

September 20, 2021
Summary of Proposed Changes to 25 C.F.R. Part 518
National Indian Gaming Commission

The National Indian Gaming Commission seeks tribal input, feedback, and suggestions concerning proposed amendments to 25 C.F.R. Part 518.

Pursuant to the Indian Gaming Regulatory Act, the Commission may delegate some of its regulatory oversight over Class II gaming to tribes through certificates of self-regulation. The Commission shall grant a self-regulation petition if the tribe (1) has conducted its gaming operations in a fair and safe manner, (2) has adopted systems to account for revenues and to investigate employees and violations of gaming regulations, and (3) has conducted gaming operations in a fiscally sound manner.¹

Part 518 of NIGC's regulations identify the eligibility and approval requirements for a petitioning tribe, the petition process, the Office of Self-Regulation's role in the self-regulation process, reporting requirements after the Commission issues a certificate, and the appeal process for revoking a certificate. The Commission is considering revisions to the following sections of Part 518 to address an ambiguity in the petition process and to clarify and expand the Office of Self-Regulation's role in the process once the Commission issues a certificate.

Section 518.7(f) currently states, "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." A certificate is valid beginning the next calendar year. Section 518.7(f) does not clearly state whether the Commission can issue its final decision before the end of the 30-day deadline. To ensure an eligible tribe receives a certificate before the end of a calendar year, the Commission is considering revising § 518.7(f) to clarify that the Commission may issue its final decision *within* 30 days (as opposed to waiting the full 30 days) if it is clear that the tribe does not want a hearing before the Commission.

Section 518.2 states that the Office of Self-Regulation will administer the self-regulation program on behalf of the Commission. To clarify and expand the Office of Self-Regulation's role in the process, the Commission is proposing the following revisions to Part 518:

- Section 518.11 – Instead of the Commission receiving notifications of material changes from self-regulated tribes, the Office of Self-Regulation will be the entity that self-regulated tribes must notify. Also, consistent with the Commission's remaining investigatory and enforcement authority once the Commission issues a certificate, the Office of Self-Regulation may request information from a self-regulated tribe;
- Section 518.13 – The Office of Self-Regulation will become the proponent of any case to revoke a certificate before the Commission, and will provide any recommendation to revoke a certificate to the Commission and the tribe; and

¹ 25 U.S.C. § 2710(c)(4)(A-C); *see also* 25 C.F.R. §§ 518.3 (more detailed eligibility requirements for self-regulation), 518.5 (self-regulation criteria).

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- Section 518.14 – For any revocation case, the Office of Self-Regulation has the burden to show just cause for revocation and must carry that burden by a preponderance of the evidence.

§ 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 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.

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- (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 request, 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 within 30 days after issuance of its preliminary findings if the tribe has informed the Commission in writing that the tribe does not request a hearing or within 30 days 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.

§ 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-Office of Self-Regulation 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. Consistent with Section 518.12 and the Commission's remaining investigatory and enforcement authority, the Office of Self-Regulation may request information regarding the eligibility criteria of § 518.3, the approval criteria of § 518.5, the requirements of § 518.10 or the requirements of § 518.11; information relevant to any material change in circumstances; or information that may lead to information that is relevant to any material change in circumstances. A tribe that holds a certificate of self-regulation must comply with the Office of Self-Regulation's requests. Failure to do so is grounds for revocation of a certificate of self-regulation.

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

~~If the Office 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 or did not comply with the eligibility criteria of § 518.3, the approval criteria of § 518.5, the requirements of § 518.10 or the requirements of § 518.11, the Office of Self-Regulation shall prepare a written recommendation to the Commission and deliver a copy of the recommendation to the tribe. 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~~The Office of Self-Regulation's recommendation~~ shall state the reasons for the ~~Commission's action~~recommendation and shall advise the tribe of its right to a hearing under part 584 or right to appeal under part 585. 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 or did not comply with the eligibility criteria of § 518.3, the approval criteria of § 518.5, the requirements of § 518.10 or the requirements of § 518.11. 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 Office of Self-Regulation's recommendation that 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. At any hearing where the Commission considers revoking a certificate, the Office of Self-Regulation bears the burden of proof to support its recommendation by a preponderance of the evidence. 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.