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

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PART 293 – CLASS III TRIBAL-STATE GAMING COMPACT

Subpart A – General Provisions and Scope

§ 293.1 What is the purpose of this part?

This part contains:

- (a) Procedures that Indian Tribes and/or States must use when submitting Tribal-State compacts and compact amendments to the Department of the Interior (Department); and
- (b) Procedures and criteria that the Secretary of the Interior (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:

- (1) A change to a class III Tribal-State gaming compact other than an extension, or
- (2) A change to secretarial procedures prescribed under 25 U.S.C. 2710(d)(7)(B)(vii) when such change is agreed upon by the Tribe and State.

- (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 an intergovernmental agreement executed between Tribal and State governments under IGRA to change 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 or reward.
- (e) *Gaming facility* means the physical building or structure, where the gaming activity occurs.
- (f) *Gaming spaces* means the areas within a gaming facility (as defined in paragraph (e) of this section) that are directly related to and necessary for the conduct of class III gaming such as: the casino floor; vault; count room; surveillance, management, and information technology areas; class III gaming device and supplies storage areas; and other secured areas. where the operation or management of class III gaming takes place, including the casino floor, vault, count, surveillance, management, information technology, class III gaming device, and supplies storage areas.
- (g) *IGRA* means the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701-2721 (1988)) and any amendments.
- (h) *Meaningful concession* means:
 - (1) Something of value to the Tribe;
 - (2) Directly related to gaming;
 - (3) Something that carries out the purposes of IGRA; and
 - (4) Not a subject over which a State is otherwise obligated to negotiate under IGRA.
- (i) *Substantial economic benefit* means:
 - (1) A beneficial impact to the Tribe;
 - (2) Resulting from a meaningful concession;
 - (3) Made with a Tribe’s economic circumstances in mind;
 - (4) Spans the life of the compact; and
 - (5) Demonstrated by an economic / market analysis or similar documentation submitted by the Tribe or the State.

(j) *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. 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 and amendments, regardless of whether they are substantive or technical, must be submitted for review and approval by the Secretary.
- (b) If an ancillary agreement or document:
- (1) Changes a term to a compact, then it must be submitted for review and approval by the Secretary
 - (2) Implements or clarifies a provision contained in a compact or an amendment and is not inconsistent with an approved compact or amendment, it does not constitute a compact or an amendment and need not be submitted for review and approval by the Secretary.
 - (3) If an approved compact or amendment expressly contemplates an ancillary agreement or document, such as internal controls or a memorandum of agreement between the Tribal and State regulators, then such agreement or document is not subject to review and approval so long as it is not inconsistent with the approved compact or amendment.
 - (4) If an ancillary agreement or document interprets language in a compact or an amendment concerning the payment of a Tribe’s gaming revenue or includes any of the topics identified in 25 CFR 292.24, then it may constitute an amendment subject to review and approval by the Secretary.
- (c) If a Tribe or a State (including its political subdivisions) are concerned that their agreement or other document, including, but not limited to, any dispute resolution agreement, arbitration award, settlement agreement, or other resolution of a dispute outside of Federal court, 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. The Department will issue a letter within 60 days providing notice of the Secretary’s determination.

§ 293.5 Are extensions to compacts or amendments subject to review and approval?

No. Approval of an extension to a compact or amendment is not required if the extension does not include any changes to any of the other terms of the compact or amendment. However, the

parties must submit the documents required by § 293.8(a) through (c). 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 duly executed by the Tribe and the State in accordance with applicable Tribal and State law, or is otherwise binding on the 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 agreement between a Tribe and a State, its agencies or its political subdivisions required by a compact or amendment if the agreement requires the Tribe to make payments to the State, its agencies, or its political subdivisions, or it restricts or regulates a Tribe's use and enjoyment of its Indian Lands and any other ancillary agreements, documents, ordinances, or laws required by the compact or amendment which the Tribe determines is relevant to the Secretary's review; and
- (e) Any other documentation requested by the Secretary that is necessary to determine whether to approve or disapprove the compact or amendment. If a compact includes revenue sharing, a market analysis or similar documentation as required by § 293.24.

§ 293.9 Where should a compact or amendment or other requests under this part be submitted for review and approval?

Submit compacts, amendments, and all other requests under 25 CFR part 293 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 document with the new address will be sent for publication in the *Federal Register* within 5 business days. Compacts and amendments may also be submitted electronically to *IndianGaming@bia.gov* as long as the original copy is submitted to the address listed in this section.

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. The Department will provide an email acknowledgement to the Tribe and the State of receipt including the 45th day for electronically submitted compacts or amendments.

§ 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 is consistent with the provisions of IGRA. The Secretary will issue a letter informing the parties that the compact or amendment has been approved by operation of law after the 45th day and before the 90th day. The Secretary's letter may include guidance to the parties identifying certain provisions that are inconsistent with 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 both 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, IGRA provides 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 and the Department has informed the parties in writing of the missing documents.

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. At the request of the Secretary pursuant to § 293.8(e), 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 § 293.17.

§ 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 compact does not include requirements for the State to show actual and reasonable annual expenses for regulating the specific Tribe’s gaming activity over the life of the compact is considered evidence of a violation of IGRA.

§ 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 tribally licensed gaming activity in amounts comparable to the State’s taxation of State licensed 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 a violation of IGRA.

§ 293.21 May a compact or amendment include provisions addressing the resolution of disputes 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. If a Tribe is concerned that an agreement or other document, including but not limited to any dispute resolution, settlement agreement, or arbitration decision, constitutes a compact or amendment, or if the Tribe is concerned that the agreement or other document interprets the Tribe’s compact or amendment to govern matters that are not directly related to the operation of gaming activities, the Tribe may submit the document to the Department as set forth in § 293.4. The inclusion of provisions addressing dispute resolution in a manner that seeks to avoid the Secretary’s review is considered evidence of a violation of IGRA.

§ 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. If a compact or amendment mandate that the Tribe adopt standards equivalent or comparable to the standards set forth in a State law or regulation, the parties must show that these mandated Tribal standards are both directly related to and necessary for, the licensing and regulation of the gaming activity.

§ 293.23 May a compact or amendment include provisions that are directly related to the operation of gaming activities?

Yes. A compact or amendment may include provisions that are directly related to the operation of gaming activities.

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

- (a) The parties must show that these provisions described in § 293.23 are directly connected to Tribe's conduct of class III gaming activities. Examples include, but are not limited to:
- (1) Minimum age for patrons to participate in gaming;
 - (2) Transportation of gaming devices and equipment; or
 - (3) Exclusion of Patrons.
- (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 a benefit to the gaming activity 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 projects or activities that are not directly related to the Tribe's operation of gaming activities and maintenance of the gaming facility;
 - (5) Requiring memorandum of understanding, intergovernmental agreements, or similar agreements with local governments;
 - (6) Enforcement of State court orders garnishing employee wages or patron winnings;
 - (7) Granting State court jurisdiction over tort claims arising from the Tribe's conduct of class III gaming activities;

- (8) Non-gaming Tribal economic activities including activities in or adjacent to the gaming facility, including but not limited to, restaurants, nightclubs, hotels, event centers, water parks, gas stations, and convenience stores; or
 - (9) 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 activities is considered evidence of a violation of IGRA.

§ 293.25 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 § 293.19 regulatory fees are a prohibited “tax, fee, charge, or other assessment.” In order for the Department to approve revenue sharing the parties must show through documentation, such as a market study or other similar evidence, that:
 - (1) The Tribe has requested, and the State has offered specific meaningful concessions the State was otherwise not required to negotiate;
 - (2) The value of the specific meaningful concessions offered by the State provides substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the compact; and
 - (3) The Tribe is the primary beneficiary of the gaming, measured by projected revenue to the Tribe against projected revenue shared with the State;
- (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 a violation of IGRA.

§ 293.26 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 of at least one year to allow for negotiations to continue, is considered evidence of a violation of IGRA.

§ 293.27 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 a violation of IGRA.

§ 293.28 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. A Tribe may submit any agreement between the Tribe and the State or its political subdivisions, mandated or required by a compact or amendment, 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, for a determination if the agreement is a compact or amendment under § 293.4(c).

§ 293.29 May a compact or amendment include provisions addressing Statewide remote wagering or internet gaming?

Yes. A compact or amendment consistent with § 293.17 may include provisions addressing Statewide remote wagering or internet gaming that is directly related to the operation of gaming activity on Indian lands. A compact may specifically include provisions allocating State and Tribal jurisdiction over remote wagering or internet gaming originating outside Indian lands where:

- (a) State law and/or the compact or amendment deem the gaming to take place, for the purposes of State and Tribal law, on the Tribe's Indian lands where the server accepting the wagers is located;
- (b) The Tribe regulates the gaming; and
- (c) The player initiating the wager is not located on another Tribe's Indian lands.

§ 293.30 What effect does this part have on pending requests, final agency decisions already issued, and future requests?

- (a) Compacts and amendments pending on [EFFECTIVE DATE OF FINAL RULE], will continue to be processed under 25 CFR part 293, promulgated on December 5, 2008, and revised June 4, 2020, unless the applicant requests in writing to proceed under this part. Upon receipt of such a request, the Secretary shall process the pending compact or amendment under this part.
- (b) This part does not alter final agency decisions made pursuant to this part before [EFFECTIVE DATE OF FINAL RULE].

- (c) All compacts and amendments submitted after [EFFECTIVE DATE OF FINAL RULE] will be processed under this part.

§ 293.31 How does the Paperwork Reduction Act affect this part?

The information collection requirements contained in this part have been approved by the Office of Management and Budget (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.