

# VARIANCE APPLICATION

Section 542.18 Updated through May 11, 2006

## **§ 542.18 How does a gaming operation apply for a variance from the standards of the part?**

### *(a) Tribal gaming regulatory authority approval.*

- (1) A Tribal gaming regulatory authority may approve a variance for a gaming operation if it has determined that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace.
- (2) For each enumerated standard for which the Tribal gaming regulatory authority approves a variance, it shall submit to the Chairman of the NIGC, within thirty (30) days, a detailed report, which shall include the following:
  - (i) A detailed description of the variance;
  - (ii) An explanation of how the variance achieves a level of control sufficient to accomplish the purpose of the standard it is to replace; and
  - (iii) Evidence that the Tribal gaming regulatory authority has approved the variance.
- (3) In the event that the Tribal gaming regulatory authority or the Tribe chooses to submit a variance request directly to the Chairman, it may do so without the approval requirement set forth in paragraph (a)(2)(iii) of this section and such request shall be deemed as having been approved by the Tribal gaming regulatory authority.

### *(b) Review by the Chairman.*

- (1) Following receipt of the variance approval, the Chairman or his or her designee shall have sixty (60) days to concur with or object to the approval of the variance.
- (2) Any objection raised by the Chairman shall be in the form of a written explanation based upon the following criteria:
  - (i) There is no valid explanation of why the gaming operation should have received a variance approval from the Tribal gaming regulatory authority on the enumerated standard; or
  - (ii) The variance as approved by the Tribal gaming regulatory authority does not provide a level of control sufficient to accomplish the purpose of the standard it is to replace.
- (3) If the Chairman fails to object in writing within sixty (60) days after the date of receipt of a complete submission, the variance shall be considered concurred with by the Chairman.
- (4) The 60-day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Chairman.

### *(c) Curing Chairman's objections.*

- (1) Following an objection by the Chairman to the issuance of a variance, the Tribal gaming regulatory authority shall have the opportunity to cure any objections noted by the Chairman.
- (2) A Tribal gaming regulatory authority may cure the objections raised by the Chairman by:
  - (i) Rescinding its initial approval of the variance; or
  - (ii) Rescinding its initial approval, revising the variance, approving it, and re-submitting it to the Chairman.
- (3) Upon any re-submission of a variance approval, the Chairman shall have thirty (30) days to concur with or object to the re-submitted variance.
- (4) If the Chairman fails to object in writing within thirty (30) days after the date of receipt of the re-submitted variance, the re-submitted variance shall be considered concurred with by the Chairman.
- (5) The thirty (30) day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Chairman.

### *(d) Appeals.*

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- (1) Upon receipt of objections to a re-submission of a variance, the Tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:
  - (i) Within thirty (30) days of receiving an objection to a re-submission, the Tribal gaming regulatory authority shall file its notice of appeal.
  - (ii) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.
  - (iii) An appeal under this section shall specify the reasons why the Tribal gaming regulatory authority believes the Chairman's objections should be reviewed, and shall include supporting documentation, if any.
  - (iv) The Tribal gaming regulatory authority shall be provided with any comments offered by the Chairman to the Commission on the substance of the appeal by the Tribal gaming regulatory authority and shall be offered the opportunity to respond to any such comments.
  - (v) Within thirty (30) days after receipt of the appeal, the Commission shall render a decision based upon the criteria contained within paragraph (b)(2) of this section unless the Tribal gaming regulatory authority elects to waive the thirty (30) day requirement and to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision.
  - (vi) In the absence of a decision within the time provided, the Tribal gaming regulatory authority's resubmission shall be considered concurred with by the Commission and become effective.
- (2) The Tribal gaming regulatory authority may appeal the Chairman's objection to the approval of a variance to the full Commission without resubmitting the variance by filling a notice of appeal with the full Commission within thirty (30) days of the Chairman's objection and complying with the procedures described in paragraph (d)(1) of this section.
- (e) *Effective date of variance.* The gaming operation shall comply with standards that achieve a level of control sufficient to accomplish the purpose of the standard it is to replace until such time as the Commission objects to the Tribal gaming regulatory authority's approval of a variance as provided in paragraph (b) of this section. Concurrence in a variance by the Chairman or Commission is discretionary and variances will not be granted routinely. The gaming operation shall comply with standards at least as stringent as those set forth in this part until such time as the Chairman or Commission concurs with the Tribal gaming regulatory authority's approval of a variance.

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