

and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

#### COMMISSION—ACCESS TO INFORMATION

25 USC 2708.

SEC. 9. The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

#### INTERIM AUTHORITY TO REGULATE GAMING

25 USC 2709.

SEC. 10. Notwithstanding any other provision of this Act, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before the date of enactment of this Act relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

#### TRIBAL GAMING ORDINANCES

25 USC 2710.

SEC. 11. (a)(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

(b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net 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;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

Contracts.

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

Environmental protection.  
Public health and safety.

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

Law enforcement and crime.

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe 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 to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and 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

Children and youth.

Taxes.

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.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 13 of the Act,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 18(a)(1) for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on the date of enactment of this Act.

(iii) Within sixty days of the date of enactment of this Act, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c)(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after the date of the enactment of this Act; and

(B) has otherwise complied with the provisions of this section

Federal  
Register,  
publication.

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b);

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(2)(C) and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 18 in excess of one quarter of 1 per cent of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d)(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

Law  
enforcement and  
crime.

## CHAPTER 3—POWERS

- Sec.
- 301. Departmental regulations.
  - 302. Delegation of authority.
  - 303. Oaths to witnesses.
  - 304. Subpenas.
  - 305. Systematic agency review of operations.
  - 306. Strategic plans.

### HISTORICAL AND STATUTORY NOTES

#### Amendments

1993 Amendments, Pub.L. 103-62, § 11(a), Aug. 3, 1993, 107 Stat. 295, added item 306.

#### WESTLAW COMPUTER ASSISTED LEGAL RESEARCH

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### § 301. Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

## Ch. 3 POWERS

### HISTORICAL AND STATUTORY NOTES Revision Notes and Legislative Reports 1966 Acts.

Derivation:	United States Code	R.S.
	5 U.S.C. 22	Aug.

The words "Executive department" are substituted for "department" as the definition of "department" applicable to this section is coextensive with the definition of "Executive department" in section 101. The words "not inconsistent with law" are omitted as surplusage as a regulation which is inconsistent with law is invalid.

The words "or military department" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which provided:

All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, any such law, order, regulation, or other action which vested functions in or other-

#### CROSS REFERENCE

Confidential records—  
Tax returns and lists, see 26 USCA § 6109  
Visas or permits to enter United States

#### LIBRARY REFERENCE

American Digest System  
Authority and powers of federal officers and employees  
§ 40.  
Power to maintain, regulate, and control activities

## § 2. Duties of Commissioner

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

(R.S. § 463.)

## Historical Note

**Codification.** R.S. § 463 was from Acts July 9, 1832, c. 174, § 1, 4 Stat. 564; July 27, 1868, c. 259, § 1, 15 Stat. 228.

**Transfer of Functions.** For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

All supervisory and appellate powers and duties in regard to Indian affairs theretofore vested in the Secretary of the Treasury were thereafter to be exercised and performed by the Secretary of the Interior under the provisions of section 1 of Act July 27, 1868, c. 259, 15 Stat. 228.

Appointment by the President of a Commissioner of Indian Affairs to act under the direction of the Secretary of War was provided for by section 1 of Act July 9, 1832, c. 174, 4 Stat. 564.

## Code of Federal Regulations

- Administrative procedures governing funding of Indian Child Welfare Act of 1978, see 25 CFR 23.1 et seq.
- Appeals from administrative actions, see 25 CFR 2.1 et seq.
- Applicability of regulations to particular Indian reservations, see 25 CFR 11.1 et seq.
- Applicability of rules of Bureau of Indian Affairs, see 25 CFR 1.1 et seq.
- Attorney contracts with Five Civilized Tribes, see 25 CFR 89.30 to 89.35.
- Business practices on Navajo, Hopi, and Zuni Reservations, see 25 CFR 141.1 et seq.
- Code of offenses for Navajo-Hopi Settlement Act secretarial responsibilities, see 25 CFR 12.1 et seq.
- Commercial fishing on Red Lake Indian Reservation, see 25 CFR 242.1 et seq.
- Enrollment.
  - Appeals, see 25 CFR 62.1 et seq.
  - Rincon, San Luiseno Band of Mission Indians in California, see 25 CFR 74.1 et seq.
  - San Pasqual Band of Mission Indians in California, see 25 CFR 76.1 et seq.
- General forest regulations, see 25 CFR 163.1 et seq.
- General grazing regulations, see 25 CFR 166.1 et seq.
- Indian fishing in Alaska, see 25 CFR 241.1 et seq.
- Indian fishing on Hoopa Valley Indian Reservation, see 25 CFR 250.1 et seq.
- Individual Indian money accounts, see 25 CFR 115.1 et seq.
- Interim grazing regulations for Hopi partitioned lands area, see 25 CFR 168.1 et seq.
- Leases and permits, see 25 CFR 162.1 et seq.
- Making pictures, television productions, or sound tracks on certain areas under jurisdiction of Department of Interior, see 43 CFR 5.1, 5.2.
- Management of tribal assets of Ute Indian Tribe, see 25 CFR 217.1 et seq.
- Off-reservation treaty fishing, see 25 CFR 249.1 et seq.
- Petitioning procedures for tribes reorganized under federal law and other organized tribes, see 25 CFR 82.1 et seq.
- Policies and procedures pertaining to financial assistance programs for Indians, see 25 CFR 20.1 et seq.
- Preparation of rolls.
  - Alaska natives, see 25 CFR 69.1 et seq.
  - Basis for distribution of judgment funds to Pembina Band of Chippewa Indians, see 25 CFR 68.1 et seq.
  - Basis for distribution of judgment funds to Warm Springs Indians, see 25 CFR 71.1 et seq.
  - Delaware Indians, see 25 CFR 66.1 et seq.

25 § 9

§ 9. Regulations by President

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.

(R.S. § 465.)

Historical Note

Codification. R.S. § 465 was from Act June 30, 1834, c. 162, § 17, 4 Stat. 738.

Code of Federal Regulations

- Administrative procedures governing funding of Indian Child Welfare Act of 1978, see 25 CFR 23.1 et seq.
- Appeals from administrative actions, see 25 CFR 2.1 et seq.
- Attorney contracts with Five Civilized Tribes, see 25 CFR 89.30 to 89.35.
- Business practices on Navajo, Hopi, and Zuni Reservations, see 25 CFR 141.1 et seq.
- Code of offenses for Navajo-Hopi Settlement Act secretarial responsibilities, see 25 CFR 141.1 et seq.
- Enrollment,
  - Appeals, see 25 CFR 62.1 et seq.
  - Rincon, San Luiseno Band of Mission Indians in California, see 25 CFR 74.1 et seq.
  - San Pasqual Band of Mission Indians in California, see 25 CFR 76.1 et seq.
- General grazing regulations, see 25 CFR 166.1 et seq.
- Indian fishing in Alaska, see 25 CFR 241.1 et seq.
- Indian fishing on Hoopa Valley Indian Reservation, see 25 CFR 250.1 et seq.
- Individual Indian money accounts, see 25 CFR 115.1 et seq.
- Land records and title documents, see 25 CFR 150.1 et seq.
- Leases and permits, see 25 CFR 162.1 et seq.
- Management of tribal assets of Ute Indian Tribe, see 25 CFR 217.1 et seq.
- Navajo grazing regulations, see 25 CFR 167.1 et seq.
- Off-reservation treaty fishing, see 25 CFR 249.1 et seq.
- Petitioning procedures for tribes reorganized under federal law and other organized tribes, see 25 CFR 82.1 et seq.
- Policies and procedures pertaining to financial assistance programs for Indians, see 25 CFR 20.1 et seq.
- Preparation of rolls,
  - Alaska natives, see 25 CFR 69.1 et seq.
  - Basis for distribution of judgment funds to Pembina Band of Chippewa Indians, see 25 CFR 68.1 et seq.
  - Basis for distribution of judgment funds to Warm Springs Indians, see 25 CFR 71.1 et seq.
  - Delaware Indians, see 25 CFR 66.1 et seq.
  - Delaware Indians of Western Oklahoma, see 25 CFR 65.1 et seq.
  - Eastern Creek Indians, see 25 CFR 63.1 et seq.
  - Indian tribes, see 25 CFR 61.1 et seq.
  - Membership of Pribilof Islands Aleut Communities of St. Paul and St. George, see 25 CFR 77.1 et seq.
  - Mohave descendants enrolled in Colorado River Indian Tribes, see 25 CFR 67.1 et seq.
  - Pyramid Lake Paiute Indians, see 25 CFR 64.1 et seq.
- Procedures for determining that group constitutes Indian tribe, see 25 CFR 83.1 et seq.
- Procedures governing appeals to Minerals Management Service, see 30 CFR 290.1 et seq.
- Revision of final roll of Confederated Tribes of Siletz Indians of Oregon, see 25 CFR 73.1 et seq.
- Rules applicable in Indian Affairs hearings and appeals, see 43 CFR 4.200 to 4.340.
- Special deposits, see 25 CFR 114.1 et seq.
- Trespass, see 25 CFR 163.22.
- Tribal funds, proceeds of labor, see 25 CFR 113.1 et seq.
- Use of Columbia River Indian in-lieu fishing sites, see 25 CFR 248.1 et seq.

INDIAN

CH. I BUREAU

Navajo Tribe.  
Procedures pertaining to  
interim co-  
Referendum elect  
Voting for tribal

Indians Co.

Admissibility of evidence  
Agents, particular sub  
Allotments of land, pa  
ulation 5

Bonds, particular subj  
Consistency of regulat  
Effect of regulations  
Fishing rights, particu  
tion 7

Force and effect of re  
Guardianship, particu  
tion 8

Just compensation 1  
Particular subjects of  
Generally 3

Agents 4  
Allotments of lan  
Bonds 6

Fishing rights 7  
Guardianship 8  
Reservations 9

Trade relations  
Treaties 11

Reservations, particu  
tion 9

Trade relations, partic  
tion 10  
Treaties, particular  
11

Violation of regulation

1. Force and effect

The regulations made pursuant to this section have the force and effect of laws enacted by Congress. U. S. v. Eastman, 18 U.S. 486, 25 Fed. Cl. 28 (1906), 143 F. 28 (1906). See also, U. S. v. Eastman, 18 U.S. 486, 25 Fed. Cl. 28 (1906), 144 U.S. 677, 36 L. S. Pa. 1899, 96 F.

Regulations made by the Secretary on all the departments. Atty. Gen. 36, 39.

2. Consistency of regulations

The authority of the executive regulations is subject to the condition that they are not in violation of the statutes enacted by Congress.