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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 293**

RIN 1076-AE99

**Class III Tribal State Gaming Compact Process**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes procedures for Indian tribes and States to submit Tribal-State compacts and compact amendments, governing the conduct of class III gaming activities on the tribe's Indian lands located within that State, for review and approval by the Secretary of the Interior.

**DATES:** This rule is effective on January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Paula Hart, Acting Director, Office of Indian Gaming, 1849 C Street, NW., Mail Stop 3657-MIB, Washington, DC 20240; Telephone: (202) 219-4066.

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**I. Authority**

The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 2710. The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

**II. Background**

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701-2721, was signed into law on October 17, 1988. IGRA authorizes class III gaming activities on Indian lands when authorized by an approved ordinance, located in a State that permits such gaming and conducted in conformance with a Tribal-State compact. See 25 U.S.C. 2710. The Indian tribe and State must submit each compact and compact amendment to the Secretary for approval or disapproval. See 25 U.S.C. 2710(d)(8)(A), (B) and (C).

On July 2, 2008, the Bureau of Indian Affairs (BIA) published a proposed rule

establishing the procedures for submitting Tribal-State compacts and compact amendments to the Secretary for approval. See 73 FR 37907. The original comment period ended on September 2, 2008. BIA extended the comment period until September 22, 2008. See 73 FR 51255 (September 2, 2008).

**III. Discussion of Comments Received on Proposed Rule**

During the public comment period, the Department received a total of 15 comments from Indian tribes, individual commenters, States, State associations, and non-profit organizations. The following discussion provides a summary of general and section-specific comments, and the Department's responses to those comments. The section-specific comments below are organized according to the sections listed in the proposed rule.

**A. General Comments**

One comment commended the Secretary for publishing these regulations.

One comment requested that the rule require the surrounding communities to approve compacts or amendments before they may become effective.

*Response:* This recommendation was not adopted because the Secretary does not have the authority to require such approval by surrounding communities. Publication in the **Federal Register** serves as notice to the public, including surrounding communities, before compacts or amendments become effective. See section 293.15 of the final rule. Each State's compact approval process is a matter of State law and governs whether surrounding communities can provide input.

One comment suggested that throughout the rule we add "substantive" in every instance we used the word "amendment."

*Response:* This comment applied to the proposed rule because the proposed rule subjected only substantive comments to Secretarial review and approval. The final rule subjects all amendments, whether substantive or technical, to Secretarial review and approval; therefore, the comment requesting that we specify that amendments refer to substantive amendments only is no longer applicable.

One comment suggested adding language to clarify the Department's position on "Indian lands."

*Response:* This regulation addresses the process for submission by tribes and States and consideration by the Secretary of Class III Tribal-State

Gaming Compacts, and is not intended to address substantive issues. To clarify, we have removed references to the purpose of this rule being to establish the "criteria" by which the Secretary reviews compacts in section 293.1.

One comment suggests using the phrase "State Governor's Office" rather than the generic term "State" for greater specificity.

*Response:* The final rule continues to refer to "State" because IGRA does not specify the "State Governor's Office."

**B. Section 293.2 How are key terms defined in this part?**

One comment suggested defining the terms "substantive amendment," "technical amendment," and "Tribal-State gaming compact."

*Response:* We accepted this recommendation with regard to defining "Tribal-State gaming compact." In the proposed rule, this definition was in its own section. The final rule includes the definition with definitions of other terms in section 293.2. With regard to defining "substantive amendment" and "technical amendment," this distinction is no longer necessary because the final rule subjects all amendments to Secretarial review and approval.

**C. Section 293.3 What is a compact?**

A comment suggested this section be deleted and a definition of a Tribal-State compact added to section 293.2.

*Response:* We accepted this recommendation and added a definition of "Tribal-State gaming compact" to section 293.2.

One comment suggested we remove "on the tribe's Indian lands located within the State."

*Response:* In response to the previous comment, the entire section was deleted. The phrase "on the tribe's Indian lands located within the State," is not included in the new definition of "Tribal-State gaming compact."

**D. Section 293.4 What authority does the Secretary have to approve or disapprove compacts and amendments?**

One comment states that the Indian tribe or State should submit the compact or amendment after it has been "legally entered into" by both parties. Another comment suggested that the Department should consider adding a requirement that the compact or amendment also be "in effect."

*Response:* These comments are related and both are addressed later in the rule. First, at 293.8 (293.9 in the proposed rule), the final rule now requires documentation from both the tribe and the State certifying that their respective representatives were

authorized to execute the proposed compact or amendment. Section 293.15 (section 293.16 in the proposed rule) is consistent with IGRA because, once approved or considered-to-have-been-approved, a compact or amendment is "in effect" for the purposes of IGRA only when a notice of approval of the compact is published in the **Federal Register**, not when submitted by the parties.

Another comment asked for identification of the Secretary's authority for approving amendments.

*Response:* IGRA requires that the Secretary review all compacts. The Secretary must review amendments to insure that the terms of the compact, as amended and considered as a whole, do not violate any provision of IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians.

One comment requested that the Department notify the parties as well as the local jurisdictions that are affected of when the compact or amendment becomes effective.

*Response:* This recommendation was not adopted because publication in the **Federal Register** serves as notice to the public. See section 293.15 of the final rule.

Multiple comments recommended referencing section 293.15 (section 293.14 of the final rule) to address the Secretary's disapproval authority.

*Response:* This recommendation was accepted and section 293.14 of the final rule is now referenced with regard to the Secretary's disapproval authority.

**E. Section 293.5 When should the Indian tribe or State submit a compact or a compact amendment for review and approval?**

One commenter would like the local jurisdictions to be notified when a compact or amendment is submitted.

*Response:* This recommendation was not adopted because IGRA does not require this notification.

**F. Section 293.6 Are technical amendments subject to review and approval?**

One comment suggests that we require "proof of State [r]atification \* \* \*, an enacted and chaptered bill or evidence of a legislative action."

*Response:* We accepted in part by adding language in final section 293.8 that would require the Governor or his representative to submit a certification of authority under State law to enter into the compact or amendment.

One comment requests us to, "clearly specif[y] \* \* \* the date by which the

Compact or amendment ratification takes affect [sic]."

*Response:* The date on which the compact is effective will be stated in the **Federal Register** notice.

One comment opposes this section and questions the statutory authority for the proposed exemption.

*Response:* The Department has amended this section to provide that all amendments are subject to Secretarial review and approval.

Multiple comments suggested redrafting sections 293.6 and 293.7 because of the confusion regarding submitting a technical amendment for approval and regarding when an amendment is not substantive.

*Response:* The Department has amended this section to provide that all amendments, whether technical or substantive, are subject to Secretarial review and approval.

**G. Section 293.7 Are extensions of compacts and amendments subject to review and approval?**

One comment suggested changing this section to address amendments and adding a new section to address extensions.

*Response:* We accepted this comment by adding a new section 293.5 in the final rule to solely address extensions.

One comment suggested that extensions do not need approval.

*Response:* We accepted this comment for all extensions that do not amend the terms of a compact, but clarified that the tribe and State must still submit the extension and supporting documentation to the Secretary. This will allow the Secretary to publish notice of the extension in the **Federal Register**; IGRA specifies that a compact is not in effect unless notice is published in the **Federal Register**.

One comment suggested that all amendments and extensions are substantive.

*Response:* The final rule addresses amendments and extensions separately. The final rule subjects all amendments to Secretarial review and approval, regardless of whether they are substantive or not. The final rule separately addresses extensions, providing that as long as they do not amend the terms of the compact, they are not subject to Secretarial review and approval, but still must be submitted to the Secretary for publication in the **Federal Register**.

**H. Section 293.8 Who can submit a compact or amendment?**

One comment suggested that we add to (a) "provided that all the necessary

documents are included with the submission."

*Response:* This recommendation was not adopted because it does not address the question raised in the heading. Final rule section 293.8 addresses what documents must be submitted.

One comment suggested language that would require the Secretary to notify the non-submitting party (the State or the Indian tribe) of the submission.

*Response:* This recommendation was not adopted because it is not required under IGRA. Additionally, the submission must be executed by both the Tribe and State government to qualify as a Tribal-State gaming compact under section 293.2(b)(2).

One comment suggested that we verify that the person submitting the compact or amendment to the Secretary has the authority to do so.

*Response:* This recommendation was not adopted because it is not required under IGRA; however, we have added a requirement that the State certify that it has authority to enter into the compact or amendment.

One comment suggested that we require a single submitter (either the State or the tribe).

*Response:* This recommendation was not adopted because IGRA does not require a single submitter.

#### *I. Section 293.9 What documents must be submitted with a compact or amendment?*

One comment asked that the Office of Indian Gaming have a "unique date and time stamp."

*Response:* The Office of Indian Gaming currently uses a "unique" date stamp that identifies the office.

The same commenter suggested requiring the person who receives the compact to "initial" that they took possession of the document.

*Response:* The Office has determined that having each person with custody of the document initial the document upon receipt will not address the apparent concern that a document does not reach the Office of Indian Gaming.

One comment recommended language that formalized the requirement that the tribe approve the compact or amendment.

*Response:* We accepted this recommendation in part by changing "adopted" to "approved."

One comment raised the concern that submitted information that is confidential and proprietary in nature may be released under the Freedom of Information Act (FOIA).

*Response:* If the Secretary determines that submitted information is confidential, as defined by FOIA, then

the Secretary would withhold the information from public disclosure. The Secretary needs enough information to make a determination as to whether submitted information is confidential and therefore exempt from public disclosure requirements under FOIA.

One comment requested that we require the compact to be "signed."

*Response:* We have not accepted this comment because existing language in the rule requiring that the compact be "executed" by both parties addresses this comment.

One comment suggests adding to paragraph (d) of this section language that clarifies that the Secretary may only seek additional documentation that is "relevant" to the Secretary's decision whether to approve or disapprove the compact or amendment.

*Response:* We did not accept this comment because the rule, as written, allows the Secretary to request only additional documentation that is "necessary to determine whether to approve or disapprove the compact or amendment." Adding a requirement that the additional documentation be "relevant" would be superfluous, given that any documentation that is "necessary" for the decision will also be relevant to the decision.

#### *J. Section 293.10 Where should a compact or amendment be submitted for review and approval?*

One comment suggests we not state the address as "Mail Stop 3657" because in the future the office could move.

*Response:* We have accepted this comment in part. We did not remove the "Mail Stop 3657" but we added, "If this address changes, a notice with the new address will be published in the **Federal Register** within 5 business days."

#### *K. Section 293.11 How long will the Secretary take to review a compact or amendment?*

One comment requested that a requirement be added to this section stating that, "the Secretary must withdraw the Federal notice in order to clarify the record and ensure that the Tribal State compact receives the proper scrutiny before being published."

*Response:* The Department determined that this additional language is not necessary because the Department has procedures in place requiring internal Departmental review before a notice can be delivered to and published in the **Federal Register**. If the Secretary determines that the compact or amendment was not legally entered into, the Secretary will disapprove the compact or amendment; in that case, no

notice will be published in the **Federal Register**. As stated in section 293.12 of the final rule, "If the Secretary neither affirmatively approves nor disapproves a compact or amendment within the 45-day review period, the compact or amendment is considered to have been approved, but only to the extent it complies with the provisions of the Indian Gaming Regulatory Act." Notice that the compact or amendment is considered to be approved will be published in the **Federal Register** and will state the date on which the compact or amendment is "in effect."

One commenter would like the local jurisdictions to be notified of the Secretary's decision to approve or disapprove a compact or amendment.

*Response:* This recommendation was not adopted because notification of the Secretary's decision to approve or disapprove is not required by IGRA. Additionally, publication in the **Federal Register** serves as notice to the public that the compact or amendment is "in effect." See section 293.15 of the final rule.

One comment suggested that we replace the language in (b) with, "If the Secretary has not put forward a decision to approve or disapprove a compact or amendment with 45 days, the compact or amendment will be considered approved."

*Response:* This comment was rejected because section 293.13 (section 293.12 of the final rule) already includes language regarding what happens when the Secretary does not put forward a decision to approve or disapprove the compact or amendment within 45 days.

One comment stated that the Department grants itself extensions to the 45-day time period for issuing a decision.

*Response:* The 45-day time period is statutory and no extensions are granted.

#### *L. Section 293.12 When will the 45-day timeline be triggered?*

One comment wanted us to add a paragraph stating that if the compact has not been legally "entered into" then it is "not in effect."

*Response:* It appears that this comment was meant to address proposed section 293.15 (When may the Secretary disapprove a compact or amendment?). We reject this comment because section 293.7 of the final rule, stating that a compact or amendment may only be submitted to the Secretary after it has been legally entered into, addresses this concern. Likewise, because IGRA requires that the compact or amendment be legally entered into, final section 293.14, stating that the Secretary may disapprove a compact or

amendment that violates any IGRA provision, addresses this concern.

Three comments suggested that we add the following sentence to this section, "Once the compact or amendment is received and date stamped in the Office of Indian Gaming, both parties (the State and the Indian Tribe) will be notified in writing by the Office of Indian Gaming, of the date triggering the 45-day timeline."

*Response:* We reject this comment because it is not required under IGRA and because the parties are generally aware of the submission date, given that they make (or authorize, in coordination with the other party) the submission. Additionally, it is often infeasible for the Office of Indian Gaming to individually respond to each submission in writing soon after receiving that submission, given the numerous other actions the Office is required to take during the 45-day time frame. The trigger for the 45-day time frame is established by statute, and the Secretary does not make any determination as to when the 45-day time frame begins, so sending a letter with the date triggering the 45-day period will not affect when the time period begins to run, or the length of the time period.

*M. Section 293.13 What happens if the Secretary does not act on the compact or amendment within the 45-day review period?*

One comment recommends that when a compact is considered to be approved that the Secretary make a finding about the extent to which the compact complies with IGRA.

*Response:* This recommendation was not adopted because it is not required under IGRA. Section 25 U.S.C. 22710(d)(8)(C) authorizes the Secretary to allow a compact to become effective without requiring a determination as to whether the compact/amendment complies with IGRA.

One comment stated that the Secretary should notify the tribe and the State upon completion of the 45-day period.

*Response:* We reject this comment because the tribe and State will be notified by publication in the **Federal Register** of the Secretary's approval within 90 days from the date the compact or amendment is received by the Office of Indian Gaming.

*N. Section 293.14 Who can withdraw a compact or amendment after it has been received by the Secretary?*

One comment suggested amending this section to provide that any

withdrawal must be in writing and executed by the tribe and the State.

*Response:* This recommendation was not adopted because this section already specifies that the request must be "written" and submitted by both the Indian tribe and State (meaning that both must execute the request).

Two comments suggested that the Secretary shall notify the other party in writing of the request to withdraw.

*Response:* This suggestion is rejected because this section already requires written requests signed by both parties.

*O. Section 293.15 When may the Secretary disapprove a compact or amendment?*

Two comments recommended that we clarify the meaning of "[t]he Secretary may disapprove a compact or amendment only if it violates \* \* \* [a]ny provisions of the Indian gaming Regulatory Act; \* \* \* or \* \* \* [t]he trust obligations of the United States to Indians."

*Response:* This recommendation was not adopted because this regulation is a procedural rule, and is not intended to address substantive issues.

*P. Section 293.16 When does an approved or considered-to-have-been-approved compact or amendment take effect?*

Multiple comments would like to restrict the Secretary's time for publishing the **Federal Register** notice to within 5 days of the approval. Another comment would like the time period to be shortened from 90 days to 60 days. Yet another comment would like the Secretary to publish the **Federal Register** notice within 15 days from the date of approval.

*Response:* These comments were not accepted because the 90-day time frame that has been incorporated is reasonable.

One comment suggested that this provision is "ultra vires" because IGRA provides that a compact "shall be considered to have been approved" if no action is taken within the 45-day review period. Another comment suggested a considered-to-be-approved compact will be automatically effective 60 days following the submission.

*Response:* We reject these comments because IGRA specifies that a compact may be considered approved but does not take effect until notice is published in the **Federal Register**. See 25 U.S.C. 2710(d)(3)(B). The act of actual publication is necessary.

One comment suggests that 25 U.S.C. 2710(d)(8)(D) does not specify that publication is necessary in order for

compacts that are "considered to be approved" to be effective.

*Response:* Section 2710(d)(8)(D) states, "The Secretary shall publish in the **Federal Register** notice of any Tribal-State compact that is approved, or considered to have been approved \* \* \*" Section 2710(d)(3)(B) states that a "compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the **Federal Register**."

#### IV. Changes to Proposed Rule

In section 293.1 (What is the purpose of this part?), the final rule clarifies in paragraph (b) that this rule addresses the procedures the Secretary follows in reviewing compacts and amendments, rather than establishing the criteria (which are already established by IGRA). The final rule incorporates a revised definition of "Tribal-State Gaming Compact" into section 293.2 (How are key terms defined in this part?), and deletes section 293.3 (What is a compact?). The final rule also adds a definition of "extensions."

In response to a comment, the final rule adds to section 293.3 (What authority does the Secretary have to approve or disapprove compacts and amendments?) a cross-reference to the section addressing when the Secretary may disapprove a compact or amendment.

Section 293.5 (When should the Indian tribe or State submit a compact or compact amendment for review and approval?) was moved to follow the section addressing "Who can submit a compact or amendment?"

The final rule revises section 293.6 (Are technical amendments subject to review and approval?) to: (1) Address whether compacts are also subject to review and approval; and (2) eliminate the distinction between technical and substantive amendments by subjecting all amendments to Secretarial review. This section is located in the final rule at section 293.4 (Are compacts and amendments subject to review and approval?).

The final rule revises section 293.7 (Are extensions of compacts and amendments subject to review and approval?) to address only extensions. See final rule section 293.5 (Are extensions to compacts subject to review and approval?). The final rule also changes the response to provide that extensions are not subject to review and approval, but must be submitted to the Secretary to allow for publication in the **Federal Register**.

The final rule makes no changes to section 293.8 (Who can submit a

compact or amendment?), which is now located at section 293.6.

The final rule revises section 293.9 (What documents must be submitted with a compact or amendment?) to require the representative of the State to submit certification of his or her authority to enter into the compact or amendment. The final rule also changes the word "adopted" to "approved" in response to a comment. See final section 293.8.

The final rule revises section 203.10 (Where should a compact or amendment be submitted for review and approval?) to clarify that, if the address provided should change, the Department will publish a notice with the new address in the **Federal Register** within 5 business days. See final section 293.9.

The remaining sections are substantively unchanged in the final rule.

## V. Procedural Requirements

### A. Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

(a) This rule will not have an economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) This rule will not create serious inconsistencies or otherwise interfere with an action taken or planned by another Federal agency. BIA is the only governmental agency that approves Tribal-State compacts and compact amendments.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule sets out the procedures for the submission of Tribal-State compacts and compact amendments.

(d) This rule will not raise novel legal or policy issues.

### B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered to be small entities for the purposes of this Act.

### C. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal government or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### E. Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications. The rule does not pertain to the "taking" of private property interests, nor does it impact private property. A takings implication assessment is not required.

### F. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the Department has determined that this rule does not have significant Federalism implications because it does not substantially and directly affect the relationship between the Federal and State governments and does not impose costs on States or localities. A Federalism Assessment is not required.

### G. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. The rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear standards, simplify procedures, reduces burden, and is clearly written. The rule does not preempt any statute.

### H. National Environmental Policy Act

The Department has determined that this rule does not constitute a major Federal action significantly affecting the

quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

### I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. No person is required to respond to an information collection request that has not complied with the PRA.

This regulation requires an information collection under the Paperwork Reduction Act of 1955 at section 293.8. The information is submitted to fulfill requirements for approval of a Tribal-State compact or compact amendment and it is used by the Bureau to determine whether the tribe has met the criteria required by IGRA. All information is collected in the tribe's submission of a Tribal-State compact or compact amendment. It is estimated that a tribe's application will need 360 hours to complete. The tribe will maintain the records as would any business; the Bureau maintains official files.

During the public comment period on the proposed rule, the Department received two public comments on the information collection. One public comment requested that we add a request for some evidence that the State is authorized to enter into a compact or amendment. In response, the Department added a requirement for a certification that the State official is authorized under State law to enter into the compact or amendment in section 293.8 of the final rule. Because the State would have to determine this authority even without submission of this statement of fact, this certification does not increase the annual burden hours. The other public comment addressed the portion of the information collection stating that the Secretary may request additional documentation as required for the approval determination (section 293.8(d) of the final rule). This comment requested that BIA narrow the scope of what documents it may request as part of the submission. Section 293.8 of the final rule lists specific documents that should be submitted and includes a catch-all provision at paragraph (d) allowing the Secretary to request any additional documentation needed for a determination as to compliance with IGRA. BIA has retained this catch-all provision to avoid defining a universe of documents that inadvertently omits

documents that may otherwise support a determination as to IGRA compliance merely because BIA cannot anticipate all the circumstances or documents that may be appropriate. As such, BIA has not made any changes to the information collection as a result of this comment.

OMB has approved the information collection requirement included in this final rule and has assigned it OMB Control Number 1076-0172 with an expiration of 11/30/2011. Questions or comments concerning this information collection should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

#### *J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

In accordance with the President's memorandum of May 14, 1988, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655), and Executive Order 13175, we have conducted consultation sessions with tribal governments on the development of proposed regulations to establish procedures for submitting Tribal-State compacts and compact amendments. Consultation sessions with tribal governments were conducted on the following dates and at the following locations: April 9, 2008 in Albuquerque, New Mexico and on April 23, 2008 in San Diego, California. The draft regulation was modified to reflect comments received during the consultation, as well as written comments received from Indian tribes, among others.

#### *K. Effects on the Nation's Energy Supply (Executive Order 13211)*

This rule does not have a significant effect on the nation's energy supply, distribution, or use as defined by Executive Order 13211.

#### *L. Information Quality Act*

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-544).

#### **List of Subjects in 25 CFR Part 293**

Indians—business and finance,  
Indians—gaming.

Dated: October 14, 2008.

**George T. Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.*

■ For reasons stated in the preamble, the Bureau of Indian Affairs amends 25 CFR chapter 1 by adding part 293, to read as follows:

### **PART 293—CLASS III TRIBAL STATE GAMING COMPACT PROCESS**

Sec.

- 293.1 What is the purpose of this part?  
293.2 How are key terms defined in this part?  
293.3 What authority does the Secretary have to approve or disapprove compacts and amendments?  
293.4 Are compacts and amendments subject to review and approval?  
293.5 Are extensions to compacts subject to review and approval?  
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293.14 When may the Secretary disapprove a compact or amendment?  
293.15 When does an approved or considered-to-have-been-approved compact or amendment take effect?  
293.16 How does the Paperwork Reduction Act affect this part?

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

#### **§ 293.1 What is the purpose of this part?**

This part contains procedures that:  
(a) Indian tribes and States must use when submitting Tribal-State compacts and compact amendments to the Department of the Interior; and  
(b) The Secretary will use for reviewing such Tribal-State compacts or compact amendments.

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

(a) For purposes of this part, all terms have the same meaning as set forth in the definitional section of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2703 and any amendments thereto.  
(b) As used in this part:  
(1) *Amendment* means an amendment to a class III Tribal-State gaming compact.

(2) *Compact or Tribal-State Gaming Compact* means an intergovernmental agreement executed between Tribal and State governments under the Indian Gaming Regulatory Act that establishes between the parties the terms and conditions for the operation and

regulation of the tribe's Class III gaming activities.

(3) *Extensions* means changes to the timeframe of the compacts or amendments.

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

The Secretary has the authority to approve compacts or amendments "entered into" by an Indian tribe and a State, as evidenced by the appropriate signature of both parties. See § 293.14 for the Secretary's authority to disapprove compacts or amendments.

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

(a) Compacts are subject to review and approval by the Secretary.

(b) All amendments, regardless of whether they are substantive amendments or technical amendments, are subject to review and approval by the Secretary.

#### **§ 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 the terms of the compact. However, the tribe must submit the extension executed by both the tribe and the State along with the documents required under paragraphs (b) and (c) of § 293.8.

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

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

The Indian 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 he or she is authorized under State law to enter into the compact or amendment;

(d) 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 3657, 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.

**§ 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 Indian 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 in the Office of Indian Gaming at the address listed in § 293.9.

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

If the Secretary neither affirmatively approves nor disapproves a compact or amendment within the 45-day review period, the compact or amendment is considered to have been approved, but only to the extent it complies with the provisions of the Indian Gaming Regulatory Act.

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

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

The Secretary may disapprove a compact or amendment only if it violates:

- (a) Any provision of the Indian Gaming Regulatory Act;
- (b) Any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands; or
- (c) The trust obligations of the United States to Indians.

**§ 293.15 When does an approved or considered-to-have-been-approved compact or amendment take effect?**

(a) An approved or considered-to-have-been-approved compact or amendment takes effect on the date that notice of its approval is published in the **Federal Register**.

(b) The notice of approval 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.

**§ 293.16 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.

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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

RIN 1506-AA90

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Exemptions from the Requirement to Report Transactions in Currency**

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to amend the Bank Secrecy Act (BSA) regulation that allows depository institutions to exempt transactions of certain persons from the requirement to report transactions in currency in excess of \$10,000. Modification of the exemption procedures is a part of the Department of the Treasury’s continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

**DATES:** *Effective Date:* January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949-2732 and select Option 3.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Statutory Background**

The Bank Secrecy Act, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, authorizes the Secretary of the Treasury (“Secretary”), among other things, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, regulatory and counter-terrorism matters, and to implement anti-money laundering programs and compliance procedures. The reporting by financial institutions of transactions in currency in excess of \$10,000 has long been a major component of the Department of the Treasury’s implementation of the BSA. The reporting requirement is promulgated pursuant to 31 U.S.C. 5313(a) requiring reports of domestic coin and currency transactions. The regulations implementing the BSA appear at 31 CFR part 103. The Secretary’s authority to administer the BSA has been delegated to the Director of FinCEN.

The Money Laundering Suppression Act of 1994 (MLSA) amended the BSA by establishing a system for exempting transactions by certain customers of depository institutions from currency transaction reporting.<sup>1</sup> In general, the statutory exemption system, 31 U.S.C. 5313(d) through (g), creates two types of exemptions.<sup>2</sup> Under 31 U.S.C. 5313(d) (sometimes called the “mandatory exemption” provision), the Secretary is required to provide depository institutions with the ability to exempt from the currency transaction reporting requirement transactions in currency between the depository institution and four specified categories of customers. The four specified categories of customers in the mandatory exemption provision are: (1) Another depository institution; (2) a department or agency of the United States, any State, or any political subdivision of any State; (3) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between

<sup>1</sup> See section 402 of the Money Laundering Suppression Act of 1994 (the “Money Laundering Suppression Act”), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325 (Sept. 23, 1994).

<sup>2</sup> The enactment of 31 U.S.C. 5313(d) through (g) reflected congressional intent to “reform \* \* \* the procedures for exempting transactions between depository institutions and their customers.” See H.R. Rep. 103-652, 103d Cong., 2d Sess. 186 (Aug. 2, 1994).