than one week.

See <https://www.nigc.gov/general-counsel/commission-regulations>



Facility Licenses

Tribes must still license all facilities where gaming takes place (charitable or not) and provide a copy of each facility license to NIGC within 30 days *after* issuance.



25 C.F.R. § 559.3

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25 C.F.R. 559.3 When must a tribe submit a copy of a newly issued or renewed facility license to the Chair?

A tribe must submit to the Chair a copy of each newly issued or renewed facility license within 30 days of issuance.

25 C.F.R. 559.4 What must a tribe submit to the Chair with the copy of each facility license that has been issued or renewed?

A tribe shall submit to the Chair with each facility license an attestation certifying that by issuing the facility license, the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety. This means that a tribe has identified and enforces laws, resolutions, codes, policies, standards, or procedures applicable to each gaming place, facility, or location that protect the environment and the public health and safety, including standards under a tribal-state compact or Secretarial procedures.

See <https://www.nigc.gov/general-counsel/commission-regulations>



Annual Audits

Operations grossing less than \$2 million may submit "reviewed" rather than audited financial statements, if...

- they have complied with audit submission regulations for the past three years or
- received a waiver from the Commission.

25 C.F.R. § 571.12

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25 U.S.C. 2710(b)(2)(C) – The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--... annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission[.] *See also* 25 U.S.C. 2710(d)(1)(A) ("Class III gaming activities shall be lawful on Indian lands only if such activities are—(A) authorized by an ordinance or resolution that--...meets the requirements of subsection [2710(b)]").

25 C.F.R. 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The independent certified public accountant must be licensed by a state board of accountancy. Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(c) If a gaming operation has gross gaming revenues of less than \$2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

- (1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation; and
- (2) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years were sent to the Commission in accordance with §571.13.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:

- (1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;
- (2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

- (3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location;
- (4) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with §571.13; and
- (5) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than \$2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

- (1) The tribe chooses to consolidate the financial statements of the gaming operations;
- (2) The consolidated financial statements include consolidating schedules for each operation;
- (3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location;
- (4) Unless waived in writing by the Commission, the gaming operations' financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with §571.13; and
- (5) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

25 CFR 571.13(a) - Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.

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Part 543 MICS

Small and Charitable operations with gross revenues less than \$3 million may be exempt from the MICS if the TGRA allows it and

- TGRA provides alternate procedures, and
- If it is charitable, gaming must be run by the charity's employees or volunteers (i.e., not a third party donating the money to the cause)

25 C.F.R. § 543.4

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25 C.F.R. 543.1 – “This part establishes the minimum internal control standards for the conduct of Class II games on Indian lands as defined in 25 U.S.C. 2701 et seq.”




25 C.F.R. 543.4 - Does this part apply to small and charitable gaming operations?

(a) Small gaming operations. This part does not apply to small gaming operations provided that:

- (1) The TGRA permits the operation to be exempt from this part;
- (2) The annual gross gaming revenue of the operation does not exceed \$3 million; and
- (3) The TGRA develops, and the operation complies with, alternate procedures that:
 - (i) Protect the integrity of games offered;
 - (ii) Safeguard the assets used in connection with the operation; and
 - (iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

(b) Charitable gaming operations. This part does not apply to charitable gaming operations provided that:

- (1) All proceeds are for the benefit of a charitable organization;
- (2) The TGRA permits the charitable organization to be exempt from this part;
- (3) The charitable gaming operation is operated wholly by the charitable organization's agents;

		<p>(4) The annual gross gaming revenue of the charitable operation does not exceed \$3 million; and</p> <p>(5) The TGRA develops, and the charitable gaming operation complies with, alternate procedures that:</p> <ul style="list-style-type: none">(i) Protect the integrity of the games offered;(ii) Safeguard the assets used in connection with the gaming operation; and(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles. <p>(c) Independent operators. Nothing in this section exempts gaming operations conducted by independent operators for the benefit of a charitable organization.</p> <p>See https://www.nigc.gov/general-counsel/commission-regulations</p>
Slide 11	<div><h3>Technical Standards</h3><p>Similar to the MICS, Charitable operations with gross revenues less than \$3 million may be exempt from the technical standards if the TGRA allows it and</p><ul style="list-style-type: none">– All proceeds are for the benefit of the charitable operation, and– Gaming is conducted by the charity's employees or volunteers (i.e., not a third party donating the money to the cause)<p>25 C.F.R. § 547.5(e)</p></div>	<p>PARTICIPANT GUIDE</p> <p>25 C.F.R. § 547.5(e) Compliance by charitable gaming operations. This part does not apply to charitable gaming operations, provided that:</p> <ul style="list-style-type: none">(1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;(2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;(3) The TGRA permits the charitable organization to be exempt from this part;(4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and(5) The annual gross gaming revenue of the charitable gaming operation does not exceed \$3,000,000. <p>See https://www.nigc.gov/general-counsel/commission-regulations</p>
Slide 12	<div><h3>Questions</h3><p>NIGC Office of General Counsel (202) 632-7003</p></div>	<p>PARTICIPANT GUIDE</p> <p>If you need technical assistance and training please contact your region office or email traininginfo@nigc.gov</p>