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seven. If the claimant is paid by the hour or the day, the "period" is the day. Where payment is made by the hour or the day, the pay is not added up and then averaged out over the week or the month. For example, earnings of $20 on one day and $10 on another day do not average out to $15 per day so as to permit both days to be considered as days of unemployment or days of sickness.

(d) *Substantially less than full time.* The phrase "substantially less than full time" means employment of not more than four hours per day.

(e) *Compatibility with full time employment.* Work is considered to be susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another position or occupation if it is a form of secondary employment that a claimant has done or could do at his or her own convenience while performing the duties of his or her railroad job.

(f) *Determinations.* The Board shall make a determination whether remuneration is subsidiary by applying the standards in this section to the facts of each case. Earnings that average more than $15 per day are not subsidiary remuneration under any circumstances. Also, earnings of any amount that are included in a claimant's qualifying base year compensation are not subsidiary remuneration. Even if earnings do not exceed an average of $15 per day, they may still not be subsidiary remuneration if the claimant worked more than four hours per day or if the work had to be performed at such times and under such circumstances as to be inconsistent with the holding of normal full-time work in his or her regular railroad work. If the evidence does not establish that the earnings are subsidiary remuneration, the question whether they are remuneration for particular days will then be considered.

(g) *Examples.* The following examples illustrate this section.

(1) A claimant receives a salary of $350 per month for serving as secretary-treasurer of the local lodge of his union. He performs a variety of duties at his own convenience while holding down a full-time railroad job in his craft. The average payment per day is not more than $15 and is, therefore, subsidiary remuneration.

(2) A claimant worked three hours per day, at $5 per hour, in the family insurance business. He was marked up for work as an extra board trainman and worked whenever he was called. When called, he skipped work in the family insurance business. His insurance earnings of $15 per day were subsidiary remuneration.

(3) While unemployed from her railroad job, a claimant took a job as a school bus driver. She worked from 7 a.m. to 9 a.m., and 2:30 p.m. to 5:30 p.m. Her regular railroad job was a daytime job from 8 a.m. to 4:30 p.m. Her pay as a school bus driver was not subsidiary remuneration because the job was not compatible with the holding of full time work in her regular railroad occupation.

Dated: March 8, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–6593 Filed 3–16–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 290

RIN 1076–AD74

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is establishing regulations to implement Section 11(b)(3) of the Indian Gaming Regulatory Act (IGRA). This rule establishes procedures for the submission, review, and approval of tribal revenue allocation plans for the distribution of net gaming revenues from tribal gaming activities.

EFFECTIVE DATE: These regulations take effect on April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Office of Indian Gaming Management, at 202–219–4066.

SUPPLEMENTARY INFORMATION: The IGRA, 25 U.S.C. § 2701 *et seq.*, was signed into law on October 17, 1988. Pursuant to Section 11(b)(3)(B), 25 U.S.C. 2710(b)(3)(B), of IGRA, the Secretary of the Interior (Secretary) is charged with the review and approval of tribal revenue allocation plans relating to the distribution of net gaming revenues from a tribal gaming activity. These regulations establish a method for the submission, review and approval of tribal revenue allocation plans.

The IGRA provides that net gaming revenues from class II and class III gaming may be distributed in the form of per capita payments to members of the Indian tribe provided the Indian tribe has prepared a Tribal Revenue Allocation Plan which is approved by the Secretary. On December 21, 1992, the Assistant Secretary—Indian Affairs (AS–IA) issued Guidelines to Govern the Review and Approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the Guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments must be protected and preserved, and that per capita payments are subject to Federal income taxes. The AS–IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA. The proposed rule was published on June 7, 1996 (61 FR 29044). A notice to extend the comment period was published on March 7, 1997 (62 FR 5588). Comments received during the comment period ending August 6, 1996, and March 24, 1997, were considered in the drafting of this final rule.

Review of Public Comments

Fifty-three comments were submitted in response to the June 7, 1996, **Federal Register** publication of the proposed rule, 25 CFR 290, and the March 7, 1997, **Federal Register** publication to extend the comment period.

Section 290.1 Purpose

No comments were received on this section.

Section 290.2 Definitions—Governing Document

One comment recommended adding a definition for the term "governing document."

Response: This comment was not adopted. Some tribes do not have constitutions or other written governing documents. Some tribes which do have written governing documents have also developed substantial bodies of tribal law interpreting those documents. Accordingly, we have substituted the phrase "applicable tribal law" as a more inclusive term than the phrase "governing document" in the definition of "Member of an Indian tribe" and elsewhere. It was unnecessary, therefore, to define the term "governing document."

Section 290.2 Definitions—Legal Incompetent

One comment suggested that the definition of the term "legal

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incompetent'' include individuals declared by tribal or BIA Social Services to be in need of ''supervised accounts'' based on documented conditions such as incarceration, physical conditions, and mental/emotional conditions.

Response: This comment was not adopted but the definition is amended to add ''or as established by the tribe'' following tribal justice systems, to allow the tribe to determine whether an individual is in need of a supervised account.

Another comment suggested that ''legal incompetent'' be defined as an individual beneficiary eligible to participate in a per capita benefit program.

Response: This comment was not adopted. We believe it is inconsistent with IGRA. The IGRA refers to payments from net gaming revenues as per capita payments, 25 U.S.C. § 2710(b)(3), not payments ''in a per capita benefit program.''

Section 290.2 Definitions—Member of an Indian Tribe

One comment supported the proposed definition.

One comment objected to the use of ''consistently maintained'' because the usage was subject to Federal review of who is an Indian.

Another comment suggested that this definition was not sufficient since it may include individuals who are not enrolled in the tribe.

Several comments stated that the definition needs to be changed because it is too broad, invites argument, conflict, and potential litigation because it will entangle BIA in membership determinations.

Response: BIA agrees with the comments that membership determinations are internal tribal matters that should be decided by the tribe. Under § 290.23, if there are disputes arising from tribal determinations of who is a member eligible to receive per capita payments from net gaming revenues, such disputes should be resolved in tribal forums. The revision is based on a presumption that there will always be requirements for membership, whether in a constitution, ordinance, resolution, court decision, custom and tradition or some combination thereof. Together, to whatever degree they exist for a particular tribe, these sources of law will form the ''applicable tribal law'' for that tribe. The revision breaks the definition into two paragraphs based upon whether a particular tribe maintains a tribal roll. Paragraph (1), in effect, requires that a person be listed on the tribal rolls if rolls are kept, and paragraph (2) requires that the person be recognized as a member by the tribal governing body if rolls are not kept. Recognition by the governing body becomes the proof of membership in the absence of rolls.

Section 290.2 Definitions—Per Capita

Several comments recommended that the definition of the term ''per capita'' include or be distinguished from other payments made to individuals under special tribal programs from net gaming revenues.

Response: This recommendation was adopted and the definition is amended to clarify other payments set aside by the tribe for special purposes or programs.

Another comment suggested that the term ''per capita'' be defined as a benefit paid or to be paid in the future to all members of the tribe.

Response: This comment was not adopted because IGRA refers to payments from net gaming revenues as per capita payments, 25 U.S.C. 2710(b)(3), and not as ''per capita benefits.'' The definition of the term is modified to ''Per Capita Payment'' for clarification purposes, and amended to reflect that the term ''payment'' includes money or other thing of value.

Section 290.3 Information Collection

This section is added as a requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The information collection requirements contained in 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB and assigned clearance number 1076–0152, expiration date March 31, 2000.

Section 290.4 What is a Tribal Revenue Allocation Plan?

No comments were received on this section.

Section 290.5 Who Approves Tribal Revenue Allocation Plans?

Section 290.5, formerly § 290.3, is renumbered and amended to clarify who will review and approve tribal revenue allocation plans.

One comment recommended that Indian tribes should not be required to seek Federal approval for the allocation of tribal dollars because such approval is insulting, paternalistic and diminishes tribal sovereignty.

Another comment requested that small one time payments, i.e. $100–$500, be excluded from the submission, review and approval of a tribal revenue allocation plan.

Response: These comments were not adopted. Congress has mandated that tribes submit and receive approval of tribal revenue allocation plans from the Secretary, 25 U.S.C. 2710(b)(3)(B). Regulations promulgated by BIA must comply with the requirements in IGRA.

Another comment suggested that the rule permit Indian tribes who are not subject to IGRA to adopt tribal revenue allocation plans subject to review and approval by the Secretary, and regardless of IGRA requirements, permit Indian tribes with gaming revenues to adopt a tribal revenue allocation plan in accordance with any applicable regulation, subject to the review and approval of the Secretary.

Response: This comment was not adopted. Unless specifically exempted from IGRA by Congress, any tribe is subject to IGRA, 25 U.S.C. 2703(5), 2710(b)(1) if it is:

(1) Recognized by the Secretary as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Recognized as possessing powers of self-government.

Section 290.6 Who Must Submit a Tribal Revenue Allocation Plan?

This section, formerly § 290.5 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.7 Must An Indian Tribe Have a Tribal Revenue Allocation Plan If It Is Not Making Per Capita Payments?

This section, formerly § 290.6 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.8 Do Indian Tribes Have to Make Per Capita Payments From Net Gaming Revenues to Tribal Members?

This section, formerly § 290.7 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.9 How May an Indian Tribe Use Net Gaming Revenues If It Does Not Have an Approved Tribal Revenue Allocation Plan?

This section formerly § 290.8 was renumbered due to the addition of § 290.3.

No comments were received on this section.

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Section 290.10 Is an Indian Tribe in Violation of IGRA If It Makes Per Capita Payments to Members From Net Gaming Revenues Without an Approved Tribal Revenue Allocation Plan?

Section 290.10 combines former §§ 290.9 and 290.24 to address the consequences of making per capita payments without an approved tribal revenue allocation plan.

One comment requested that the rule identify the ramifications for non-compliance and the procedures that the Department of Justice (DOJ) would use to enforce the rule.

Response: This comment was not adopted because enforcement procedures have not been discussed with DOJ, 25 U.S.C. 2716(c). The DOJ and the National Indian Gaming Commission (NIGC) pursuant to 25 U.S.C. 2713 (b)(1), 25 U.S.C. 2710 (d)(1)(A)(ii), and 25 U.S.C. 2710 (b)(3)(A)–(D), have authority to enforce the per capita requirements of IGRA.

290.11 May an Indian Tribe Distribute Per Capita Payments From Net Gaming Revenues Derived from Either Class II or Class III Gaming Without a Tribal Revenue Allocation Plan?

This section, formerly § 290.10, was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.12 What Information Must the Tribal Revenue Allocation Plan Contain?

This section, formerly § 290.11, was renumbered due to the addition of § 290.3.

One comment questioned the need for this section, but after review agreed that the section merely stated what must be in the plan and that other sections discussed the topics in more detail. Paragraph (a) requires that tribes prepare a tribal revenue allocation plan that includes a percentage breakdown of the uses to which net gaming revenues will be allocated. The percentage breakdown must total 100 percent.

One comment requested clarification that only a percentage breakdown of uses is required and not actual budget figures.

Response: This comment was not adopted because that requirement is already specified in paragraph (a).

Paragraph (b) The revenue allocation plan must meet the following criteria:

No comments were received on this paragraph.

Paragraph (b)(1) formerly 290.11 paragraph (b)(1) is removed.

Eight comments were received objecting to the limitation of 50 percent of the net gaming revenues be used for per capita payments and recommended reconsideration or elimination of the section.

Response: This recommendation was adopted. Each tribal revenue allocation plan will be reviewed by the appropriate Bureau official (ABO) on a case-by-case basis to ensure compliance with IGRA and 25 CFR part 290.

Paragraph (b)(1) is revised due to the deletion of § 290.11 (b)(1) of the proposed rule.

One comment suggested that this section, in addition to funding tribal government operations or programs and promoting tribal economic development, mandates that the tribe must also provide for the general welfare of the Indian tribe and its members; to donate to charitable organizations or to help fund operations of local government agencies.

Another comment recommended that the term "significant" be defined.

Response: These comments have been adopted in part to require the tribe to reserve an adequate portion of net gaming revenues for one or more of the purposes set forth in the IGRA, 25 U.S.C. 2710 (b)(2)(B).

Paragraph (b)(2) formerly paragraph § 290.11 (b)(3) is revised due to the deletion of § 290.11(b)(1) of the proposed rule.

One comment suggested that this section was open ended and needed to outline specific requirements the Secretary must review as required by IGRA.

This comment was adopted to require detailed information to allow the ABO to determine compliance with this section and IGRA.

Paragraph (b)(3) combines former §§ 290.11(b)(4) and 290.15 because they refer to the disbursement of minors' and legal incompetents' per capita payments to the parents or legal guardians of such minors or legal incompetents.

Several comments questioned why a minor's or legal incompetent's shares must be made available to his/her parent or legal guardian and whether the parents or legal guardians should be accountable for the funds they receive.

Response: This comment was not adopted because the IGRA requires the per capita payments to be disbursed to the parents or legal guardians of such minors or legal incompetents in such amounts as necessary for the health, education, or welfare, of the minor or other legally incompetent. It is up to the tribe to establish a method for the accountability of the funds.

One comment suggested that the rule address the following: (1) A tribe disperses funds to a parent or legal guardian and the parent or legal guardian fails to use the funds for the minor or legal incompetent. Has the tribe met its obligation to protect and preserve the shares allocated to minors and legal incompetents? (2) Precautions that a tribe may take to protect and preserve the shares allocated to minors and legal incompetents? (3) Circumstances under which a tribe should refuse to disperse funds to the parent or legal guardian of a minor or legal incompetent?

One comment recommended that §§ 290.11(b)(4) and 290.15 be cross referenced because they appear to require a separate plan for the disbursement of minors' and legal incompetents' per capita payments to the parents or legal guardians of such minors or legal incompetents.

One comment suggested this section was open ended and needed more specific information as to whether guidance is directed to the field or the public.

Response: These comments were adopted and the new revised paragraph (b)(3) includes these requirements.

Paragraph (b)(4) formerly § 290.11 (b)(5) is renumbered due to the deletion of paragraph (b)(1).

No comments were received on this paragraph.

Paragraph (b)(5) formerly § 290.11 (b)(6) is renumbered due to the deletion of paragraph (b)(1).

One comment asked whether existing tribal systems fulfill the requirement for a forum or process for the resolution of discrepancy in expenditure of net gaming revenues or disputes regarding per capita payments.

Response: This comment was not adopted but is amended to read: "and must utilize or establish a tribal court system, forum or administrative process for resolution of disputes" following eligibility requirements.

Section 290.13 Under What Conditions May an Indian Tribe Distribute Per Capita Payments?

This section, formerly 290.12, was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.14 Who Can Share in a Per Capita Payment?

Section 290.14 combines former §§ 290.13 and 290.14.

One comment recommended these sections be combined for clarification.

Response: This comment was adopted, §§ 290.13 and 290.14 are combined because they both refer to the per capita distribution of payments.

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Section 290.15 Must the Indian Tribe Establish Trust Accounts With Financial Institutions for Minors and Legal Incompetents?

Section 290.15 formerly § 290.16 is renumbered, the former § 290.15 and § 290.11(b)(3) are combined under § 290.12(b)(4).

One comment suggested the inclusion of the following language: "Congress has not mandated any one way for you to protect and preserve the interests of minors and legal incompetents, as long as you do not distribute benefits currently to the parents or legal guardian in such a way that the parents or legal guardian may use the benefits for their own purposes unrelated to the minor's or legal incompetent's health, education, or welfare needs. You have the flexibility to consider all relevant factors, including desired income tax and other consequences for the minors and legal incompetents, in deciding how best to structure your benefit programs, subject to the requirement that the Secretary must review and approve your revenue allocation plan."

Response: This comment was not adopted. The IGRA authorizes "per capita payments" from net gaming revenues, 25 U.S.C. 2710(b)(3), not "benefits." This section has been amended to clarify that the tribe may establish trust accounts with financial institutions but should explore investment options to structure the accounts to the benefit of their members.

Section 290.16 Can the Per Capita Payments of Minors and Legal Incompetents be Deposited into Accounts Held by BIA or OTFM?

Section 290.16 formerly § 290.17 is renumbered, because former §§ 290.15 and 290.11(b)(3) are combined under § 290.12(b)(4).

One comment indicated that this section is detrimental to the health and well being of Indians requiring supervised accounts.

Another comment concerned the placement of gaming revenues into Proceeds of Labor accounts.

Another comment recommended rewording of the section because trust funds are now administered by the Office of Trust Funds Management (OTFM).

Response: Only the last comment has been adopted. This section has been amended to clarify that the Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by BIA or OTFM. It has long been BIA policy to place only funds derived from trust assets into Individual Indian Money accounts, Indian Moneys Proceeds of Labor Escrow accounts or special deposit funds accounts held by BIA. Gaming revenues are not funds derived from trust assets or trust resources but are tribal funds under the control of the tribe. In addition, the Internal Revenue Service (IRS) regulations, 26 CFR part 31, require that Indian tribes, not BIA or OTFM, withhold taxes for all recipients.

Section 290.17 What Documents Must the Indian Tribe Include With the Tribal Revenue Allocation Plan?

Section 290.17 formerly § 290.18 is renumbered, because former §§ 290.15 and 290.11 (b)(3) are combined under § 290.12 (b)(4).

No comments were received on this section.

Section 290.18 Where Should the Indian Tribe Submit the Tribal Revenue Allocation Plan?

Section 290.18 formerly § 290.19 is renumbered, because former §§ 290.15 and 290.11 (b)(3) are combined under § 290.12 (b)(4).

One comment suggested a deadline for review by the Superintendent be included in the rule.

Response: This comment was not adopted. The Superintendent's limited role in the process is confined to a determination that the plan was adopted in accordance with applicable tribal law. There is no need for a time deadline for forwarding the plan to the ABO.

Section 290.19 How Long Will the ABO Take to Review and Approve the Tribal Revenue Allocation Plan?

Section 290.19 formerly §§ 290.20 and 290.21 are combined.

One comment recommended these sections be combined to identify the action and the time limit necessary for review and approval of the plan by the ABO.

Response: This comment has been adopted and is amended to read: "How long will the ABO take to review and approve the tribal revenue allocation plan."

Four comments questioned what would happen after the 90-day period if no action is taken by the ABO and what recourse a tribe would have if the tribal revenue allocation plan is rejected by the ABO.

Response: In response to these comments, a new paragraph (c) is added to read: "If the ABO fails to take action within the 60 days you may appeal the failure of the ABO to act on your request in accordance with the regulations at 25 CFR part 2. A tribal revenue allocation plan is not effective without the express written approval of the ABO." The changes to this section clarify that the ABO should act on the tribal revenue allocation plan within 60 days of its submission to the ABO. These changes clarify that a failure to act within this time period can be appealed under 25 CFR part 2 and that the tribal revenue allocation plan is not effective until it has the express written approval of the ABO. The reference in the proposed rule to the tribe's governing document is omitted in the final rule in order to provide adequate time for review by the ABO, to prevent a tribe's shortened review time limits from bumping the review of another tribe's plan and because IGRA specifically requires approval of the plan by the Secretary. The time deadline has been shortened to 60 days to assure prompt consideration of the plan.

Section 290.20 When Will the ABO Disapprove a Tribal Revenue Allocation Plan?

Section 290.20 formerly § 290.22 is renumbered.

No comments were received on this section.

Section 290.21 May an Indian Tribe Appeal the ABO's Decision?

Section 290.21 formerly § 290.23 is renumbered.

One comment suggested 43 CFR part 4 be included in the appeal process.

Response: No action was taken on this comment. The process set forth in 25 CFR part 2, Appeals from Administrative Action provides the mechanism for appeal to the Interior Board of Indian Appeals, the same as 43 CFR part 4.

Section 290.22 How Does the Indian Tribe and its Members Ensure Compliance With its Tribal Revenue Allocation Plan?

Section 290.22 formerly § 290.25 is renumbered.

One comment requested clarification whether existing tribal systems fulfill the requirement for a forum or process for the resolution of discrepancy in expenditures of net gaming revenues.

Response: This comment was not adopted but is amended to include a tribal court system, forum or administrative process in the tribal revenue allocation plan for reviewing expenditures of net gaming revenues and explain how you will correct deficiencies.

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Section 290.23 How Does the Indian Tribe Resolve Disputes Arising From Per Capita Payments to Individual Members or Identified Groups of Members?

Section 290.23 formerly § 290.26 is renumbered.

One comment asked whether existing tribal systems fulfill the requirement for a forum or process for the resolution of disputes regarding per capita payments.

Response: This comment was not adopted but is amended to include a tribal court system, forum or administrative process to resolve disputes arising from per capita distributions.

Section 290.24 Do Revisions/ Amendments to a Tribal Revenue Allocation Plan Require Approval?

Section 290.24 formerly § 290.27 is renumbered.

No comments were received on this section.

Section 290.25 What is the Liability of the United States Under This Part?

Section 290.25 formerly § 290.28 is renumbered.

No comments were received on this section.

Section 290.26 Are Previously Approved Tribal Revenue Allocation Plans, Revisions or Amendments Subject to Review in Accordance With 25 CFR Part 290.

A new section 290.26 is added in response to the comments requesting clarification as to whether or not the submission of a revision or amendment to the tribal revenue allocation plan would necessitate the review of the entire tribal revenue allocation plan or just that portion being revised or amended.

Executive Order 12866

OMB has determined that this rule is significant. OMB's guidance on E.O. 12866 requires that a cost-benefit analysis be done for significant rules and that it contain three elements. These elements are a statement of record, an examination of alternative approaches, and an analysis of costs and benefits.

Because of the nature of IGRA and this rule, the usual economic analysis required by E.O. 12866 is neither appropriate nor needed. The intent of E.O. 12866 is to provide decision makers with appropriate information to determine that a regulatory action imposing costs and yielding benefits, or otherwise having the effects sought by authorizing legislation, is both needed and is economically justified. Whereas many regulatory actions intervene in the economic system by prohibiting or requiring certain actions, IGRA and this rule do neither. Instead, they allow tribes to voluntarily allocate gaming revenues, including per capita payments to tribal members.

This rule does nothing to either increase or decrease the revenues from gaming operations. It allows tribes to reallocate those revenues if they choose to do so. Tribes wishing to allocate gaming revenues as allowed by IGRA will incur only the minimal administrative cost of preparing and implementing the Allocation Plan required by the rule and IGRA. The Secretary of the Interior and Federal employees to whom the Secretary's authorities under IGRA are or will be delegated may also incur minimal administrative cost in implementing the rule.

The actual allocations from tribes to individual members do not result in costs or benefits as they are defined for purposes of the economic analysis required by E.O. 12866. These allocations are transfer payments rather than expenditures. Transfer payments, in themselves, do not cause the sort of resource allocations that give rise to costs and benefits. In this regard, per capita allocations of gaming revenues are similar to Social Security payments to individuals.

These regulations establish a method for the submission, review and approval of tribal revenue allocation plans in a timely manner. The tribal revenue allocation plans provide for the distribution of tribal gaming revenue for tribal use and allow for per capita payments to tribal members for private use. The IGRA, Section 2710 (b)(2)(B) requires that net gaming revenues from any tribal gaming are not to be used for purposes other than, (i) to fund tribal government operations or programs, (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies. Section 2710 (b)(3) of IGRA further provides that net revenues may be used to make per capita payments to members of the Indian tribe only if, (a) the Indian tribe has prepared a plan to allocate revenues for purposes to fund tribal government operations or programs; to provide for the general welfare of the Indian tribe and its members; to promote tribal economic development; to donate to charitable organizations; or to help fund operations of local government agencies, (b) the plan is approved by the Secretary as adequate, particularly for the purpose to fund tribal government operations and programs and to promote tribal economic development, (c) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and (d) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

The anticipated expenses or costs to the public or to the tribes who submit tribal revenue allocation plans will be minimal. The plans will provide for the distribution of net revenues from any tribal gaming for tribal use and per capita payments to tribal members for private use.

In accordance with IGRA, each tribe must submit a tribal revenue allocation plan if it intends to make per capita payments to members of the Indian tribe. The regulations will establish a method for the submission, review and approval of a tribal revenue allocation plan. If a tribe distributes per capita payments from net gaming revenues without an approved tribal revenue allocation plan, the DOJ or the NIGC may enforce the per capita requirements of IGRA.

On December 21, 1992, the AS-IA issued Guidelines to Govern the Review and Approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the Guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments are protected and preserved, and that per capita payments are subject to Federal income taxes. The AS-IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA.

The anticipated expenses or costs to the public or to the tribes who submit tribal revenue allocation plans will be minimal. The rule will not result in an annual gross effect on the economy of $100 million or more, and therefore is not an economically significant regulatory action. The rule will allow any Indian tribe that is conducting gaming to prepare a tribal revenue allocation plan for the purpose of

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making per capita payments to tribal members from net gaming revenues. A tribal revenue allocation plan will not affect the total amount of net gaming revenue available to a particular tribe. Without the rule, tribes must use net gaming revenues in accordance with Section 2710 (b)(2)(B), solely for tribal group purposes. With the rule, tribes may distribute a portion of the net gaming revenue to tribal members in per capita payments, which can be spent for private purposes. The net revenue is determined by the success of the tribe's gaming operation. Only a portion of the net gaming revenues may be used to make per capita payments to tribal members. Without a tribal revenue allocation plan, a tribe cannot make per capita payments to members of the tribe but must continue to spend all net gaming revenues for the benefit of the tribe.

Currently, there are approximately 225 Indian tribes engaged in class II (bingo) and class III (casino) gaming. Although IGRA mandates how net gaming revenues are to be used by tribes, it does not require tribes to provide to anyone the amounts of net gaming revenues earned or distributed. The tribal revenue allocation plan will require that tribes provide the Secretary a percentage breakdown of the uses to which net gaming revenues are allocated. The total percentage must equal 100 percent. To some Indian tribes who were previously unsuccessful in attracting businesses to their remote lands, gaming revenues now serve as the primary economic development tool available. Gaming revenues have enabled tribes to meet and supplement Federal funding to meet the needs of their members, by providing funds for housing assistance, education assistance, medical assistance, etc.

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 purposes of this Act.

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 does not have an annual effect on the economy of $100 million or more. Without this rule only the tribe may spend net gaming revenues in accordance with 25 U.S.C. § 2710(b)(2)(B) of IGRA. With this rule a method for the submission, review and approval of a tribal revenue allocation plan is established to allow a tribe to distribute per capita payments to its members from net gaming revenues.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability to U.S.-based enterprises to compete with foreign-based enterprises. The rule will provide a method for the submission, review and approval of tribal revenue allocation plans to allow a tribe to distribute per capita payments to its members from some of its net gaming revenues in accordance with IGRA.

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 because only Indian tribes that conduct gaming activities and choose to distribute per capita payments from net gaming revenues to its members are required to submit tribal revenue allocation plans for review and approval in accordance with IGRA. Indian tribes that conduct gaming activities and who choose not to distribute per capita payments from net gaming revenues to its members are not required to submit a tribal revenue allocation plan to utilize net gaming revenues.

As an alternative to the establishment of regulations, the AS-IA issued Guidelines on December 21, 1992, to govern the review and approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments must be protected and preserved, and that per capita payments are subject to Federal income taxes. The AS-IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA.

Takings (E.O. 12630)

The Department has determined that this rule does not have significant ''takings'' implications. The rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Federalism (E.O. 12612)

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

Civil Justice Reform (E.O. 12988)

The Department has certified to OMB that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order (E.O.) 12988.

National Environmental Policy Act of 1969 (NEPA) Statement

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 NEPA.

Paperwork Reduction Act

The Office of Management and Budget has reviewed and approved the information collections contained in this rule and assigned them approval number 1076–0152. The proposed rule was published on June 7, 1996, 61 FR 29044, and solicited comments on the information collection. The OMB expressed a concern related to the proposed rule §§ 290.11 (b)(3) and (b)(4) [renumbered §§ 290.12 (b)(2) and (b)(3)] indicating that these sections were open ended and needed more specific information. In particular, (3) OMB indicated the rule should outline specific requirements the Secretary must review as required by IGRA and (4) OMB questioned whether guidance is submitted to field personnel and/or public.

Response: Section 290.11(b)(3) is renumbered as § 290.12(b)(2) and is amended to read: ''It must contain detailed information to allow the ABO to determine that it complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development.'' Section 290.11(b)(4) is renumbered § 290.12(b)(3) and amended to state that because IGRA requires the per capita payments to be disbursed to

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the parents or legal guardians of such minors or legal incompetents in such amounts as necessary for the health, education, or welfare, of the minor or other legally incompetent, it is up to the tribe to establish a method for the accountability of the funds.

These concerns have been addressed in the rule and are reflected in the Paperwork Reduction Act submission.

Another comment questioned the accuracy of the Department's estimate of the burden of the proposed collection of information. No action was taken on this comment. The comment did not address why the cost or hour burden is questioned. Consultation from tribal representatives was obtained to determine the estimated burden of the collection of information.

Sections 290.12, 290.17, 290.24 and 290.26 have been amended and contain information collection requirements.

BIA invites the public to comment on the accuracy of the burden estimate and to provide suggestions for reducing the burden. Please submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior, OMB Control Number 1076–0152, Washington, DC, 20503, and to the Director, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070-MIB, Washington, DC 20240.

BIA needs this information to ensure that Tribal Revenue Allocation Plans include assurances that certain statutory requirements are met, a breakdown of the specific uses to which net gaming revenues will be allocated, eligibility requirements for participation, tax liability notification and the assurance of the protection and preservation of the per capita shares of minors and legal incompetents. BIA will use this information to ensure that net gaming revenues are used: (1) to fund tribal government operations and programs; (2) to provide for the general welfare of the Indian tribe and its members; (3) to promote tribal economic development; (4) to donate to charitable organizations; and (5) to fund operations of local government agencies. The likely respondents to this collection are Indian tribes, bands or groups. The estimated annual number of respondents is 50 with collections obtained periodically. The total burden for this collection of information is estimated to average 75–100 hours per response, for 5,000 total hours per year, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the submission. Responses to the collection of information are mandatory in order to receive benefits.

The Paperwork Reduction Act of 1995 requires us to tell you that a Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Drafting Information

The primary author of this document is Nancy Pierskalla, Management Analyst, Office of Indian Gaming Management, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 290

Gambling, Grant programs—business, Grant programs—Indians, Indians—business and finance, Indians—gaming.

For the reasons given in the preamble, part 290 is added to Chapter I of Title 25 of the Code of Federal Regulations as set forth below.

PART 290—TRIBAL REVENUE ALLOCATION PLANS

Sec.

290.1 Purpose.
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290.10 Is an Indian tribe in violation of IGRA if it makes per capita payments to its members from net gaming revenues without an approved tribal revenue allocation plan?
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290.12 What information must the tribal revenue allocation plan contain?
290.13 Under what conditions may an Indian tribe distribute per capita payments?
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290.15 Must the Indian tribe establish trust accounts with financial institutions for minors and legal incompetents?
290.16 Can the per capita payments of minors and legal incompetents be deposited into accounts held by BIA or OTFM?
290.17 What documents must the Indian tribe include with the tribal revenue allocation plan?
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290.19 How long will the ABO take to review and approve the tribal revenue allocation plan?
290.20 When will the ABO disapprove a tribal revenue allocation plan?
290.21 May an Indian tribe appeal the ABO's decision?
290.22 How does the Indian tribe and its members ensure compliance with its tribal revenue allocation plan?
290.23 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?
290.24 Do revisions/amendments to a tribal revenue allocation plan require approval?
290.25 What is the liability of the United States under this part?
290.26 Are previously approved tribal revenue allocation plans, revisions or amendments subject to review in accordance with 25 CFR part 290?

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

§ 290.1 Purpose.

This part contains procedures for submitting, reviewing, and approving tribal revenue allocation plans for distributing net gaming revenues from tribal gaming activities. It applies to review of tribal revenue allocation plans adopted under IGRA.

§ 290.2 Definitions.

Appropriate Bureau official (ABO) means the Bureau official with delegated authority to approve tribal revenue allocation plans.

IGRA means the Indian Gaming Regulatory Act of 1988 (Public Law 100–497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701–2721(1988)) and any amendments.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as:

(1) Eligible for the speci al programs and services provided by the United States to Indians because of their status as Indians; and

(2) Having powers of self-government.

Legal incompetent means an individual who is eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal justice systems or as established by the tribe.

Member of an Indian tribe means an individual who meets the requirements established by applicable tribal law for enrollment in the tribe and—

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(1) Is listed on the tribal rolls of that tribe if such rolls are kept or

(2) Is recognized as a member by the tribal governing body if tribal rolls are not kept.

Minor means an individual who is eligible to participate in a per capita payment and who has not reached the age of 18 years.

Per capita payment means the distribution of money or other thing of value to all members of the tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity. This definition does not apply to payments which have been set aside by the tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing or other similar, specifically identified needs.

Resolution means the formal document in which the tribal governing body expresses its legislative will in accordance with applicable tribal law.

Secretary means the Secretary of the Interior or his/her authorized representative.

Superintendent means the official or other designated representative of the BIA in charge of the field office which has immediate administrative responsibility for the affairs of the tribe for which a tribal revenue allocation plan is prepared.

Tribal governing body means the governing body of an Indian tribe recognized by the Secretary.

Tribal revenue allocation plan or *allocation plan* means the document submitted by an Indian tribe that provides for distributing net gaming revenues.

You or your means the Indian tribe.

§ 290.3 Information collection.

The information collection requirements contained in §§ 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number 1076–0152.

§ 290.4 What is a tribal revenue allocation plan?

It is the document you must submit that describes how you will allocate net gaming revenues.

§ 290.5 Who approves tribal revenue allocation plans?

The ABO will review and approve tribal revenue allocation plans for compliance with IGRA.

§ 290.6 Who must submit a tribal revenue allocation plan?

Any Indian tribe that intends to make a per capita payment from net gaming revenues must submit one.

§ 290.7 Must an Indian tribe have a tribal revenue allocation plan if it is not making per capita payments?

No, if you do not make per capita payments, you do not need to submit a tribal revenue allocation plan.

§ 290.8 Do Indian tribes have to make per capita payments from net gaming revenues to tribal members?

No. You do not have to make per capita payments.

§ 290.9 How may an Indian tribe use net gaming revenues if it does not have an approved tribal revenue allocation plan?

Without an approved tribal revenue allocation plan, you may use net gaming revenues to fund tribal government operations or programs; to provide for the general welfare of your tribe and its members; to promote tribal economic development; to donate to charitable organizations; or to help fund operations of local government agencies.

§ 290.10 Is an Indian tribe in violation of IGRA if it makes per capita payments to its members from net gaming revenues without an approved tribal revenue allocation plan?

Yes, you are in violation of IGRA if you make per capita payments to your tribal members from net gaming revenues without an approved tribal revenue allocation plan. If you refuse to comply, the DOJ or NIGC may enforce the per capita requirements of IGRA.

§ 290.11 May an Indian tribe distribute per capita payments from net gaming revenues derived from either Class II or Class III gaming without a tribal revenue allocation plan?

No, IGRA requires that you have an approved tribal revenue allocation plan.

§ 290.12 What information must the tribal revenue allocation plan contain?

(a) You must prepare a tribal revenue allocation plan that includes a percentage breakdown of the uses for which you will allocate net gaming revenues. The percentage breakdown must total 100 percent.

(b) The tribal revenue allocation plan must meet the following criteria:

(1) It must reserve an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe or its members;

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government.

(2) It must contain detailed information to allow the ABO to determine that it complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development.

(3) It must protect and preserve 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 to the parents or legal guardians of these minors or incompetents at times and in such amounts as necessary for the health, education, or welfare of the minor or incompetent;

(ii) Establishing criteria for withdrawal of the funds, acceptable proof and/or receipts for accountability of the expenditure of the funds and the circumstances for denial of the withdrawal of the minors' and legal incompetents' per capita payments by the parent or legal guardian; and

(iii) Establishing a process, system, or forum for dispute resolution.

(4) It must describe how you will notify members of the tax liability for per capita payments and how you will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR part 31.

(5) It must authorize 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.

§ 290.13 Under what conditions may an Indian tribe distribute per capita payments?

You may make per capita payments only after the ABO approves your tribal revenue allocation plan.

§ 290.14 Who can share in a per capita payment?

(a) You must establish your own criteria for determining whether all members or identified groups of members are eligible for per capita payments.

(b) If the tribal revenue allocation plan calls for distributing per capita payments to an identified group of members rather than to all members,

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you must justify limiting this payment to the identified group of members. You must make sure that:

(1) The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary;

(2) The distinction does not discriminate or otherwise violate the Indian Civil Rights Act; and

(3) The justification complies with applicable tribal law.

§ 290.15 Must the Indian tribe establish trust accounts with financial institutions for minors and legal incompetents?

No. The tribe may establish trust accounts with financial institutions but should explore investment options to structure the accounts to the benefit of their members while ensuring compliance with IGRA and this part.

§ 290.16 Can the per capita payments of minors and legal incompetents be deposited into accounts held by BIA or OTFM?

No. The Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by BIA or OTFM.

§ 290.17 What documents must the Indian tribe include with the tribal revenue allocation plan?

You must include:

(a) A written request for approval of the tribal revenue allocation plan; and

(b) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies you have adopted the tribal revenue allocation plan in accordance with applicable tribal law.

§ 290.18 Where should the Indian tribe submit the tribal revenue allocation plan?

You must submit your tribal revenue allocation plan to your respective Superintendent. The Superintendent will review the tribal revenue allocation plan to make sure it has been properly adopted in accordance with applicable tribal law. The Superintendent will then transmit the tribal revenue allocation plan promptly to the ABO.

§ 290.19 How long will the ABO take to review and approve the tribal revenue allocation plan?

The ABO must review and act on your tribal revenue allocation plan within 60 days of receiving it. A tribal revenue allocation plan is not effective without the ABO's written approval.

(a) If the tribal revenue allocation plan conforms with this part and the IGRA, the ABO must approve it.

(b) If the tribal revenue allocation plan does not conform with this part and the IGRA, the ABO will send you a written notice that:

(1) Explains why the plan doesn't conform to this part of the IGRA; and

(2) Tells you how to bring the plan into conformance.

(c) If the ABO doesn't act within 60 days, you can appeal the inaction under 25 CFR part 2. A tribal revenue allocation plan is not effective without the express written approval of the ABO.

§ 290.20 When will the ABO disapprove a tribal revenue allocation plan?

The ABO will not approve any tribal revenue allocation plan for distribution of net gaming revenues from a tribal gaming activity if:

(a) The tribal revenue allocation plan is inadequate, particularly with respect to the requirements in § 290.12 and IGRA, and you fail to bring it into compliance;

(b) The tribal revenue allocation plan is not adopted in accordance with applicable tribal law;

(c) The tribal revenue allocation plan does not include a reasonable justification for limiting per capita payments to certain groups of members; or

(d) The tribal revenue allocation plan violates the Indian Civil Rights Act of 1968, any other provision of Federal law, or the United States' trust obligations.

§ 290.21 May an Indian tribe appeal the ABO's decision?

Yes, you may appeal the ABO's decision in accordance with the regulations at 25 CFR part 2.

§ 290.22 How does the Indian tribe ensure compliance with its tribal revenue allocation plan?

You must utilize or establish a tribal court system, forum or administrative process in the tribal revenue allocation plan for reviewing expenditures of net gaming revenues and explain how you will correct deficiencies.

§ 290.23 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?

You must utilize or establish a tribal court system, forum or administrative process for resolving disputes arising from the allocation of net gaming revenue and the distribution of per capita payments.

§ 290.24 Do revisions/amendments to a tribal revenue allocation plan require approval?

Yes, revisions/amendments to a tribal revenue allocation plan must be submitted to the ABO for approval to ensure that they comply with § 290.12 and IGRA.

§ 290.25 What is the liability of the United States under this part?

The United States is not liable for the manner in which a tribe distributes funds from net gaming revenues.

§ 290.26 Are previously approved tribal revenue allocation plans, revisions, or amendments subject to review in accordance with this part?

No. This part applies only to tribal revenue allocation plans, revisions, or amendments submitted for approval after April 17, 2000.

(a) If the ABO approved your tribal revenue allocation plan, revisions, or amendments before April 17, 2000, you need not resubmit it for approval.

(b) If you are amending or revising a previously approved allocation plan, you must submit the amended or revised plan to the ABO for review and approval under this part.

Dated: October 29, 1999.

Kevin Gover

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6603 Filed 3–16–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final rule titled ''Postlease Operations Safety'' that was published Tuesday, December 28, 1999 (64 FR 72756). We are correcting minor errors in four documents incorporated by reference and separating two document entries that were printed as one entry.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede 30 CFR 250, subpart A, General, regulations on the effective date and affect all operators and lessees on the Outer Continental Shelf.

The published final regulations contained a complete listing of all of the

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