

INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

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EXPLANATION OF MATERIAL TRANSMITTED:

This chapter/ handbook describes how the Office of Indian Gaming (OIG) will review and approve or disapprove tribal Revenue Allocation Plans (RAP) required under the Indian Gaming Regulatory Act (IGRA) (25 U.S.C. 2710). It includes a description of the information that must be contained in a plan, additional documents that must be submitted with the plan by the tribe, and a description of the internal approval process.



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FILING INSTRUCTIONS:

Remove: None

Insert: 47 IAM 3, Tribal Revenue Allocation Plans

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- 1.1 Purpose.** This handbook describes how the Office of Indian Gaming (OIG) will review and approve or disapprove tribal Revenue Allocation Plans (RAP) required under the Indian Gaming Regulatory Act (IGRA) (25 U.S.C. 2710). It includes a description of the information that must be contained in a plan, additional documents that must be submitted with the plan by the tribe, and a description of the internal approval process.
- 1.2 Scope.** This policy applies to all programs under the authority of the Assistant Secretary of Indian Affairs (AS-IA), including AS-IA, Bureau of Indian Affairs (BIA), and Bureau of Indian Education (BIE). Tribal governments or tribal organizations operating Indian Affairs programs under grants, contracts or compacts authorized by the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. §450 *et seq.*) are required to comply with policies and procedures if required by statute or regulation.

- 1.3 Policy, based on Statutory Conformance.** Requirements contained in this handbook conform to the provisions of IGRA 25 USC 2710(b)(3)(A-B), to require Tribes which intend to distribute per capita payments to tribal members from revenue derived from tribal gaming activities to have a tribal RAP **approved and in effect** before distributing gaming revenue.

The IGRA, 25 USC 2710(b)(3)(B) further requires Tribes to submit a plan describing how the tribe will allocate net gaming revenues. A tribal RAP is not effective without the **express written approval** of the Appropriate Bureau Official (ABO).

If the ABO does not act on the request for approval of the plan within 60 days, the tribe can appeal the inaction under 25 CFR part 2.

1.4 Authority.

- A.** The **IGRA, 25 USC 2710(b)(2)(B)** requires the tribe to use gaming revenues from the tribal gaming activity for the purposes of funding tribal government operations or programs, providing for the general welfare of the tribe or its members, promoting tribal economic development, donating to charitable organizations, or helping to fund operations of local government agencies.
- B.** The **IGRA, 25 USC 2710(b)(3)** provides that net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe and the Indian tribe has prepared a plan to allocate revenues. The IGRA further requires: the plan be approved by the Secretary of the Interior; that the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are to be protected and preserved; and that the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.
- C.** The **IGRA, 25 USC § 2710(d)(1)(A)(ii)** requires application of the provisions of **§ 2710(b)** to class III gaming activities before the RAP is approved.
- D.** Under **25 CFR part 2**, the Tribe may appeal inaction on a RAP by the ABO.

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E. Federal agencies have the responsibility of creating, preserving and disposing of records under **44 USC § 3101-3107**.

1.5 Signatory Authority and Approval. The authority to approve tribal RAPs has been delegated to the Assistant Secretary – Indian Affairs by the Secretary of the Interior under the general authority of 109 DM 8.1 and re-delegated to the Principal Deputy Assistant Secretary for Policy and Economic Development under the general authority of 210 DM 8.2.

1.6 Responsibilities.

A. The Assistant Secretary – Indian Affairs is responsible for the overall management and administration of policy for Indian Affairs.

B. The Office of Indian Gaming has the general responsibility of reviewing tribal RAPs for statutory conformance, recommending approval or disapproval, and performing all general administrative tasks associated with the final action on tribal RAPs.

1.7 Procedures

A. Submitting a tribal RAP.

1. A tribal RAP is submitted to the Superintendent in the Bureau of Indian Affairs' (BIA) administrative jurisdiction serving the tribe.

2. The Superintendent will review the tribal RAP before forwarding to the Appropriate Bureau Official (ABO) to ensure it has been properly adopted in accordance with applicable tribal law ensuring that the plan includes:

- a) A written request for approval of the tribal RAP; and
- b) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies the tribe has adopted the tribal RAP in accordance with applicable tribal law.
- c) The Superintendent will then transmit the tribal RAP promptly to the ABO.

B. Reviews by the Office of Indian Gaming.

- 1.** The ABO must review and act on the tribal RAP within 60 days of receiving it.
- 2.** The ABO's review consists of verifying that the RAP:
 - a) Includes a percentage breakdown of the uses for which the tribe will allocate net gaming revenues. The percentage breakdown must total 100 percent.
 - b) Reserves an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes:
 - i. funding tribal government operations or programs;
 - ii. providing for the general welfare of the tribe or its members;

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- iii. promoting tribal economic development;
 - iv. donating to charitable organizations; or
 - v. helping fund operations of local government.
- c)** Contains the following detailed information to allow the ABO to determine that it complies with IGRA if a per capita distribution to tribal members is over 50% of the net gaming revenue:
- i. the number of enrolled members of the Tribe;
 - ii. the number of enrolled members residing on the Reservation;
 - iii. the number of enrolled members residing on the Reservation that are unemployed;
 - iv. the number of businesses owned and/or operated by the Tribe;
 - v. the amount of revenues generated by each business that is available to the Tribe for economic development;
 - vi. the level of essential government services, such as water, sewer, housing, law enforcement, fire protection, road maintenance, tribal court, social service programs provided on the Reservation; and
 - vii. whether the level of government services is curtailed because of lack of revenue.
- d)** Protects and preserves the interests of minors and other legally incompetent persons who are entitled to receive per capita payments by:
- i. ensuring that tribes make per capita payments for eligible minors or incompetents at times and in such amounts as necessary for the health, education, or welfare of the minor or incompetent;
 - ii. ensuring that those payments for eligible minors or incompetents are accessible to the parents or legal guardians; and
 - iii. establishing criteria for withdrawal of the funds, acceptable proof and/or receipts for accountability of the expenditure of the funds; and
 - iv. describing the circumstances for denial of the withdrawal of the minors' and legal incompetents' per capita payments by the parent or legal guardian; and
- e)** Establishes a process, system, or forum for dispute resolution.
- f)** Describes the following regarding tax liability:
- i. how the tribe will notify members of the tax liability for per capita payments; and
 - ii. how the tribe will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR part 31.
- g)** Authorizes the distribution of per capita payments to members according to specific eligibility requirements and must utilize or establish a tribal court system, forum or administrative process for resolution of disputes concerning

the allocation of net gaming revenues and the distribution of per capita payments.

- h) Justifies payment to certain groups within the tribal membership. If the tribal RAP calls for distributing per capita payments to an identified group of members, i.e., elders only, rather than to all members, the tribe must justify limiting this payment to the identified group of members. Therefore, the ABO ensures that:
 - i. The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary;
 - ii. The distinction does not discriminate or otherwise violate the Indian Civil Rights Act; and
 - iii. The justification complies with applicable law.

1.8 Approval or Disapproval of Tribal RAP

- A. A tribal RAP is not effective without the ABO's written approval. The ABO must verify the tribal RAP conforms with the regulations and the IGRA.
- B. If the tribal RAP does not conform with the regulations and the IGRA, the ABO will send the tribe a written notice that:
 - 1. Explaining why the plan doesn't conform to this part of the IGRA; and
 - 2. Describes how to bring the plan into conformance.
- C. The ABO does not approve any tribal RAP for distribution of net gaming revenues from a tribal gaming activity if:
 - 1. The tribal RAP is inadequate, particularly with respect to the requirements in 25 CFR §290.12 and IGRA, and the tribe fails to bring it into compliance;
 - 2. The tribal RAP is not adopted in accordance with applicable tribal law;
 - 3. The tribal RAP does not include a reasonable justification for limiting per capita payments to certain groups of members; or
 - 4. The tribal RAP violates the Indian Civil Rights Act of 1968, any other provision of Federal law, or the United States' trust obligations.

1.9 Appealing the ABO's Adverse Decision. The tribe may appeal the ABO's adverse decision in accordance with the regulations at 25 CFR Part 2.

1.10 Revising or Amending a Tribal RAP

- A. Revisions or amendments to a tribal RAP must be submitted to the ABO for approval to ensure that they comply with §290.12 and IGRA.

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- B.** If the ABO approved a tribal RAP, revisions, or amendments before April 17, 2000, its does need not to be resubmitted for approval, however, if the tribe is amending or revising a previously approved allocation plan after April 17, 2000, the tribe must submit the amended or revised plan to the ABO for review and approval under 25 CFR 290.

1.11 RAP Files.

- A.** Records are maintained by the Office of Indian Gaming and include:
 - 1.** Tribal RAPs for distribution of net revenue from gaming to tribal members.
 - 2.** Printouts of electronic mail, documents created through word processing and spreadsheet software applications, supporting documentation and related correspondence.
- B.** The files are permanent and maintained in OIG for a maximum of 5 years after cut-off then retired to the records center. Subsequent legal transfer of the records to the National Archives of the United States will be as jointly agreed to between the United States Department of Interior and the National Archives and Records Administration.