

POKAGON BAND GAMING COMMISSION LIQUOR CONTROL REGULATIONS



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CHAPTER I. GENERAL PROVISIONS

Section 1.01 Legal Authority.

Pursuant to the authority conferred on the Commission by Section 9 of the Codes, the Commission adopts these Regulations.

Section 1.02 Short Title.

These Regulations shall be known and may be cited as the "Liquor Control Regulations".

Section 1.03 Definitions.

Capitalized terms used in these Regulations and not defined below shall have the same meaning as such term is defined in the Codes.

For the purposes of these Regulations, words in the present tense include the future; the masculine includes the feminine; the singular includes the plural; and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive. In construing the provisions of these Regulations, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise:

- (a) "Center of History and Culture" means the Center of History and Culture of the Tribe.
- (b) "Codes" means the Michigan Code and the Indiana Code.
- (c) "Compacts" means those compacts with the State of Michigan and the State of Indiana, defined respectively as "Michigan Compact" and the "Indiana Compact".
- (d) "Indiana Code" means the Pokagon Band Liquor Control Code (Indiana), as may be amended from time-to-time.
- (e) "Indiana Compact" means Section 10(H) of the Compact dated January 21, 2021 between the Pokagon Band of Potawatomi and the State of Indiana negotiated and entered into pursuant to IGRA § 2710(d)(3) to govern Class III gaming and shall include any renewals and amendments, which was deemed approved by the Secretary of the Interior by operation of law under the Indian Gaming Regulatory Act and become effective upon publication in the Federal Register (86 FR 35328-0186, July 2, 2021).
- (f) "Indiana Reservation" means lands within the Tribe's Reservation located within the State of Indiana.
- (g) "License" means a License issued by the Gaming Commission under the provisions of the Michigan Code or the Indiana Code authorizing the importation, manufacture, distribution, or Sale of Alcoholic Liquor for commercial purposes on or within the Reservation consistent with federal law.
- (h) "Licensed Alcoholic Liquor Business" means a Licensee operating within the exterior boundaries of the Reservation.
- (i) "Michigan Code" means the Liquor Control Code (Michigan), as may be amended from time-to-time.
- (j) "Michigan Compact" means Section 10 of the Compact dated December 3, 1998, including all

renewals, amendments, appendices, exhibits and other attachments thereto, between the Pokagon Band of Potawatomi Indians and the State of Michigan providing for the Conduct of Tribal Class III Gaming by the Pokagon Band of Potawatomi Indians, which was deemed approved by the Secretary of the Interior by operation of law under the Indian Gaming Regulatory Act (25 U.S.C. § 2710(d)(8)(C)) and became effective on upon publication in the Federal Register (64 Fed. Reg. 8111, February 18, 1999).

- (k) “Michigan Reservation” means lands within the Tribe’s Reservation located within the State of Michigan.
- (l) “Mixed Wine Drink” means a drink or similar product marketed as a wine cooler and containing less than seven percent (7%) Alcohol by volume, consisting of Wine and plain, sparkling, or carbonated water and containing anyone (1) or more of the following: Non-Alcoholic Liquor; flavoring; coloring materials; fruit juices; fruit adjuncts; sugar; carbon dioxide; or preservatives.
- (m) “Mixed Spirit Drink” means a drink produced and packaged or sold by a mixed spirit drink Manufacturer or an out-of-state seller of mixed spirit drink which contains ten percent (10%) or less Alcohol by volume consisting of distilled Spirits mixed with non-Alcoholic Liquor or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.
- (n) “Regulations” means these Liquor Control Regulations.
- (o) “Reservation” means pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law,
 - (1) all lands, the title to which is held in trust by the United States for the benefit of the Tribe; and
 - (2) all lands proclaimed by the Secretary of the Interior to be part of the Tribe’s reservation. The term Reservation includes any rights-of-way running through the Reservation. The term “Reservation” includes both the Michigan Reservation and Indiana Reservation.
- (p) “Schedule of Fees” means the schedule of fees for any License issuance, renewal, modification, or transfer which is established by the Commission pursuant to the Codes, and as may be amended from time-to-time.
- (q) “Spirits” means any beverage which contains Alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes Wine containing an alcoholic content of more than twenty-one percent (21%) by volume, except Sacramental Wine and Mixed Spirit Drink.
- (r) “Wine” means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than twenty-one percent (21%) of alcohol by volume, including fermented fruit juices other than grapes and Mixed Wine Drinks.

Section 1.04 Rules of Interpretation.

- (a) These Regulations shall be liberally interpreted in order to allow the Commission to carry out its duties and to ensure that all the objectives of the Codes and these Regulations are achieved.

- (b) Resolving inconsistency between governing documents. If there is a conflict between the Codes and these Regulations, then the Codes shall prevail. If there is a conflict between these Regulations and the applicable Compacts, the applicable Compact provision shall prevail.
- (c) The Commission shall have sole authority to interpret these Regulations and determine whether or not any inconsistency with the Codes or Compacts exists, subject to any right of an Applicant or Licensee to challenge a decision, action, or any delayed or withheld action or decision of the Commission as provided in Section 39 of the Codes, provided that the Tribal Court shall give deference to the Commission's reasonable interpretations of the Codes, Regulations, and Compacts.

Section 1.05 Areas Not Covered by the Regulations.

The Commission shall exercise its discretion in any matter not covered by these Regulations to achieve the objectives of the Codes and these Regulations.

Section 1.06 Access to Records.

No original of any official record or document of the Commission shall leave the custody of the Commission, except by express written order of the Executive Director or a court of competent jurisdiction.

Section 1.07 Communications; Notices.

- (a) Except when otherwise provided, any document or correspondence addressed to the Commission shall be sent to, or personally delivered at, the principal office of the Commission.
- (b) Said documents or correspondence shall be deemed to have been delivered or filed from the date the same were received at the principal office of the Commission.
- (c) Except as otherwise provided in these Regulations, all notices and other communications from the Commission shall be sent to a Licensee or Applicant by regular or certified mail to the address which appears in the most recent Application or in a change of address notice received from such Licensee or Applicant.
- (d) Any notice or any other communication from the Commission shall be deemed to have been served or received when the same is deposited, postage prepaid, in the mail of the United States of America and the time specified in said notice shall commence to run from that date.
- (e) Applicants shall notify the Commission within five business days of any change of address.
- (f) Applicants shall notify the Commission within five business days of any material changes in Applicant's application.
- (g) Licensees shall notify the Commission within five business days of any material changes that may affect the Licensee's continued eligibility for a License.

Section 1.08 Notification of Government Regulatory Action.

Licensees shall provide the Commission with all available information regarding regulatory or licensing notice or action by any government agency. This required notification includes, but is not limited to, state license suspension, revocation, enforcement action, and notices of violation. Such information shall be provided to the Commission not later than five business days of the Licensee's receipt of such information.

Section 1.09 Sovereign Immunity Preserved.

Consistent with Section 44 of the Codes, nothing in these Regulations, and no enforcement action

taken pursuant to these Regulations shall constitute a waiver of such sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

CHAPTER II. LICENSING

Section 2.01 Licenses, License Transfers and License Renewals.

- (a) All applications for Licenses, transfers, and renewals must be on a form provided by the Commission, completed and delivered to the Commission, and include all information necessary for investigation and processing of the application and any required fee, as set forth in the Schedule of Fees.
- (b) If a Licensee desires to alter the size of the physical structure of the Licensed premises, to add to or remove any space from the physical structure of the Licensed premises, to install any additional Alcoholic Liquor service areas, to serve Alcoholic Liquor outdoors on a regular basis, or make any other structural or operational change impacting the Alcoholic Liquor business, the Licensee shall first obtain approval of the Commission by applying to have the License modified.
- (c) The Commission shall consider, at a minimum, the following before issuing a License or a License transfer or renewal:
 - (1) The proximity of the Licensed premises to a church, a traditional religious practice or ceremonial area or school building.
 - (i) A License shall be denied if the contemplated location of the Licensed premises is within 500 feet of a church, a traditional religious practice or ceremonial area or school building, and issuance of a License would adversely affect or is inconsistent with the operation of the church, a traditional religious practice or ceremony or school.
 - (ii) The terms “church, a traditional religious practice or ceremonial area or school building” shall not include a day care, pre-school, or other child-care facility located within or in the immediate vicinity of the Licensed premises for the purpose of providing services to the Licensee’s employees, agents, or patrons.
 - (iii) If the Commission is unsure whether an area is a “traditional religious practice or ceremonial area”, the Commission may seek guidance from the Center of History and Culture.
 - (2) The general management experience, business reputation, past criminal convictions, moral character, and Alcoholic Liquor consumption of the Applicant’s officers and directors, as well as its agents and employees with primary management responsibility for the Sale of Alcoholic Liquor.
 - (3) The effects that issuance of a License would have on the economic development of the area.
 - (4) The opinions of the local community residents, the Commission, and tribal law enforcement agencies.
 - (5) Any other effects on the health, welfare, and safety of the Tribe, its members, and the general public.

Section 2.02 Obligation to Pay Fees.

Any obligation for payment of fees arising under the Code or the Regulations shall be paid in full and shall not be refunded, even if the Applicant withdraws the application.

CHAPTER III. ADMINISTRATIVE PROCEDURES

Section 3.01 General Administrative Procedures.

- (a) The Commission shall conduct hearings for the following Commission actions:
 - (1) Issuance of Licenses and License transfers,
 - (2) License renewals, where required by the Commission based on information provided in the Applicant's renewal application indicating that there has been a material change in the Applicant's ownership or control or based on other matters that may affect the Applicant's continued eligibility for a License;
 - (3) License modifications, including where the Licensee seeks to alter the size of the physical structure of the Licensed premises, to add to or remove any space from the physical structure of the Licensed premises, to install any additional Alcoholic Liquor service areas, to serve Alcoholic Liquor outdoors on a regular basis, or make any other structural or operational change impacting the Alcoholic Liquor business
 - (4) License suspensions or revocations; and
 - (5) Seizures of contraband.
- (b) Notice and hearings on these actions shall be conducted in the manner provided in these Regulations and Section 24, Section 32, and Section 37, as applicable of the Codes, as applicable.
- (c) The hearing shall be conducted under the requirements of these Regulations, the applicable Codes, and any rules of procedure adopted by the Commission.
- (d) At a minimum, an officer or director of the Licensed Alcoholic Liquor Business or an Alcoholic Liquor Business applying for a License, or the employee or agent responsible for the Licensed Alcoholic Liquor Business' Alcoholic Liquor transactions must personally appear at the designated hearing. If such person fails to personally appear, the Commission may, among other things, deny the License.
- (e) Requests to postpone hearings shall be made in writing and received by the Commission not less than two (2) business days prior to the hearing date, unless the Applicant or Licensee can show good cause for not complying with this requirement.

Section 3.02 License Suspension and Revocation.

- (a) Suspension or revocation proceedings are initiated as provided under Section 31 of the Codes.
- (b) Alleged violations of the Codes or these Regulations shall be documented in a Commission investigation report and submitted to the Commission. A copy of such investigation report shall also be provided to the Licensee.
- (c) The Licensee may waive the right to a hearing on the alleged violation(s) and acknowledge and admit the alleged violation(s). In such case, the Commission may issue an order directing the Licensee to correct the violation within an identified time.
- (d) Failure to correct the violation within the time period specified by the Commission will result in the scheduling of a hearing before the Commission for consideration of License suspension or revocation, as applicable.
- (e) Anything in these Regulations notwithstanding, pursuant to Section 31 of the Codes, the Commission may immediately suspend a License, if the Commission determines that the grounds for suspension or revocation are supported by reliable evidence and such grounds pose a substantial risk of imminent harm to the health, welfare, or safety of the public, provided such emergency suspension shall not exceed three (3) calendar days without a hearing.

CHAPTER IV. INVESTIGATION AND ENFORCEMENT POWERS

Section 4.01 Investigation and Enforcement.

- (a) The Commission's investigative and enforcement powers include, without limitation, the following, either in the course of determining whether to issue a License, License transfer, or License renewal, or in determining a Licensee's compliance with the Codes and Regulations, and federal liquor code, laws and regulations:
- (1) Issuing a subpoena requiring a Person to appear before the Commission and be examined, and to produce any books, records, or documents that may be relevant;
 - (2) Examining or copying books, records, and papers of any Person that may be relevant to the Commission's responsibilities pursuant to the Code and these Regulations;
 - (3) Inspecting and searching the Licensed premises during regular business hours or when the Licensed premises are occupied by the Licensee, including their respective employees or agents;
 - (4) Invoking the aid of the Tribal Court to obtain relevant information;
 - (5) Requesting the assistance of law enforcement in obtaining a search warrant pursuant to Tribal Law, and, pursuant to such search warrant, seizing any Alcoholic Liquor, containers, implements, or conveyances used in connection with a violation of the provisions of the Codes or these Regulations;
 - (6) Seizing suspected adulterated Alcoholic Liquor for analytical purposes;
 - (7) Seizing Alcoholic Liquor that does not comply with the Code or these Regulations; and
 - (8) Seizing Alcoholic Liquor that is damaged by fire, water, chemicals, smoke, floods, explosion, freezing, sewage, or other causes affecting quality or merchantable value.
- (b) The Applicant or Licensee, as applicable, shall fully cooperate with the Commission's investigation.

CHAPTER V. ADVERTISING

Section 5.01 Alcoholic Liquor Advertising.

- (a) Advertisements for Alcoholic Liquor shall not depict or refer to any under twenty-one (21) years of age.
- (b) Dispenser signs.
 - (1) Alcoholic Liquor dispensing equipment shall have the brand of Alcoholic Liquor designated by a sign on the dispenser or on the tap.
 - (2) A Licensee shall not draw from a dispenser or tap a brand of Alcoholic Liquor other than that brand designated by the dispenser sign or tap marker.
- (c) Retail Licensees shall not engage in cooperative advertising with any wholesalers, Manufacturers, or outstate sellers of Alcoholic Liquor that involves either:
 - (1) Financial assistance provided by a Manufacturer or wholesale seller of Alcoholic Liquor for the brand promotion of their product; or
 - (2) The appearance of the Retail Licensee's name, trade name, and/or logo in advertising by a Manufacturer or wholesale seller of Alcoholic Liquor.
- (d) Licensees may not use any gambling devices, including punch boards and games of any description, for advertising purposes. However, this Subsection 5.01(d) shall not prohibit the Licensee from providing a patron the ability or opportunity to order Alcoholic Liquor directly from such gambling device.

Section 5.02 Contests and Advertising Articles.

- (a) On-premises Licensees shall not participate in or sponsor any contest or tournament that requires the use or consumption of Alcoholic Liquor as a necessary part of the contest or tournament.
- (b) Except as may otherwise be permitted under Tribal Law, including the Codes, and these Regulations, Licensees may not give away any Alcoholic Liquor of any kind or description at any time in connection with their business.
- (c) Licensees may not give away the contents of a sample bottle or can of Alcoholic Liquor.
- (d) Except as otherwise permitted under Tribal Law and these Regulations, Licensees may not advertise or sell Alcoholic Liquor at less than cost.
- (e) Licensees may not sell, offer to sell, or advertise the Sale of an unlimited quantity of Alcoholic Liquor at a specific price.
- (f) Licensees may not sell, offer to sell, or advertise the Sale of two or more identical drinks containing Alcoholic Liquor to a person for that person's consumption for one price. When two or more identical drinks containing Alcoholic Liquor are served to a person at one time, the price charged for the second and each additional identical drink shall be the same as the price charged for the first drink.

CHAPTER VI. ALCOHOLIC LIQUOR BUSINESS OPERATION

Section 6.01 Purchasing.

- (a) Beer and Wine:
 - (1) retail Licensees within the Michigan Reservation shall only Purchase Beer and Wine from private wholesalers licensed by the State of Michigan.
 - (2) retail Licensees within the Indiana Reservation shall only Purchase Beer and Wine from manufacturers and wholesalers licensed by the State of Indiana.
- (b) Spirits:
 - (1) retail Licensees within the Michigan Reservation shall only Purchase Alcoholic Liquor over 21% by volume from the State of Michigan through its Authorized Distribution Agents.
 - (2) retail Licensees within the Indiana Reservation shall only Purchase Alcoholic Liquor from manufacturers and wholesalers licensed by the State of Indiana.

Section 6.02 Hours and days of operation within the Michigan Reservation.

- (a) Sales.

Sales are considered complete when the exchange or possession of the Alcoholic Liquor takes place.
- (b) Monday through Saturday Sales.

Licensees may only sell Alcoholic Liquor on Monday through Saturday during the hours permitted under the laws and regulations of the State of Michigan.
- (c) On-premise consumption.

Licensees may not allow anyone, including their agents and employees, to consume Alcoholic Liquor on the Licensed Premises except during the days and times of day that are expressly permitted under the laws and regulations of the State of Michigan.
- (d) Sunday Sales.

Licensees may only sell Alcoholic Liquor on Sunday during the hours permitted under the laws and regulations of the State of Michigan.
- (e) New Year's Day Sales.

If January 1 falls on a Sunday, the Licensee's hours may be extended if and to the extent allowed under the laws and regulations of the State of Michigan.
- (f) Christmas Sales.

Licensees shall not sell Alcoholic Liquor on December 24 or December 26, except during the times of day that are permitted under the laws and regulations of the State of Michigan.
- (g) The Licensed premises may be open, but not serve Alcoholic Liquor, during otherwise prohibited Sale hours described in this section, and may be occupied by other than the Licensee's employees, agents, and contractors
- (h) The hours limitations regarding the public consumption of Alcoholic Liquor do not apply to the consumption of Alcoholic Liquor in the bedrooms or suites of registered guests of hotels.
- (i) If there is any conflict between the laws and regulations of the State of Michigan and the Michigan Code and the Regulations, then the Michigan Code and the Regulations shall prevail.

Section 6.03 Hours and days of operation within the Indiana Reservation.

- (a) Sales.
Sales are considered complete when the exchange or possession of the Alcoholic Liquor takes place.
- (b) Sunday through Saturday Sales.
Licensees may only sell Alcoholic Liquor on Sunday through Saturday during the hours permitted under the laws and regulations of the State of Indiana.
- (c) On-premise consumption.
Licensees may not allow anyone, including their agents and employees, to consume Alcoholic Liquor on the Licensed Premises except during the days and times of day that are expressly permitted under the laws and regulations of the State of Indiana.
- (d) New Year's Day Sales.
If January 1 falls on a Sunday, the Licensee's hours may be extended if and to the extent allowed under the laws and regulations of the State of Indiana.
- (e) Christmas Sales.
Licensees shall not sell Alcoholic Liquor on December 24 or December 26, except during the times of day that are permitted under the laws and regulations of the State of Indiana.
- (f) The Licensed premises may be open, but not serve Alcoholic Liquor, during otherwise prohibited sale hours described in this section, and may be occupied by other than the Licensee's employees, agents, and contractors.
- (g) The hours limitations regarding the public consumption of Alcoholic Liquor do not apply to the consumption of Alcoholic Liquor in the bedrooms or suites of registered guests of hotels.
- (h) If there is any conflict between the laws and regulations of the State of Indiana and the Indiana Code and the Regulations, then the Indiana Code and the Regulations shall prevail.

Section 6.04 Posting.

Licensees shall prominently post in a conspicuous place on the licensed premises:

- (a) Gaming Commission-issued Licenses framed under a transparent material.
- (b) A sign describing the prohibition against selling or furnishing Alcoholic Liquor to a person less than 21 years of age.
- (c) A sign stating the total capacity of each public room of the licensed establishment, in accordance with the applicable standards under the Pokagon Band's Health and Safety Act.

Section 6.05 Prohibited Acts.

In addition to any acts prohibited under the Codes, a Licensee shall not:

- (a) Employ within the Michigan Reservation:
 - (1) A person under 18 years of age to sell or serve Alcoholic Liquor;
 - (2) A person between the ages of 16 and 18 in, about, or in connection with the part of the establishment where Alcoholic Liquor is consumed, sold at retail, or sold for consumption on the premises, unless the Sale of food or other goods constitutes at least 50% of the total gross receipts of that portion of the establishments
 - (3) A person between the ages of 14 and 16 in establishments where Alcoholic Liquor is sold at retail, unless:
 - (i) the Sale of food or other goods constitutes at least 50% of the total gross receipts of that portion of the establishment; and
 - (ii) the person is not employed in, about, or in connection with that part of the establishment where alcoholic beverages are consumed or sold for consumption on the premises;
 - (4) a person under the age of 18 to conduct or assist in any gaming activity conducted on the licensed premises; or
 - (5) a person who has not successfully completed proper training for responsible service of Alcohol, such as "TIPS" (Training for Intervention Procedure) or another training program with similar content and training standards.
- (b) Employ within the Indiana Reservation:
 - (1) a person under the age of 21 to sell, furnish, or otherwise deal in Alcoholic Liquor, but a Licensee may:
 - (i) employ a person at least 19 years of age, but less than 21 years of age whose job duties include ringing up a sale of Alcoholic Liquor in the course of the person's employment, and
 - (ii) employ a person at least 19 years of age, but less than 21 years of age who has successfully completed proper training for responsible service of Alcoholic Liquor, such as "TIPS" (Training for Intervention Procedure) or another training program with similar content and training standards, to serve Alcoholic Liquor in a dining area or family room of a restaurant or hotel:
 - (A) in the course of the person's employment as a waiter, waitress, or server; and
 - (B) under the supervision of a person who is at least 21 years of age, is present at the restaurant or hotel, and has successfully completed successfully completed proper training for responsible service of Alcoholic Liquor, such as "TIPS" (Training for Intervention Procedure) or another training program with similar content and training standards.
 - (I) a person under the age of 21 to be a bartender.
 - (II) a person at least 21 years of age to sell, furnish, or otherwise deal in Alcoholic Liquor who has not successfully completed proper training for responsible service of Alcoholic Liquor, such as "TIPS" (Training for Intervention Procedure) or another training program with similar content and training standards

- (c) Allow a person:
 - (1) under 17 years of age to remain in any place where Alcoholic Liquor is sold, given away, or furnished for a beverage, unless the person is accompanied by parent or guardian; or
 - (2) under 21 years of age to play any gaming activity, where such gaming is conducted on premises having a License;
- (d) Allow a person who is Obviously Intoxicated to consume any alcoholic beverage on the licensed premises;
- (e) Allow an employee or agent of the Licensee to be in an Obviously Intoxicated condition on the licensed premises;
- (f) Allow an Obviously Intoxicated person to frequent or loiter on the licensed premises;
- (g) Allow on the licensed premises any vending machine that dispenses any type of Alcoholic Liquor directly to a customer;
- (h) Allow illegal activities to occur on the licensed premises;
- (i) Allow patrons to remove Alcoholic Liquor from the licensed premises, where the License provides for consumption only on the premises or at the location designated in the License, except a Retail on-sale general License may allow a person who has purchased a meal and partially consumed a bottle of Wine with such meal, to remove the partially consumed bottle from the Licensed Premises upon departure, provided that the Licensee caps the bottle or reinserts a cork so that the top of the cork is level with the lip of the bottle; and
- (j) Allow patrons to consume Alcoholic Liquor on the licensed premises where such Alcoholic Liquor was not purchased from the Licensee, but this shall not apply to the consumption of Alcoholic Liquor in the bedrooms or suites of registered guests of hotels.

Section 6.06 Additional Requirements for On-Premises Licensees.

Serving of brand names. The Licensee shall serve and sell only the brand name ordered by the patron.

Section 6.07 Recordkeeping.

The Licensee shall maintain accurate records of Alcoholic Liquor Purchases and Sales, and all submittals to and correspondence with the Gaming Commission and shall maintain such records for at least 5-years from such Purchase or Sale or correspondence.

Section 6.08 Giving Away of Alcoholic Liquor.

- (a) A Licensee holding a Retail on-sale general License whose Licensed Premises are located within the Michigan Reservation that is also entitled to exercise the rights and privileges of a class A or class B hotel Licensee shall be entitled to furnish Alcoholic Liquor at less than cost or without charge to the same extent as class A or class B hotel Licensees are permitted under the laws and regulations of the state of Michigan. This provision is intended to extend to Retail on-sale general Licensees the same rights to furnish complimentary Alcoholic Liquor as Michigan law provides to class A or class B hotel Licensees.
- (b) A Licensee holding a Retail on-sale general License whose Licensed Premises are located within the Indiana Reservation shall be entitled to furnish complimentary Alcoholic Liquor to its patrons or guests at less than cost or without charge under the following conditions:
 - (1) The Commission expressly authorized the Licensee to sell Alcoholic Liquor on the Licensed Premises at less than cost or without charge as set forth in the License issued by the Commission;

- (2) The Licensee is the holder of a gaming facility license issued by the Commission pursuant to Chapter IV of the Pokagon Band Gaming Regulatory Act for a gaming facility located within the Indiana Reservation; and
- (3) The location(s) on the Licensed Premises where the Licensee will sell Alcoholic Liquor at less than cost or without charge is within the Licensee's gaming facility on the Indiana Reservation.

CHAPTER VII. RULES OF PROCEDURE FOR HEARINGS

Section 7.01 Scope of Rules of Procedure.

For purposes of this Chapter, the term “Petitioner” refers to an Applicant in a hearing for an issuance or transfer of a License under Section 24 of the applicable Codes, a Licensee seeking renewal of a License, where the Commission determines a hearing is required under Section 24 of the applicable Codes, or a Licensee, or an Applicant or a Licensee in a hearing before the Commission regarding a suspension or revocation of a License as described in Sections 31 and 32 of the applicable Codes. The term “Respondent” refers to any Person who is the subject of an enforcement proceeding initiated by the Commission under Section 37 of the applicable Codes. The terms “Petitioner” and “Respondent” are collectively referred to herein as “Petitioner/Respondent”.

Section 7.02 Notice of Hearing.

Except as provided otherwise in the Codes or the Regulations, the Commission shall provide written notice to the Petitioner/Respondent of the hearing at least twenty (20) days prior to the date set for the hearing. The day the Petitioner/Respondent receives the notice shall be considered a full day’s notice under this Section. The notice shall be sent by United States mail, postage prepaid, at the address listed in the application or and may also be sent by courier using services that document an attempted delivery or may be personally served upon the Petitioner/Respondent. The notice shall state the date, time and place of the hearing. In addition to any requirements under the Code, the notice shall also contain an indication of the action(s) being considered by the Commission, including, but not limited to:

- (a) Whether the Commission is holding the hearing for the purpose of obtaining further information from the Petitioner/Respondent;
- (b) Whether the Commission will be considering the grant or denial of the License application;
- (c) Whether the Commission will be examining any alleged violations of the applicable Codes, the conditions of any License issued by the Commission, any Commission order, these Regulations or any other applicable laws, regulations or agreements;
- (d) Whether any other sanctions or penalties will be considered; or
- (e) Whether the Commission will be considering overturning or upholding a decision made by an Agent of the Commission. The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

Section 7.03 Ex Parte Communications.

- (a) Prohibited.

No ex parte communication relative to the action(s) being considered by the Commission shall be made before a decision is rendered, or a threat or offer of reward shall be made at any time, to any member of the Commission by or on behalf of the Petitioner/Respondent or the Petitioner/Respondent’s attorney.

- (b) Attorney Communication.

Nothing in this Section shall prohibit the Petitioner/Respondent or the Petitioner/Respondent’s attorney from communicating with the Commission’s legal counsel, the Executive Director, or the Executive Director’s designee.

- (c) Report.

Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission’s legal counsel and turn it over to the

Commission's legal counsel.

(d) Matters Prohibited.

For purposes of this Section only, the action(s) being considered by the Commissioners shall be those matters identified in the written notice regarding the hearing as well as any other matters that are actually considered by the Commissioners during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commissioners during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.

(e) Sanction.

The Commissioners shall have the power to impose any sanction authorized under the Codes upon its determination that a Petitioner/Respondent has made an ex parte communication in violation of this Section or otherwise violated this Section.

Section 7.04 Appearance through Counsel.

(a) Personal Attendance.

Petitioner/Respondent(s) to all hearings governed by this Chapter may appear personally or through an attorney, except that a party to the action must personally attend any hearing on the merits unless his or her attendance has been waived, in writing, by the Commissioners. The preceding notwithstanding, in any matter under Subsection 3.0(d), such person may not appear solely through an attorney.

(b) Service.

When a Petitioner/Respondent has appeared through an attorney, service of all notices, motions, orders, decisions and other papers thereafter shall be made upon the attorney, unless the Petitioner/Respondent requests otherwise in writing.

(c) Attorney Empowered.

When a Petitioner/Respondent is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the Petitioner/Respondent, including a request for subpoenas.

(d) Attorney Admission Requirements.

Any attorney appearing before the Commissioners must be duly admitted and authorized to practice before the Tribal Court, but the Commissioners may permit, for good cause shown by written application to the Commissioners, attorneys duly licensed to practice law in any other jurisdiction to appear before the Commission on a case by case basis.

Section 7.05 Discovery Procedures for Enforcement Hearings.

- (a) The Commission and the Petitioner/Respondent(s) shall exchange a list of persons that each party intends to call as witnesses no later than five (5) business days before a scheduled hearing. The day the list is received shall be considered a full day's notice under this Section. Each witness shall be identified by name, and if known, position and business address. If no business address is available, a home address for the witness shall be provided. Except for hearings under Section 24 of the Codes, any witness not identified in accordance with this Subsection may be prohibited from testifying at a hearing in the Commissioners' discretion.

- (b) The Commission and the Petitioner/Respondent(s) shall exchange a copy of all documents or exhibits that they intend to offer as evidence in support of their case in chief, subject to the provisions of Section 7.06 of these Regulations. This exchange shall be made no later than five (5) business days before a scheduled hearing. The day the documents or exhibits are received shall be considered a full day's notice under this Subsection. Failure to make available any document or exhibit in accordance with this Subsection may, in the Commissioners' discretion, be grounds to deny the admission into evidence of such document or exhibit.

Section 7.06 Confidential Materials.

- (a) Document Designation.

- (1) Prior to submitting any documents or exhibits to the Commission, the Commission or the Petitioner/Respondent(s) may designate any document it reasonably believes to contain confidential information as "Subject to a Confidentiality Claim" by so marking the document in a prominent and evident manner.
- (2) Any documents designated as "Subject to a Confidentiality Claim" shall not be exchanged but shall be made available for inspection.

- (b) Commission Ruling.

Documents marked in accordance with subsection (a) above, and any non-public information contained within the document, shall not be made a part of the public record of the Commission proceedings or otherwise disclosed by the Commission to any Person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the Codes), without first providing the Commission or the Petitioner/Respondent with the opportunity to seek a ruling by the Commissioners that the document or non-public information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commissioners. If the request for such a ruling is made during a public hearing, the hearing shall be adjourned, and the Commissioners shall conduct a closed session in order to hear and rule upon the request. The Commission or the Petitioner/Respondent may present to the Commissioners in a closed meeting written and oral argument regarding the confidentiality claim, along with any facts the Commission or the Petitioner/Respondent believes to be relevant to such argument.

- (c) Commission Decision.

In determining whether a document marked in accordance with subsection (a) above should be made part of the public record of the Commission proceedings, the Commissioners will balance the claim for confidentiality against the materiality of the information to the related regulatory procedure or subject of the hearing, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the Commissioners' decision. In making this determination, the Commissioners shall consider all facts and circumstances relevant to making a proper ruling. The decision of the Commissioners shall be made in open session.

- (d) Withdrawal Request.

In the event that the Commissioners rule that the document in question or information contained therein should be made part of the public record of the Commission's proceedings, the document or information will be made part of the public record unless the Commission or the Petitioner/Respondent requests that the Commissioners withdraw the document from the proceeding and the Commission's possession. In the event the Commission or the Petitioner/Respondent requests that the document be withdrawn from the Commission's possession, the Commissioners will then consider the withdrawal request when it weighs the

other evidence in the proceeding. A withdrawal of documents from the proceeding shall be looked upon by the Commissioners with disfavor, and, depending on the facts and circumstances, the Commissioners may deem the withdrawal of any document to be sufficient cause in and of itself to deny the relief requested by the Petitioner/Respondent.

(e) Closed Session Designation.

In the event the Commissioners rule that the document or information contained therein should not be made part of the public record, the document shall be designated "Confidential" and will not be made part of the public record. The Commissioners may consider the document and information contained therein in camera in making its determination.

(f) Return Documents.

At the conclusion of the Commission proceedings, the Commission will return to the Commission or Petitioner/Respondent, as applicable, all documents marked as "Subject to a Confidentiality Claim" pursuant to subsection (a) above that were not (1) made part of the public record of the proceeding or (2) that were designated as "Confidential" and considered by the Commissioners in camera.

Section 7.07 Hearing Procedures.

(a) The Chairperson of the Commission shall preside over all hearings conducted before the Commission, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

(b) The Commission may require, upon proper notice, any Person, including, but not limited to, any Applicant, Licensee, or any Agent, employee or representative of such Person, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. Testimony at all hearings shall be recorded by a duly certified court reporter or be recorded by other means and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated may result in sanctions by the Commission. Failure to appear may also constitute grounds for:

(1) The refusal to grant a License to the Person noticed, and/or that Person's principal, or employer; or

(2) The revocation or suspension of a License held by the Person noticed, and/or that Person's principal, or employer.

(c) Subject to the requirements of Section 7.05, any party to the hearing may call and examine witnesses. The Commissioners shall exercise their discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.

(d) The Commissioners shall have the authority to caution or to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the proceedings.

(e) Persons shall be permitted to speak only when recognized by the Chairperson.

(f) Any Commissioner may ask questions of witnesses and may request or allow additional evidence at any time, subject to the limitations of Section 7.05.

(g) Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

- (h) Except as may otherwise be provided in the applicable Codes or other Tribal Law, all hearings held under the Codes and these Regulations shall be open to the public.
- (i) The Commission, in its discretion, has the power to sequester witnesses.

Section 7.08 Evidence.

- (a) In hearings governed by this Chapter, the Commissioners shall not be bound by the usual Court rules relating to the admission of evidence and calling and questioning of witnesses. The Commissioners shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commissioners shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
- (b) Subject to the limitations in Sections 7.05 and 7.06, any evidence, including records and documents in the possession of the Commission which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case and every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- (c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.
- (d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the Commission or the parties shall be given an opportunity to compare the copy to the original.
- (e) The record in a hearing governed by these rules shall include:
 - (1) All Applications, intermediate rulings and exhibits and appendices thereto.
 - (2) Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence received pursuant to Section 7.07 of these Regulations.
 - (3) A statement of matters officially noticed.
 - (4) Questions and offers of proof, objections, and rulings thereon.
 - (5) Any decision, opinion, findings or report by the Commission.
 - (6) The transcript prepared by a duly certified court reporter and if not utilized, a copy of the recording of the hearing. The Commission may waive the need for a transcript prepared by a duly certified court reporter.

Section 7.09 Burden of Proof.

- (a) The Commission shall have the burden to establish by a preponderance of the evidence, violations of the Codes or these Regulations.
- (b) A Petitioner/Respondent shall have the burden to establish by clear and convincing evidence affirmative qualification for Licensure.

Section 7.10 Commission Decisions.

- (a) All decisions to be made by the Commission under the Codes or the Regulations shall, when necessary to support the decision, include findings of fact and determinations of law. All such decisions, findings, and determinations shall be made on the record in an open meeting, except

as may be otherwise authorized by Tribal Law. All Commission decisions shall be made by majority vote. All decisions of the Commission shall be final, subject to appeals to Tribal Court as permitted under Section 39 of the Codes.

- (b) The Commission shall serve a copy of any Commission decision on the Petitioner/Respondent.

Section 7.11 Sanctions.

If any party or its attorney fails to comply with any Commission order the Codes or the Regulations regarding a hearing, the Commission may upon motion or upon its own initiative, in its discretion impose upon such party or attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including, but not limited to, the following:

- (a) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these Regulations or any Commission order;
- (b) A determination order that designated facts shall be taken to be established;
- (c) A determination order that the noncompliant party may not support or oppose designated claims or defenses;
- (d) An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the noncompliant party; or
- (e) A finding against the noncompliant party.

Regulation History

Adopted on May 10, 2023, by the Commission and these Regulations replaced in its entirety, prior regulations adopted by the Commission.