

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed \$25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than \$25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requester an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

PART 518—SELF-REGULATION OF CLASS II GAMING

Sec.

- 518.1 What does this part cover?
- 518.2 Who will administer the self-regulation program for the Commission?
- 518.3 Who is eligible to petition for a certificate of self-regulation?
- 518.4 What must a tribe submit to the Commission as part of its petition?
- 518.5 What criteria must a tribe meet to receive a certificate of self-regulation?
- 518.6 What are the responsibilities of the Office of Self-Regulation in the certification process?
- 518.7 What process will the Commission use to review and certify petitions?
- 518.8 What is the hearing process?
- 518.9 When will a certificate of self-regulation become effective?
- 518.10 What must a self-regulating tribe provide the Commission to maintain its self-regulatory status?
- 518.11 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any additional information?
- 518.12 Which investigative or enforcement powers of the Commission are inapplicable to self-regulating tribes?
- 518.13 When may the Commission revoke a certificate of self-regulation?
- 518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?

AUTHORITY: 25 U.S.C. § 2706(b)(10); E.O. 13175.

SOURCE: 78 FR 20241, Apr. 4, 2013, unless otherwise noted.

§ 518.1 What does this part cover?

This part sets forth requirements for obtaining a certificate of self-regulation of Class II gaming operations

under 25 U.S.C. 2710(c). When the Commission issues a certificate of self-regulation, the certificate is issued to the tribe, not to a particular gaming operation. The certificate applies to all Class II gaming activity conducted by the tribe holding the certificate.

§ 518.2 Who will administer the self-regulation program for the Commission?

The self-regulation program will be administered by the Office of Self-Regulation. The Chair shall appoint one Commissioner to administer the Office of Self-Regulation.

§ 518.3 Who is eligible to petition for a certificate of self-regulation?

A tribe is eligible to petition the Commission for a certificate of self-regulation of Class II gaming if, for a three (3)-year period immediately preceding the date of its petition:

- (a) The tribe has continuously conducted such gaming;
- (b) All gaming that the tribe has engaged in, or has licensed and regulated, on Indian lands within the tribe's jurisdiction, is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), in accordance with 25 U.S.C. 2710(b)(1)(A);
- (c) The governing body of the tribe has adopted an ordinance or resolution that the Chair has approved, in accordance with 25 U.S.C. 2710(b)(1)(B);
- (d) The tribe has otherwise complied with the provisions of 25 U.S.C. 2710; and
- (e) The gaming operation and the tribal regulatory body have, for the three (3) years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

§ 518.4 What must a tribe submit to the Commission as part of its petition?

A petition for a certificate of self-regulation is complete under this part when it contains:

- (a) Two copies on 8½" x 11" paper of a petition for self-regulation approved by the governing body of the tribe and

§518.5

25 CFR Ch. III (4-1-14 Edition)

certified as authentic by an authorized tribal official;

(b) A description of how the tribe meets the eligibility criteria in §518.3, which may include supporting documentation; and

(c) The following information with supporting documentation:

(1) A brief history of each gaming operation(s), including the opening dates and periods of voluntary or involuntary closure;

(2) An organizational chart of the tribal regulatory body;

(3) A brief description of the criteria tribal regulators must meet before being eligible for employment as a tribal regulator;

(4) A brief description of the process by which the tribal regulatory body is funded, and the funding level for the three years immediately preceding the date of the petition;

(5) A list of the current regulators and employees of the tribal regulatory body, their complete resumes, their titles, the dates they began employment, and, if serving limited terms, the expiration date of such terms;

(6) A brief description of the accounting system(s) at the gaming operation which tracks the flow of the gaming revenues;

(7) A list of gaming activity internal controls at the gaming operation(s);

(8) A description of the record keeping system(s) for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three (3)-year period immediately preceding the date of the petition; and

(9) The tribe's current set of gaming regulations, if not included in the approved tribal gaming ordinance.

§518.5 What criteria must a tribe meet to receive a certificate of self-regulation?

(a) The Commission shall issue a certificate of self-regulation if it determines that for a three (3)-year period, the tribe has:

(1) Conducted its gaming activity in a manner that:

(i) Has resulted in an effective and honest accounting of all revenues;

(ii) Has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) Has been generally free of evidence of criminal or dishonest activity;

(2) Conducted its gaming operation on a fiscally and economically sound basis;

(3) Conducted its gaming activity in compliance with the IGRA, NIGC regulations in this chapter, and the tribe's gaming ordinance and gaming regulations; and

(4) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the gaming activity;

(ii) Investigating, licensing and monitoring of all employees of the gaming activity;

(iii) Investigating, enforcing, prosecuting, or referring for prosecution violations of its gaming ordinance and regulations; and

(iv) Prosecuting criminal or dishonest activity or referring such activity for prosecution.

(b) A tribe may illustrate that it has met the criteria listed in paragraph (a) of this section by addressing factors such as those listed below. The list of factors is not all-inclusive; other factors not listed here may also be addressed and considered.

(1) The tribe adopted and is implementing minimum internal control standards which are at least as stringent as those promulgated by the Commission;

(2) The tribe requires tribal gaming regulators to meet the same suitability requirements as those required for key employees and primary management officials of the gaming operation(s);

(3) The tribe's gaming operation utilizes an adequate system for accounting of all gaming revenues from Class II gaming activity;

(4) The tribe has a dispute resolution process for gaming operation customers and has taken steps to ensure that the process is adequately implemented;

(5) The tribe has a gaming regulatory body which:

(i) Monitors gaming activities to ensure compliance with Federal and tribal laws and regulations;

(ii) Monitors the gaming revenues accounting system for continued effectiveness;

(iii) Performs routine operational or other audits of the Class II gaming activities;

(iv) Routinely receives and reviews gaming revenue accounting information from the gaming operation(s);

(v) Has access to, and may inspect, examine, photocopy and audit, all papers, books, and records of the gaming operation(s) and Class II gaming activities;

(vi) Monitors compliance with minimum internal control standards for the gaming operation;

(vii) Has adopted and is implementing an adequate system for investigating, licensing, and monitoring of all employees of the gaming activity;

(viii) Maintains records on licensees and on persons denied licenses, including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction;

(ix) Establishes standards for, and issues, vendor licenses or permits to persons or entities who deal with the gaming operation, such as manufacturers and suppliers of services, equipment and supplies;

(x) Establishes or approves the rules governing Class II games, and requires their posting;

(xi) Has adopted and is implementing an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations, and takes appropriate enforcement actions; and

(xii) Takes testimony and conducts hearings on regulatory matters, including matters related to the revocation of primary management officials, key employee and vendor licenses;

(6) The tribe allocates and appropriates a sufficient source of permanent and stable funding for the tribal regulatory body;

(7) The tribe has adopted and is implementing a conflict of interest policy for the regulators/regulatory body and their staff;

(8) The tribe has adopted and is implementing a system for adequate prosecution of violations of the tribal gaming ordinance and regulations or referrals for prosecution; and

(9) The tribe demonstrates that the operation is being conducted in a manner which adequately protects the environment and the public health and safety.

(c) The tribe assists the Commission with access and information-gathering responsibilities during the certification process.

(d) The burden of establishing self-regulation is upon the tribe filing the petition.

§518.6 What are the responsibilities of the Office of Self-Regulation in the certification process?

The Office of Self-Regulation shall be responsible for directing and coordinating the certification process. It shall provide a written report and recommendation to the Commission as to whether a certificate of self-regulation should be issued or denied, and a copy of the report and recommendation to the petitioning tribe.

§518.7 What process will the Commission use to review and certify petitions?

(a) Petitions for self-regulation shall be submitted by tribes to the Office of Self-Regulation.

(1) Within 30 days of receipt of a tribe's petition, the Office of Self-Regulation shall conduct a review of the tribe's petition to determine whether it is complete under §518.4.

(2) If the tribe's petition is incomplete, the Office of Self-Regulation shall notify the tribe by letter, certified mail or return receipt requested, of any obvious deficiencies or significant omissions in the petition. A tribe with an incomplete petition may submit additional information and/or clarification within 30 days of receipt of notice of an incomplete petition.

(3) If the tribe's petition is complete, the Office of Self-Regulation shall notify the tribe in writing.

(b) Once a tribe's petition is complete, the Office of Self-Regulation shall conduct a review to determine whether the tribe meets the eligibility criteria in §518.3 and the approval criteria in §518.5. During its review, the Office of Self-Regulation:

(1) May request from the tribe any additional material it deems necessary

§518.8

25 CFR Ch. III (4–1–14 Edition)

to assess whether the tribe has met the criteria for self-regulation.

(2) Will coordinate an on-site review and verification of the information submitted by the petitioning tribe.

(c) Within 120 days of notice of a complete petition under §518.4, the Office of Self-Regulation shall provide a recommendation and written report to the full Commission and the petitioning tribe.

(1) If the Office of Self-Regulation determines that the tribe has satisfied the criteria for a certificate of self-regulation, it shall recommend to the Commission that a certificate be issued to the tribe.

(2) If the Office of Self-Regulation determines that the tribe has not met the criteria for a certificate of self-regulation, it shall recommend to the Commission that it not issue a certificate to the tribe.

(3) The Office of Self-Regulation shall make all information, on which it relies in making its recommendation and report, available to the tribe, subject to the confidentiality requirements in 25 U.S.C. 2716(a), and shall afford the tribe an opportunity to respond.

(4) The report shall include:

(i) Findings as to whether each of the eligibility criteria is met, and a summary of the basis for each finding;

(ii) Findings as to whether each of the approval criteria is met, and a summary of the basis for each finding;

(iii) A recommendation to the Commission as to whether it should issue the tribe a certificate of self-regulation; and

(iv) A list of any documents and other information received in support of the tribe's petition.

(5) A tribe shall have 30 days from the date of issuance of the report to submit to the Office of Self-Regulation a response to the report.

(d) After receiving the Office of Self-Regulation's recommendation and report, and a tribe's response to the report, the Commission shall issue preliminary findings as to whether the eligibility and approval criteria are met. The Commission's preliminary findings will be provided to the tribe within 45 days of receipt of the report.

(e) Upon receipt of the Commission's preliminary findings, the tribe can re-

quest, in writing, a hearing before the Commission, as set forth in §518.8. Hearing requests shall be made to the Office of Self-Regulation, and shall specify the issues to be addressed by the tribe at the hearing and any proposed oral or written testimony the tribe wishes to present.

(f) The Commission shall issue a final determination 30 days after issuance of its preliminary findings or after the conclusion of a hearing, if one is held. The decision of the Commission to approve or deny a petition shall be a final agency action.

(g) A tribe may withdraw its petition and resubmit it at any time prior to the issuance of the Commission's final determination.

[78 FR 20241, Apr. 4, 2013, as amended at 78 FR 37115, June 20, 2013]

§518.8 What is the hearing process?

(a) Within 10 days of receipt of the request for a hearing, the Office of Self-Regulation shall notify the tribe of the date and place of the hearing. The notice shall also set a hearing schedule, the time allotted for testimony and oral argument, and the order of the presentation.

(1) To the extent possible, the hearing will be scheduled not later than 60 days after the notice is issued, and the hearing schedule will be issued at least 30 days prior to the hearing.

(2) [Reserved]

(b) The Commission shall issue a decision on the petition within 30 days after the hearing's conclusion. The decision shall set forth, with particularity, findings regarding the tribe's satisfaction of the self-regulation standards in this Part. If the Commission determines that a certificate will issue, it will do so in accordance with §518.9 of this part.

(c) The decision of the Commission to approve or deny a petition shall be a final agency action.

[78 FR 20241, Apr. 4, 2013, as amended at 78 FR 37115, June 20, 2013]

§518.9 When will a certificate of self-regulation become effective?

A certificate of self-regulation shall become effective on January 1 of the year following the year in which the

Commission determines that a certificate will issue. Petitions will be reviewed in chronological order based on the date of receipt of a complete petition.

§ 518.10 What must a self-regulating tribe provide the Commission to maintain its self-regulatory status?

Each tribe that holds a certificate of self-regulation shall be required to submit the following information by April 15 of each year following the first year of self-regulation, or within 120 days after the end of each fiscal year of the gaming operation, as required by 25 CFR 571.13:

(a) An annual independent audit, to be filed with the Commission, as required by 25 U.S.C. 2710(b)(2)(C); and

(b) A complete resume for all employees of the tribal regulatory body hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation, to be filed with the Office of Self-Regulation.

Failure to submit the information required by this section may result in revocation of a certificate of self-regulation.

[78 FR 20241, Apr. 4, 2013, as amended at 78 FR 37115, June 20, 2013]

§ 518.11 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any additional information?

Yes. A tribe that holds a certificate of self-regulation has a continuing duty to advise the Commission within three business days of any changes in circumstances that are material to the approval criteria in § 518.5 and may reasonably cause the Commission to review and revoke the tribe's certificate of self-regulation. Failure to do so is grounds for revocation of a certificate of self-regulation. Such circumstances may include, but are not limited to, a change of primary regulatory official; financial instability; or any other factors that are material to the decision to grant a certificate of self-regulation.

§ 518.12 Which investigative or enforcement powers of the Commission are inapplicable to self-regulating tribes?

During any time in which a tribe has a certificate of self-regulation, the powers of the Commission, as set forth in 25 U.S.C. 2706(b)(1)–(4), shall be inapplicable.

§ 518.13 When may the Commission revoke a certificate of self-regulation?

The Commission may, after an opportunity for a hearing, revoke a certificate of self-regulation by a majority vote of its members if it determines that the tribe no longer meets the eligibility criteria of § 518.3, the approval criteria of § 518.5, the requirements of § 518.10 or the requirements of § 518.11. The Commission shall provide the tribe with prompt notice of the Commission's intent to revoke a certificate of self-regulation under this part. Such notice shall state the reasons for the Commission's action and shall advise the tribe of its right to a hearing under part 584 or right to appeal under part 585. The decision to revoke a certificate is a final agency action and is appealable to Federal District Court pursuant to 25 U.S.C. 2714.

§ 518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?

Yes. A tribe may request a hearing regarding the Commission's proposal to revoke a certificate of self-regulation. Such a request shall be filed with the Commission pursuant to part 584. Failure to request a hearing within the time provided by part 584 shall constitute a waiver of the right to a hearing.

PART 519—SERVICE

Sec.

519.1 Designation of an agent by a tribe.

519.2 Designation of an agent by a management contractor or a tribal operator.

519.3 Methods of service.

519.4 Copy of any official determination, order, or notice of violation.

AUTHORITY: 25 U.S.C. 2706(b)(10).

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.