



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



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Dear Tribal Leader:

Presidents Office

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721, was signed into law on October 17, 1988. Section 11 of IGRA, 25 U.S.C. § 2710, contains provisions for the distribution of net gaming revenues from class II and class III gaming which may be distributed in the form of per capita payments to members of the Indian tribe provided the Indian tribe has prepared a Tribal Revenue Allocation Plan which is approved by the Secretary.

In accordance with Executive Order 13175, the Department of Interior, Office of Indian Gaming seeks to consult on the development of proposed regulations amending existing regulations in 25 CFR Part 290 which establish criteria for implementing Section 11 (b)(3)(B) of IGRA. The enclosed draft amendment to 25 CFR Part 290 modifies the procedures for submitting, reviewing, and approving tribal revenue allocation plans for allocating and distributing net gaming revenues from class II and/or class III tribal gaming activities.

As a result and in keeping with the policy commitment of the Department of the Interior on government-to-government consultation, we are providing you with a copy of the draft amendment highlighting all changes in red. The consultation sessions will be held on the following dates and at the following locations in order to receive input on the draft amendment.

October 25, 2007 8:30 a.m. - 12:00 Noon

Barona Valley Ranch Resort and Casino
1932 Wildcat Canyon Road
Lakeside, CA 92040

Hotel Reservations: (619) 443-2300 Toll Free: (888) 722-7662

October 30, 2007 8:30 a.m. - 12:00 Noon

National Indian Programs Training Center
1011 Indian School Road, NW, Suite 233-234 (12th Street & Menaul Blvd)
Albuquerque, NM 87104
(505) 563-5400

Comments may be mailed or hand delivered to the Office of Indian Gaming, 1849 C Street N.W., MS-3657-MIB, Washington, D.C. 20240. If you need additional information regarding the consultation process please contact the Office of Indian Gaming at 202-219-4066.

Sincerely,

George T. Skibine
Acting Deputy Assistant Secretary -
Policy and Economic Development

Enclosure

PART 290 - TRIBAL REVENUE ALLOCATION PLANS

Sec.

- 290.1 Purpose.
- 290.2 Definitions.
- 290.3 Information collection.
- 290.4 What is a tribal revenue allocation plan?
- 290.5 Who approves tribal revenue allocation plans?
- 290.6 Who must submit a tribal revenue allocation plan?
- 290.7 Must an Indian tribe have a tribal revenue allocation plan if it is not making per capita payments?
- 290.8 Do Indian tribes have to make per capita payments from net gaming revenues to tribal members?
- 290.9 How may an Indian tribe use net gaming revenues if it does not have an approved tribal revenue allocation plan?
- 290.10 May an Indian tribe make per capita payments from net gaming revenues without an approved tribal revenue allocation plan?
- 290.11 What are the consequences for a tribe that is making per capita payments without an approved tribal revenue allocation plan?
- 290.12 What information must the tribal revenue allocation plan contain?
- 290.13 What supplemental information must be submitted for the ABO to review a tribal revenue allocation plan?
- 290.14 What documents must the Indian tribe include with the tribal revenue allocation plan?
- 290.15 Under what conditions may an Indian tribe distribute per capita payments?
- 290.16 Who can share in a per capita payment?
- 290.17 Must the Indian tribe establish trust accounts with financial institutions for minors and legally incompetent persons?
- 290.18 Can the per capita payments of minors and legally incompetent persons be deposited into accounts held by the BIA or the Office of Special Trustee (OST)?
- 290.19 Where should the Indian tribe submit the tribal revenue allocation plan?
- 290.20 How long will the ABO take to review and approve the tribal revenue allocation plan?
- 290.21 When will the ABO disapprove a tribal revenue allocation plan?
- 290.22 May an Indian tribe appeal the ABO's decision?
- 290.23 Once approved, how does a tribe and its members ensure compliance with its tribal revenue allocation plan?
- 290.24 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?
- 290.25 Do revisions/amendments to a tribal revenue allocation plan require approval?
- 290.26 Are tribal revenue allocation plans, revisions, or amendments, approved before [the effective date of this regulation], subject to review in accordance with this part?
- 290.27 What is the liability of the United States under this part?

AUTHORITY:

5 U.S.C. § 301, 25 U.S.C. §§ 2, 9, and 2710

§ 290.1 Purpose.

This part contains procedures for submitting, reviewing, and approving tribal revenue allocation plans for allocating and distributing net gaming revenues from Class II and/or III tribal gaming activities. It applies to the review of tribal revenue allocation plans adopted under IGRA.

§ 290.2 Definitions.

Appropriate Bureau official (ABO) means the Bureau of Indian Affairs official with delegated authority to approve tribal revenue allocation plans.

IGRA means the Indian Gaming Regulatory Act of 1988, Pub. L. No. 100-497, 102 Stat. 2467 (codified at 25 U.S.C. §§ 2701-2721(1988)) and any amendments.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as:

(1) Eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Having powers of self-government.

Legally incompetent person means an individual who is eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal justice systems or as established by the tribe.

Member of an Indian tribe means an individual who meets the requirements established by applicable tribal law for enrollment in the tribe and (1) has been listed on the tribal rolls of that tribe if such rolls are kept or (2) has been recognized as a member by the tribal governing body if tribal rolls are not kept.

Minor means an individual who is eligible to participate in a per capita payment and who has not reached the age of 18 years.

Net gaming revenues mean revenues derived from a tribe's class II and/or III gaming operation, as defined in IGRA and 25 C.F.R. § 502.16 ("gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total gaming-related expenses, excluding management fees").

Per capita payment means the distribution of money or other thing of value to all members of the tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity. This definition does not apply to net gaming revenues which have been set aside by the tribe for bona fide programs, for which participants have met the program's written eligibility criteria, such as programs for social welfare, medical assistance, education, housing or other similar, specifically identified needs.

Per capita payment account means an account established by an Indian tribe at a financial institution to receive and invest per capita payments for members who are minors, or who have been determined to be legally incompetent, pending distribution of the account assets to those members after they attain the age of majority or cease to be legally incompetent.

Regional Director means the official of the BIA in charge of the regional office which has administrative responsibility for the affairs of the tribe for which a tribal revenue allocation plan is prepared.

Resolution means the formal document in which the tribal governing body expresses its legislative will in accordance with applicable tribal law.

Secretary means the Secretary of the Interior or his/her authorized representative.

Superintendent means the official or other designated representative of the BIA in charge of the field office which has immediate administrative responsibility for the affairs of the tribe for which a tribal revenue allocation plan is prepared.

Tribal governing body means the governing body of an Indian tribe recognized by the Secretary.

Tribal revenue allocation plan or *revenue allocation plan* means the document submitted by an Indian tribe that provides for distributing net gaming revenues.

You or your means the Indian tribe.

§ 290.3 Information Collection.

The information collection requirements contained in §§ 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(d), and assigned clearance number 1076-0152.

§ 290.4 What is a tribal revenue allocation plan?

It is a document that describes how you will allocate net gaming revenues.

§ 290.5 Who approves tribal revenue allocation plans?

The ABO will review and approve tribal revenue allocation plans for compliance with IGRA.

§ 290.6 Who must submit a tribal revenue allocation plan?

Any Indian tribe that intends to make a per capita payment from net gaming revenues must submit a tribal revenue allocation plan.

§ 290.7 Must an Indian tribe have a tribal revenue allocation plan if it is not making per capita payments?

No. If you do not make per capita payments, you do not need to submit a tribal revenue allocation plan.

§ 290.8 Do Indian tribes have to make per capita payments from net gaming revenues to tribal members?

No. You do not have to make per capita payments.

§ 290.9 How may an Indian tribe use net gaming revenues if it does not have an approved tribal revenue allocation plan?

Without an approved tribal revenue allocation plan, you may use net gaming revenues for any of the five categories listed in IGRA at 25 U.S.C. § 2710(b)(2)(B). They are as follows:

- (a) To fund tribal government operations or programs;
- (b) To provide for the general welfare of your tribe and its members;
- (c) To promote tribal economic development;
- (d) To donate to charitable organizations; or
- (e) To help fund operations of local government agencies.

§ 290.10 May an Indian tribe make per capita payments from net gaming revenues without an approved tribal revenue allocation plan?

No. IGRA requires that you have an approved tribal revenue allocation plan. You are in violation of § 2710(3) of IGRA if you make per capita payments to your tribal members from net gaming revenues without an approved tribal revenue allocation plan.

§ 290.11 What are the consequences for a tribe that is making per capita payments without an approved tribal revenue allocation plan or without complying with its approved revenue allocation plan?

If you violate IGRA by making per capita payments to tribal members without an approved revenue allocation plan, an enforcement action may be brought by the NIGC that could result in a fine or temporary and/or permanent closure of your tribe's gaming facility or facilities. Federal income tax penalties may also apply.

§ 290.12 What information must the tribal revenue allocation plan contain?

(a) A tribal revenue allocation plan must be submitted that includes a percentage breakdown of the uses for which you will allocate net gaming revenues. The percentage breakdown must total 100 percent.

(b) The plan must reserve an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes:

- (1) To fund tribal government operations or programs;
- (2) To provide for the general welfare of the tribe or its members;
- (3) To promote tribal economic development;
- (4) To donate to charitable organizations; or
- (5) To help fund operations of local government.

(c) The plan must identify when, where and to whom per capita payments will be made.

(d) The plan must contain detailed information to allow the ABO to determine that it complies with this part and IGRA, particularly regarding funding for tribal governmental operations and for promoting tribal economic development.

(e) It must protect and preserve the interests of minors and other legally incompetent persons who are entitled to receive per capita payments by:

(1) Ensuring that tribes make per capita payments for eligible minors or legally incompetent persons available for disbursement to the parents or legal guardians of these minors or incompetent persons at times, and in amounts, necessary for the health, education, or welfare of the minor or incompetent person;

(2) Establishing criteria for allowing the withdrawal of any per capita payments by a parent or legal guardian;

(3) Requiring acceptable proof and/or receipts for accountability of the expenditure of any per capita payments withdrawn by a parent or legal guardian; and

(4) Establishing criteria for denying the withdrawal of the minors' and legally incompetent persons' per capita payments by a parent or legal guardian.

(f) It must describe how you will notify members of the tax liability for per capita payments and how you will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR part 31;

(g) It must authorize the distribution of per capita payments to members according to specific eligibility requirements; and

(h) It must utilize or establish a tribal court system, forum or administrative process for the resolution of disputes concerning the allocation and distribution of net gaming revenues, including the distribution of per capita payments to tribal members and to parents or legal guardians on behalf of minors or legally incompetent persons.

§ 290.13 What supplemental information must be submitted for the ABO to review a tribal revenue allocation plan?

Detailed information must be submitted to allow the ABO to determine that the plan complies with this part and IGRA. The ABO's primary focus will be on information relating to revenues allocated for tribal governmental operations, programs and services, and revenues allocated for economic development. The information that a tribe must submit includes, but is not limited to, the following:

- (a) The number of enrolled members of the tribe, including a breakdown of:
 - (1) The number of adults;
 - (2) The number of minors; and
 - (3) The number of legally incompetent persons.
- (b) The number of enrolled members of the tribe residing on the tribe's reservation, and the number of enrolled members residing off-reservation.
- (c) The number of enrolled members of the tribe residing on the tribe's reservation who are unemployed.
- (d) The number and names of businesses, including both gaming and non-gaming related businesses, owned or operated by the tribe.
- (e) The amount of revenues generated by each business, including each gaming operation, which is available to the tribe for economic development.
- (f) The amount of tribal debt.
- (g) A list of all essential governmental services provided by the tribe on its reservation, such as water, sewer, housing, law enforcement, fire protection, road maintenance, tribal court, etc., a description of each of the services provided, and cost of providing these services as expressed in your last audit report. These governmental services must be available to all tribal members.
- (h) The total amount of revenue from net gaming revenues and all other sources, including, but not limited to, revenue received pursuant to the Indian Self-Determination and Assistance Act, 25 U.S.C. § 450 et seq., and budgeted by the tribe to provide governmental services on its reservation.
- (i) Which governmental services or programs are, or have been, affected by a lack of available revenue, and whether any governmental services or programs have been curtailed or cut back due to the lack of available revenue.
- (j) The number and titles of all tribal government programs, and the needs addressed by each.
- (k) The total amount of revenue, from tribal and all other sources, budgeted by the tribe for one or more of the following purposes:
 - (1) To fund government operations or programs to tribal members;
 - (2) To provide for the general welfare of the tribe or its members;
 - (3) For economic development;
 - (4) For donations to charitable organizations; or
 - (4) To help fund operations of local governments.
- (l) If the tribe has established per capita payment accounts with a financial institution on behalf of minors and persons found to be legally incompetent for deposit of their per capita payments, then documentation demonstrating that such accounts have been established must be provided.

(m) If an identified group, other than all enrolled members, is to receive per capita payments, the justification for distinguishing between this group and the rest of the members of the tribe must be provided.

§ 290.14 What documents must the Indian tribe include with the tribal revenue allocation plan?

You must include:

- (a) A written request for approval of the tribal revenue allocation plan;
- (b) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies you have adopted the tribal revenue allocation plan in accordance with applicable tribal law; and
- (c) The supplemental information set forth herein at § 290.13.

§ 290.15 Under what conditions may an Indian tribe distribute per capita payments?

You may make per capita payments only after the ABO reviews and approves your tribal revenue allocation plan.

§ 290.16 Who can share in a per capita payment?

(a) You must establish your own criteria for determining whether all members or identified groups of members are eligible for per capita payments.

(b) If the tribal revenue allocation plan calls for distributing per capita payments to an identified group of members rather than to all members, you must justify limiting this payment to the identified group of members. You must make sure that:

(1) The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary;

(2) The distinction does not discriminate or otherwise violate the Indian Civil Rights Act;

(3) The justification complies with applicable tribal law; and

(4) You have established written eligibility criteria for identifying the group of members.

§ 290.17 Must the Indian tribe establish trust accounts with financial institutions for minors and legally incompetent persons?

No. The tribe may, but is not required to, establish per capita payment accounts with financial institutions for minors and legally incompetent persons, and should explore investment options to structure the accounts to their benefit. If you have established per capita payment accounts, documents demonstrating that such accounts have been established must be submitted for review to ensure compliance with IGRA and this part. Per capita payment account information must be maintained and be available for review.

§ 290.18 Can the per capita payments of minors and legal incompetent persons be deposited into accounts held by the BIA or the Office of Special Trustee (OST)?

No. The Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by the BIA or the OST.

§ 290.19 Where should the Indian tribe submit the tribal revenue allocation plan?

You must submit your tribal revenue allocation plan to your respective Superintendent. The Superintendent will review the tribal revenue allocation plan to make sure it has been properly adopted in accordance with applicable tribal law. The Superintendent will then transmit the tribal revenue allocation plan promptly to the appropriate BIA regional director who will submit the tribal revenue allocation plan to the ABO with a recommendation on whether the plan should or should not be approved.

§ 290.20 How long will the ABO take to review and approve the tribal revenue allocation plan?

(a) The ABO must review and act on your tribal revenue allocation plan within 60 days of receiving it. A tribal revenue allocation plan is not effective without the ABO's written approval.

(b) If the tribal revenue allocation plan conforms to this part and IGRA, the ABO must approve it.

(c) If the tribal revenue allocation plan does not conform to this part and IGRA, the ABO will send you a written notice that:

(1) Explains why the plan does not conform to this part and IGRA; and

(2) Tells you how to bring the plan into conformance.

(d) If the ABO does not act within 60 days, you can appeal the inaction under 25 CFR

Part 2.

§ 290.21 When will the ABO approve a tribal revenue allocation plan?

To be approved, the tribe has the burden of establishing that the plan is adequate by demonstrating that:

(a) The tribe has reserved an adequate portion of net gaming revenues for the purposes set out in § 290.12(2), particularly those set out in (2)(a) and (2)(c);

(b) The tribe has sufficient revenues to adequately fund essential tribal governmental operations and programs;

(c) The tribe has sufficient revenues to adequately fund economic development;

(d) The tribal revenue allocation plan authorizes the distribution of per capita payments to members according to specific tribal membership requirements;

(e) If the tribal revenue allocation plan does not call for per capita payments to an identified group(s) of tribal members, that the payments are made to all members and do not discriminate;

(f) If the tribal revenue allocation plan calls for per capita payments to an identified group(s) of tribal members, that the requirements of § 290.16 have been satisfied;

(g) The per capita payments for eligible minors or legally incompetent persons are available for disbursement to the parents or legal guardians of these minors or incompetent persons to assist with the minor's or legally incompetent person's health, education or welfare, at times and in amounts deemed necessary, with the following protections:

(1) Written criteria that must be met before a parent or legal guardian can withdraw any per capita payments;

(2) Receipts or other acceptable proof that must be provided for the accountability of expenditures of any per capita payments withdrawn by a parent or legal guardian; and

(3) Written criteria for denying an attempt by a parent or legal guardian to withdraw a minor's or legally incompetent person's per capita payments.

(h) The tribal revenue allocation plan provides for notification of tribal members of the tax liability for per capita payments and the withholding of taxes for all recipients in accordance with IRS regulations in 26 CFR part 31; and

(i) A tribal court system, forum or administrative process is in place for the resolution of disputes concerning the allocation and distribution of net gaming revenues, including the distribution of per capita payments to tribal members and to parents or legal guardians of minors and legally incompetent persons.

(j) The tribal revenue allocation plan is adopted in accordance with applicable tribal law;

(k) The tribal revenue allocation plan does not violate the Indian Civil Rights Act of 1968, any other provision of Federal law or the United States' trust obligations.

§ 290.22 May an Indian tribe appeal the ABO's decision?

Yes, you may appeal the ABO's decision to the Interior Board of Indian Appeals in accordance with the regulations at 25 CFR Part 2.

§ 290.23 Once approved, how does the Indian tribe ensure compliance with the tribal revenue allocation plan?

You must utilize or establish a tribal court system, forum or administrative process for reviewing challenges to expenditures of net gaming revenues, and, if any deficiencies are found, then issuing decisions with explanations of how you will correct these deficiencies.

§ 290.24 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?

You must utilize or establish a tribal court system, forum or administrative process for resolving disputes arising from the allocation of net gaming revenue and the distribution of per capita payments.

§ 290.25 Do revisions/amendments to a tribal revenue allocation plan require approval?

(a) Yes, revisions/amendments to a tribal revenue allocation plan must be submitted to the ABO for approval to ensure that they comply with § 290.12, § 290.13 and IGRA.

(b) If you are amending, revising or replacing a previously approved tribal revenue allocation plan, you must submit the amended, revised or new plan to the ABO for review and approval under this part.

(c) The information required by §§ 290.12 and 290.13 must be submitted anew if the amended, revised or new tribal revenue allocation plan changes either of the following:

- (1) the percentage breakdowns of allocations; or
- (2) the amount or distribution of per capita payments.

(d) The information required by §§ 290.12 and 290.13 must be submitted anew if either of the following has occurred since the previous revenue allocation plan was approved:

(1) any government operations, programs or services have been curtailed or cut back;

or

(2) the net gaming revenues have either increased or decreased by 25 per cent.

§ 290.26 Are tribal revenue allocation plans, revisions, or amendments approved before [the effective date of this regulation], subject to review in accordance with this part?

No.

§ 290.27 What is the liability of the United States under this part?

The United States is not liable for the manner in which a tribe distributes funds from net gaming revenues.