

The National Indian Gaming Commission seeks tribal input, feedback, and suggestions concerning whether the regulations pertaining to gaming ordinances, 25 C.F.R. Part 522, should be amended.

As a prerequisite to class II and III gaming, IGRA requires an Indian tribe to adopt an ordinance or resolution that is approved by the Chair of the Commission.¹ The Chair is compelled to approve any tribal gaming ordinance or resolution concerning class II or III gaming on *Indian lands* within a tribe's jurisdiction if the ordinance or resolution fulfills the prerequisites of 25 U.S.C. § 2710(b)(2)(A)-(F). Such prerequisites include that: (1) the tribe maintains the sole proprietary interest and responsibility for the conduct of any gaming activity; (2) any net revenues from any tribal gaming are used for the purposes enumerated by IGRA; (3) annual outside audits of the gaming be provided to the Commission; (4) contracts for supplies, services, or concessions for a contract in excess of \$25,000 be subject to independent audits; (5) the construction and maintenance of the gaming facility and the operation of such gaming be conducted in a manner that adequately protects the environment and the public health and safety; and (6) there is an adequate system ensuring background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight is conducted on an ongoing basis.²

In addition, the Commission has promulgated regulations controlling the submission, amendment, approval, and disapproval of proposed gaming ordinances and amendments in 25 C.F.R. Part 522. Now, the Commission shares the attached proposed regulatory changes to:

- Authorize the submission of documents in electronic or physical form;
- Clarify that the ordinance submission requirements in § 522.2 also apply to amendments;
- Eliminate the requirement that a tribe submit copies of all gaming regulations;
- Require a tribe to include a copy of its constitution with its submission;
- Authorize the Chair to request copies of all tribal gaming regulations in its discretion and compel the tribe to respond to requests for additional information in 30 days;
- Add the requirement that a tribe submit a conforming copy of its entire ordinance or resolution that contains requested amendments;
- Initiate the 90-day deadline for the Chair's ruling upon receipt of a complete submission;
- Clarify that a tribe that subsequently amends a gaming ordinance or amendment pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission;
- Eliminate the requirement that the Chair publish the tribe's entire gaming ordinance in the Federal Register; and
- Simplify the language in Part 522.

¹ 25 U.S.C. § 2710(b)(1)(B).

² 25 U.S.C. § 2710(b)(2)(a)-(f).

Part 522 – Submission of Gaming Ordinance or Resolution

§522.1 Scope of this part.

This part applies to any class II or class III gaming ordinance or resolution or amendment thereto adopted by a tribe ~~after February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.~~

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§522.2 Submission requirements.

A tribe shall submit to the Chair~~man~~ 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 ~~on 8½ " × 11" paper~~ of an ordinance or resolution certified as authentic by an authorized tribal official ~~and~~ that meets the approval requirements in §522.4(b) or 522.6 of this part;

(b) A ~~description 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 ~~description 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) ~~Copies of all tribal gaming regulations; A copy of the tribe's constitution;~~

(e) When an ordinance or resolution concerns class III gaming, a copy of ~~the 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;

(f) A ~~description copy~~ of the procedures for resolving disputes between the gaming public and the tribe or the management contractor;

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

(h) Identification of a law enforcement agency that will take fingerprints and a ~~description~~ copy of the procedures for conducting a criminal history check by a law enforcement agency.

Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(i) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair~~man~~ may request in his or her their discretion ~~request as needed~~. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993; 73 FR 6029, Feb. 1, 2008]

§522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chair~~man~~'s approval any amendment to an ordinance or resolution.

(b) A tribe shall submit ~~for to~~ the Chair~~man~~'s ~~approval~~ all of the following information with a request for approval of an amendment:

(1) One copy of the amendment certified as authentic by an authorized tribal official; and

(2) any ~~Any amendment to the~~ submissions made under §§522.2(b) through (h) of this part ~~within 15 days after adoption of such amendment~~ that have been modified since their prior conveyance to the Chair for an ordinance, resolution, or amendment approval.

(3) A conforming copy of the entire ordinance or resolution containing the requested modifications.

§522.3a Amendment Approvals and Disapprovals.

(a) No later than 90 days after the complete submission of any amendment to a class II ordinance or resolution, the Chair shall approve the amendment if the Chair finds that—

(1) A tribe meets the amendment submission requirements of §522.3(b); and

(2) The amendment complies with §522.4(b).~~b~~. No later than 90 days after a tribe submits any amendment to a class II ordinance for approval, the Chair may disapprove the amendment if ~~they~~ it determines that a tribe failed to comply with the requirements of §522.3 or (a)(1) and (2) of this section. The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

(e) No later than 90 days after the submission of any amendment to a class III ordinance or resolution, the Chair shall approve the amendment if the Chair finds that—

- (1) A tribe ~~follows~~ meets the amendment submission requirements of §522.3(b); and
- (2) The amendment complies with §522.6(b) and (c).

(f) No later than 90 days after a tribe submits any amendment to a class III ordinance for approval, the Chair may disapprove the amendment if they determine that—

- (1) A tribal governing body did not adopt the amendment in compliance with the governing documents of the tribe; or
- (2) A tribal governing body was significantly and unduly influenced in the adoption of the amendment by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.4 Approval requirements for class II ordinances.

No later than 90 days after the complete submission to the Chair~~man~~ under §522.2 of this part, the Chair~~man~~ shall approve the class II ordinance or resolution if the Chair~~man~~ finds that—

- (a) A tribe meets the submission requirements contained in §522.2 of this part; and
- (b) The class II ordinance or resolution provides that—

- (1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either §522.10 or §522.11 of this part;

- (2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

- (i) To fund tribal government operations or programs;
- (ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));
- (iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

(8) A tribe that subsequently amends a gaming ordinance pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

§522.5 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under §522.2 of this part, the Chair~~man~~ may disapprove an ordinance if ~~he or she~~they determine~~s~~ that a tribe failed to comply with the requirements of §522.2 or §522.4(b) of this part. The Chair~~man~~ shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

[58 FR 5810, Jan. 22, 1993, as amended at 80 FR 31994, June 5, 2015]

§522.6 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chair~~man~~ under §522.2 of this part, the Chair~~man~~ shall approve the class III ordinance or resolution if—

- (a) A tribe ~~follows~~ meets the submission requirements contained in §522.2 of this part;
- (b) The ordinance or resolution meets the requirements contained in §522.4(b) (2), (3), (4), (5), (6), and (7) of this part; and
- (c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under §522.10 of this part.

§522.7 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of §522.6 of this part and no later than 90 days after a submission under §522.2 of this part, the Chair~~man~~ shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 582 of this chapter if the Chair~~man~~ determines that—

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of ~~a~~ the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

[58 FR 5810, Jan. 22, 1993, as amended at 80 FR 31994, June 5, 2015]

§522.8 Publication of class III ordinance and approval.

The Chairman shall publish ~~a~~ notice of approval of the class III tribal gaming ordinances or resolutions in the Federal Register, ~~along with the Chairman's approval thereof.~~

§522.9 ~~Substitute a~~ Approval by operation of law.

If the Chair~~man~~ fails to approve or disapprove an ordinance or resolution or amendment thereto submitted under §522.2 or §522.3 of this part within 90 days after the date of submission to the Chair~~man~~, a tribal ordinance or resolution or amendment thereto shall be considered to

have been approved by the Chair~~man~~ but only to the extent that such ordinance or resolution or amendment thereto is consistent with the provisions of the Act and this chapter.

§522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under §522.11 of this part), a tribal ordinance shall require:

- (a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chair~~man~~;
- (b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in §522.4(b)(2) of this part;
- (c) That not less than 60 percent of the net revenues be income to the tribe;
- (d) That the owner pay an assessment to the Commission under §514.1 of this chapter;
- (e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and
- (f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits, and hours of operation.

[58 FR 5810, Jan. 22, 1993, as amended at 80 FR 31994, June 5, 2015]

§522.11 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under §502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in §522.10(a)-(d) of this part.

§522.12 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chair~~man~~, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

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(a) A tribe shall submit to the Chairman ~~on 8½" × 11" paper~~ one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the FEDERAL REGISTER and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the FEDERAL REGISTER under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

DISCUSSION DRAFT