



BULLETIN

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Subject: Frequently Asked Questions regarding IGRA and Cannabis

As states have legalized or decriminalized the cultivation, sale, and use of cannabis to varying degrees in recent years, the National Indian Gaming Commission has begun to receive questions from gaming Tribes as to how certain cannabis related issues may be implicated by the Indian Gaming Regulatory Act. The NIGC is publishing this Bulletin in an effort to provide some guidance to Tribes.

The frequently asked questions below are not specific to any single tribe, but are intended to address various questions the Commission has received. This guidance may be updated from time-to-time as needed. If you have additional questions, please contact the NIGC at NIGC_outreach@nigc.gov.

Q. Is Cannabis legal everywhere?

- A. No. Cannabis remains illegal under federal law. And although many states have passed laws legalizing or decriminalizing cannabis, not every state has done so, and the laws that have been adopted by the various states are not uniform.

Q. Does Cannabis use disqualify an applicant from obtaining a gaming license and are we required to test for it?

- A. Ultimately, each Tribe must determine whether and to what extent cannabis use will impact an employee or potential employee's eligibility for a gaming license. IGRA and NIGC regulations require tribes to determine whether an applicant is eligible for a gaming license based on a review of the applicant's prior activities, criminal record, reputation, habits, and associations. The tribal official making the determination should evaluate any information discovered during the review with an eye toward any threat the applicant may pose to the public interest or to the effective regulation of gaming, or whether the applicant raises the risk of unsuitable, unfair, or illegal practices and methods

and activities in the conduct of gaming. (25 C.F.R. § 556.5). The specifics of that process depend on tribal regulations and policies.

Q. My tribe has been approached by vendors wanting to sell cannabis products out of the casino building. Is this permissible?

- A. No. Despite recent changes in state laws, federal law continues to classify cannabis as a controlled substance. It is illegal to manufacture, distribute, or dispense cannabis under federal law and NIGC is obligated to refer knowledge of any such activity to the appropriate federal law enforcement agencies.

Q. My tribe is considering entering the market with our own grow operation or processing facility. We will not sell from the casino or use the casino property in any way for the cannabis business. Can we fund the operation with gaming revenue?

- A. The NIGC recommends that tribes not use net gaming revenue as defined by IGRA and NIGC regulations¹ to fund any aspect of their cannabis related businesses. IGRA restricts the use of net gaming revenues to five categories, and may not be used to fund an illegal enterprise. The cultivation, sale, and possession of cannabis is illegal under federal law and, therefore, net gaming revenue should not be used to finance such an operation.

The information provided in this Bulletin sets forth the NIGC's regulatory approach and existing positions and may be updated as needed. Please email any comments on this topic to NIGC_outreach@nigc.gov.

¹ 25 U.S.C. § 2703(9); 25 C.F.R. § 502.16