



CWYA DBR JƏŃGŁŁY DĤƏŃĤ
CHEROKEE NATION GAMING
COMMISSION

Administrative Procedures Act Posting

TITLE: Cherokee Nation Gaming Commission Rules and Regulations

TYPE OF ACTION: Notice of Proposed Rule Making

PROPOSED RULES: Cherokee Nation Rules and Regulations Chapter VI, Section C, Subsection 1, "Vendor Licensing Process and Standards"

PUBLICATION DATE: May 6, 2022

SUMMARY:

The purpose of the Vendor Licensing Process and Standards is to implement all necessary legal requirements pursuant to the Tribal State Compact and Cherokee Nation law. The current Vendor Licensing Process and Standards exceed or conflict with Cherokee Nation law. Regulations for licensing non-gaming vendors is specifically prohibited by LA-07-14 and LA-17-14, codified as 4 CNCA 22 §(C).

AUTHORITY:

Legislative Act 07-14 § 22(C)(providing that it shall be the responsibility of the Cherokee Nation Gaming Commission to promulgate rules and regulations necessary to administer the Cherokee Nation Gaming Act, provided that such rules and regulations do not exceed or conflict with the regulations issued by the National Indian Gaming Commission's Minimum Internal Control Standards). The Gaming Act of the Cherokee Nation prohibits the Cherokee Nation Gaming Commission from promulgating regulations that "exceed or conflict what is required under any Cherokee Nation-State of Oklahoma Gaming Compact.

REGULATORY ANALYSIS:

No regulatory analysis of the revised rule was performed.

COMMENT PERIOD:

Written comments must be received on or before 5 p.m., 10 June 2022. Comments may be

submitted electronically at gaming-commission@cherokee.org.

Written comments may be sent to the Cherokee Nation Gaming Commission, P. O. Box 627, Tahlequah, OK 74465 and must be postmarked by the date above.

A copy of the current Cherokee Nation Gaming Commission Rules and Regulations may be obtained by submitting a request electronically or in writing using either of the above electronic & physical addresses. Likewise, a copy of the same may be accessed by visiting the following website:

<https://www.cherokee.org/our-government/gaming-commission/statutes-and-regulations/>

The Tribal-State Compact may be accessed by visiting the Bureau of Indian Affairs' website at <https://www.bia.gov/as-ia/oig/gaming-compacts>

BACKGROUND:

The Indian Gaming Regulatory Act ("IGRA") was enacted by the United States Congress on October 17, 1988 establishing the National Indian Gaming Commission ("NIGC"). Under the IGRA, as most recently determined by the United States Court of Appeals for the District of Columbia in Colorado River Indian Tribes v. National Indian Gaming Commission, et al., 466 F.3d 134 (App. D.C. 2006), the NIGC is charged with regulating Class II gaming on tribal lands.

The NIGC adopted certain regulations found in the Code of Federal Regulations at 25 CFR part 501, et seq. for the submission of tribal gaming ordinances to the Chairman of the NIGC for approval, as well as for the requirements of background investigations required for the licensing of Primary Management Officials and Key Employees of tribal gaming facilities, and other related requirements for the operation of tribal gaming.

The Tribal Council of the Cherokee Nation enacted Legislative Act 30-89 on April 8, 1989, known as the "Cherokee Nation Tribal Gaming Act," to regulate the conduct of gaming owned and operation by the Cherokee Nation. On October 22, 1990 the Cherokee Nation amended the Gaming Act with Legislative Act 9-90 to comply with the IGRA and to establish the Cherokee Nation Gaming Commission.

On October 16, 1995, the Cherokee Nation adopted Resolution 126-95 to authorize Class III gaming on Indian lands in states where such gaming is permitted.

On October 2, 2003 the Cherokee Nation amended the Act with Legislative Act 29-03 to authorize and provide for the regulation of Class II gaming which had been compacted for with the State of Oklahoma and/or authorized by legislative action.

On November 10, 2003 the Cherokee Nation Amended the Gaming Act with Legislative Act 37-03 to clarify the activities that fall under the jurisdiction of the Cherokee Nation Gaming Commission.

On May 19, 2011 the Cherokee Nation enacted Legislative Act 10-11 which repealed and replaced Legislative Acts 30-89, 9-90, 1-94, 126-95, 29-03, 37-03, 44-04, 20-06, 15-07 and amended Legislative Act 26-10.

On December 9, 2013 the Cherokee Nation enacted Legislative Act 07-14 which, inter alia, amended Legislative Act 10-11 Section 22(C). This section provides as follows:

It shall be the responsibility of the Commission to promulgate regulations necessary to administer the relevant provisions of this Act, provided that the rules and regulations promulgated or created by the Cherokee Nation Gaming Commission shall not exceed or conflict with the regulations issued by the National Indian Gaming Commission, including but not limited to the National Indian Gaming Commission Minimum Internal Control Standards or the provisions of the Indian Gaming Regulatory Act, as applicable, unless specifically outlined by law; nor shall the regulations promulgated exceed or conflict what is required under any Cherokee Nation-State of Oklahoma Gaming Compact.

LA 07-14, Section 22 (C)(codified at 4 CNCA § 22(C)).



CWYʌ DBŦ JƏŦGŁŁƏY DhƏŦBh
CHEROKEE NATION GAMING COMMISSION
RULES AND REGULATIONS

CHAPTER:	Vendor Licensing Process and Standards	CHAPTER #:	VI
SUBJECT:	Vendor Licensing	SECTION – SUBSECTION:	C. 1
EFFECTIVE DATE:	06/15/2022	SUPERSEDES MATERIAL DATED:	07/16/2009
APPROVED BY:	Gaming Commissioners	DATE:	

VENDOR LICENSING AND STANDARDS

PURPOSE

The purpose of this Section is to implement all necessary legal requirements pursuant the Cherokee Gaming Act and the Cherokee Nation-State of Oklahoma (“Compact”) for the licensing of Gaming Vendors at Cherokee Nation gaming facilities by the Cherokee Nation Gaming Commission (“CNGC”). The licensing of Gaming Vendors is for purpose of protecting the integrity of gaming at Cherokee Nation gaming facilities

SCOPE

This Section applies to Gaming Vendors conducting business within the Cherokee Nation gaming facilities, to include vendors conducting business prior to the effective date of these Rules and Regulations and vendors applying for licensure after said date. This section does not apply to non-gaming vendors, as CNGC has no authority over the licensing of non-gaming vendors under Cherokee law.¹

A. Definitions

1. **Conducting Business** - an execution of an agreement, either oral or written, to sell a good to, or perform a service for, a Cherokee Nation gaming operation if the vendor would require a Gaming Vendor License. This definition does not include: i) interaction with prospective vendors where no agreement has been executed; ii) vendors providing new gaming products for evaluation; or iii) vendor services in a non-production environment.
2. “Directly-Related to Gaming Activities” -Goods or services integral to the performance of Class II or Class III games either by direct means or through the manipulation, monitoring, of handling of information or items used in the performance of games.
3. **Gaming Areas** – any operation or area in connection with the conduct of gaming, including but not limited to the storage of gaming equipment and/or materials and directly tied to the gaming activity on trust land. This definition intentionally excludes

non-gaming areas located within a gaming facility.

4. Gaming Vendor –

- a. Any person or entity who provides through sale, lease, rental or otherwise, or parts, maintenance or service in connection therewith to the tribe or the enterprise at any time and in any amount;² and
- b. Gaming-Related Vendors and their agents who provide, or are likely to provide, at least Twenty-five Thousand Dollars (\$25,000.00) in goods or services to the gaming operation in any twelve-month period, or who have received at least Twenty-five Thousand Dollars (\$25,000.00) for goods and services provided to the gaming operation in any consecutive twelve-month period within the immediately preceding twenty-four month period.³
- a. **Gaming-Related Vendors** -Vendors who provide goods and services that are not games or gaming equipment themselves but are directly-related and integral to gaming activities.⁴This definition does not include vendors who provide wholesale parts for non-gaming components, equipment, and computer hardware. This definition intentionally excludes vendors for computer systems, services, or software if these goods and services are not directly-related to gaming activities.

5. Gaming Vendor Agent(s)– An individual employed by a Gaming Vendor who performs work on behalf of a licensed Gaming Vendor at any gaming facility.

6. Principal - means, with respect to any entity, its sole proprietor or any partner, trustee, beneficiary or shareholder holding five percent (5%) or more of its beneficial or controlling ownership, either directly or indirectly, or any officer, director, principal management employee, or key employee thereof..

7. Temporary Gaming Vendor Permit – Permit issued to an applicant(s) for a Gaming Vendor License for the applicant to begin to provide a service or goods while his/her application is processed by CNGC.

¹ 2015-CNAG-06

² Compact Part 10 § (B)(1).

B. Gaming Vendor License Requirement

No entity or person who meets the definition of a Gaming Vendor as defined by this regulation, or is an agent of a Gaming Vendor, shall conduct business, as defined by this regulation, with or operate in a gaming facility under the jurisdiction of the Cherokee Nation without a Gaming Vendor license duly issued by CNGC.

1. Local branches or distributors who directly do business with a gaming facility may be licensed under these regulations in place of the parent company if contact with the larger company is minimal.
2. Exemptions from this licensing policy are provided for as follows:
 - a. Exemptions specifically allowed by the Tribal-State Compact:
 - i. Attorneys or certified public accountants and their firms shall be exempt from the licensing requirement herein to the extent that they are providing services covered by their professional licenses.⁵
 - i. Financing provided by a federally-regulated or state-regulated bank, savings and loan, or trust, or other federally or state-regulated lending institution; any agency of the federal, state, tribal or local government; or any person or entity, including, but not limited to, an institutional investor who, alone or in conjunction with others, lends money through publicly or commercially traded bonds or other commercially traded instruments, including but not limited to the holders of such bonds or instruments or their assignees or transferees, or which bonds or commercially traded instruments are underwritten by any entity whose shares are publicly traded or which underwriter, at the time of the underwriting, has assets in excess of One Hundred Million Dollars (\$100,000,000.00), shall be exempt from the licensing and background investigation requirements in subsection B of the Part of the subsection.⁶

³ Id.

⁴ 2015-CNAG-2016 pp.5-6

⁵ Id.

⁶ Part 10 § C(4).

- b. Other entities which are exempted from the licensing requirements of this regulation include:
 - i. Any Tribal, Federal, State, or local/municipal governmental or regulatory agency;
 - ii. Cherokee Nation Owned and/or chartered companies;
 - iii. Public utilities;
 - iv. Cable TV Companies;
 - v. Sign/Advertising/Printing companies that do not have access to gaming/guest information;
 - vi. Entertainment, including promotional personnel that do not participate in the direct performance of gaming processes;
 - vii. Artists;
 - viii. Third party venues and employees located within CNE gaming facilities;
 - ix. IT vendors whose services/equipment does not directly use or manipulate gaming data;
 - x. Sponsorships and/or charitable organizations;
 - xi. Insurance companies;
 - xii. Travel Companies;
 - xiii. Fleet service providers;
 - xiv. FF&E vendors including vendors for chairs, game bases, and carpet;
 - xv. Any other entity or person otherwise specifically excluded by CNGC based on circumstances unique to that Gaming Vendor as determined by CNGC.

C. Types of Gaming Vendor Permits/Licenses

- 1. CNGC shall issue the following types of licenses, to each Gaming Vendor and to individual agents who require regular access to any licensed gaming facility, as follows:
 - a. Temporary Gaming Vendor Permit
 - b. Gaming Vendor License

D. RIGHTS, LIMITATIONS AND DISCLAIMERS OF LICENSES

- 1. A Gaming Vendor that holds a license issued by CNGC shall not acquire, and is not deemed to acquire, a vested property right or any other right not expressly listed in this policy by means of said issuance.
- 2. The application for, or the issuance of, a Gaming Vendor License shall not constitute a guarantee of business with CNE's gaming operations.
- 3. CNGC may halt the licensing process or suspend a license issued at its sole discretion, with cause. When this occurs, CNGC Licensing will provide reasonable notice, information, and an opportunity to cure to the Gaming Vendor. CNGC Licensing will also provide a copy of this notice to the gaming facility.

E. Gaming Vendor License Application Process

1. Registration and Temporary Gaming Vendor Permit

- a. CNGC Licensing or the gaming facility shall provide a prospective Gaming Vendor with a “New Vendor Registration” form.
- b. CNGC shall provide the Gaming Vendor with a Gaming Vendor License Application once the “New Vendor Registration” form has been received by CNGC Licensing.
- c. The “New Gaming Vendor Registration” form includes a listing of each Gaming Vendor agent who may require immediate access to any gaming facility. This list must include the full legal name, date of birth, social security number, position held, and a recent photograph of every Gaming Vendor agent listed on the form.
- d. The “New Gaming Vendor Registration” form shall include an attestation that each Gaming Vendor agent requiring immediate access to a gaming facility has passed a background investigation performed or facilitated by the applicant. A statement to the effect that a background investigation process has been initiated shall be submitted if a background investigation is not complete. If the Gaming Vendor has not completed a background investigation, the Gaming Vendor Agents will not be allowed at the gaming facilities. Failure to provide this information may also result in the Gaming Vendor and/or its agents being denied access in the gaming facility until such forms are received and a full background investigation is completed of the Gaming Vendor and its agents.
- e. Upon receipt of the completed “New Gaming Vendor Registration” form and background attestations and/or referenced forms above, CNGC will provide authorization by e-mail to CNE and the Gaming Vendor stating the Gaming Vendor is eligible to conduct business, as defined in this Regulation.
- f. The applicant and any agents shall be issued a Temporary Gaming Vendor License effective for a period of ninety (90) days from the date of issuance to allow for

immediate access to Cherokee Nation gaming operations until the Gaming Vendor License Application is received and processed.

- g. If an authorized Gaming Vendor License is not issued within the ninety (90) day timeframe, CNGC shall notify the Gaming Vendor and CNE in writing of the reason of the exception and may grant an extension of the Gaming Vendor Temporary Permit until the Gaming Vendor License is issued.

2. Gaming Vendor License Application

- a. In order to obtain an Authorized Gaming Vendor License, a vendor must complete and return the full Gaming Vendor License Application along with payment of the Gaming Vendor Licensing Fee within forty-five (45) days of receiving a Temporary Gaming Vendor Permit.
- b. Failure to return the Gaming Vendor License Application and full fee amount within the forty-five (45) day period will result in the suspension of the Temporary Gaming Vendor Permit and denial of immediate access to the CNE gaming facilities until the completed Gaming Vendor License Application and fee is submitted.
- c. A single fourteen (14) day extension may be granted if the Gaming Vendor applicant submits a request in writing with justification as to why an extension is warranted. The written request must be received by CNGC or Executive Director (with affirmation) no later than five (5) days before the expiration of the forty-five (45) day period after the issuance of a Temporary License.
- d. CNGC Licensing will accept licensure/registration from other federal and state licensing bodies including but not limited to, the U.S. Securities and Exchange Commission and State Corporation Commissions in lieu of CNGC Gaming Vendor Licensing, provided that all the information in subsection "e" below is provided to CNGC Licensing.
- e. Gaming Vendor License Application must include the following:
 - i. Name of business directly doing business with a gaming facility, business address, business telephone number(s), federal tax identification number (or social security number, if a sole proprietorship), main office address (if different from business address), any other names used by the applicant in business, and type of service(s) applicant will provide;
 - ii. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity;
 - iii. If the applicant is a corporation, the state of incorporation;
 - iv. Names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;

- v. Description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - vi. A list of Indian tribes with which the vendor has an existing or previous business relationship, including ownership, financial, or management interests in non-gaming activities that can be legally disclosed;
 - vii. Names, addresses, and phone numbers of three business references (two businesses and one bank), with whom the company had regularly done business;
 - viii. The name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 - ix. If the business has ever had a license revoked for any reason, the circumstances involved;
 - x. A list of lawsuits to which the business has been or is involved, including the name and address of the court involved, and the date and disposition if any; and
 - xi. List of the principals of the business, their social security numbers, addresses and telephone numbers, title, and percentage of ownership in the company.⁷
- e. The following notice shall be placed upon the Gaming Vendor License Application for a vendor and its principals:

The purpose of the requested information is to determine the eligibility of individuals to be granted a Gaming Vendor License. The information will be used by Cherokee Nation Gaming Commission members and staff who have need for the information in the performance of their official duties only. The information may be disclosed by the Cherokee Nation to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by Cherokee Nation in connection with the issuance, denial, or revocation of a Vendor Gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe being unable to license you for a primary management official or key employee position. Inclusion of false or misleading information in the Gaming Vendor License Application may be grounds for revocation of the Cherokee Nation Gaming Vendor License.⁸

⁷ These application requirements were mostly taken from section 28 of NIGC Bulletin 2018-01 Revised Model Gaming Ordinance.

⁸ Id.

- f. A Gaming Vendor License Applicant may submit to CNGC Licensing a copy of a recent license application to another jurisdiction if it contains the information listed above. The vendor will be required to submit, in writing, any changes in the information since the other license application was filed, and any information requested by CNGC Licensing not contained in the other application.⁹

3. Background Investigation

- a. CNGC Licensing shall employ an investigator or otherwise perform an investigation itself of each applicant for a Gaming Vendor License. This investigation shall include:
 - i. Verification of the vendor's business' incorporation status and qualifications to do business in the state of Oklahoma;
 - ii. Obtaining a business credit report, if available, and conducting a Better Business Bureau check on the vendor;
 - iii. Conducting a check of the Gaming Vendor's business' credit history; and
 - iv. Calling and questioning each of the references listed in the vendor application.¹⁰
- c. A principal of a Gaming Vendor shall be subjected to the same background investigation required for a Covered Game Employee.¹¹ See Individual Licensing Regulations.
- d. CNGC Licensing shall ensure that all records and information obtained as a result of the background investigation are confidential and not disclosed to persons who are not directly involved in the licensing process.
- e. All Gaming Vendor License applicant records and information will be designated confidential information and secured by CNGC Licensing at CNGC offices through physical and/or logical means.

F. Suitability Determination

The following standards shall apply to Gaming Vendor applicants to determine the suitability to hold a Gaming Vendor License and the standards in which a suspension, denial, or revocation may be upheld, including but not limited to:

⁹ Id.

¹⁰ Id.

¹¹ Compact, Part 10 §B(3)

1. Based on the scope of the background investigation and findings, CNGC shall make a finding as to the suitability of Gaming Vendors applying for a Gaming Vendor License with the Cherokee Nation. The suitability determination will be based on whether the Gaming Vendor:
 - a. Poses a threat to the public interest or to the effective regulation of gaming;
 - b. Creates or enhances the danger of unsuitable, unfair or illegal practices, methods and/or activities in the conduct or operation of gaming; or,
 - c. The Gaming Vendor fails to meet the standards set forth in this document as a part of the background investigation; or
 - d. One or more of the Principals are persons who would not be qualified to receive an individual Gaming License if they applied as Covered Game Employees.¹²

2. If CNGC makes a determination that a Gaming Vendor applicant does not meet the preceding suitability standard or deems the applicant unsuitable at any time, CNGC shall prepare and certify a "Preliminary Finding of Non-Suitability."
 - a. A copy of the Preliminary Finding shall be sent to the Gaming Vendor applicant via certified mail at the applicant's home or business address together with an Order and Notice of Hearing, which shall inform the applicant of the date, time, and place of a hearing at which the applicant should appear and show cause why the Preliminary Finding should not be adopted by CNGC and made final.
 - b. The Order and Notice shall advise the applicant that if the applicant fails to appear at the hearing and show cause, the Preliminary Finding will be adopted by CNGC and a permanent and final finding and an Order shall be entered without further notice.
 - c. If certified mail is returned as unclaimed, non-deliverable, or refused by the addressee, no further notice is necessary or required to be sent to the applicant by CNGC.
 - d. The hearing shall be held in no less than five (5) and no later than thirty (30) working days after the date on which the Preliminary Finding was entered. The hearing shall be conducted as provided for in Title 4 and/or as provided by CNGC. At the conclusion of the hearing or as soon as practicable thereafter, CNGC shall enter a final finding and an Order shall be entered.

¹² Compact, Part 10§B(3)

- d. CNGC shall notify the Gaming Vendor applicant and the gaming operation of the determination through certified first-class mail.
- e.

G. Submission to State Compliance Agency

1. CNGC shall forward quarterly licensing reports for any type of applicant to the State Compliance Agency via certified mail, pursuant to Part 10 of the Tribal-State Compact.
2. The State Compliance Agency, at its discretion and expense, may conduct its own background investigation of a vendor pursuant to Part 10 of the Tribal-State Compact.
3. Any background investigation completed by the State Compliance Agency shall be communicated to CNGC and, upon the receipt of our written request; a written report shall be submitted of the findings and conclusions.
4. The State Compliance Agency may object in writing to the licensing of any vendor by CNGC based upon the criteria set forth in Part 10 of the Tribal-State Compact.
5. CNGC retains the final decision-making authority over the licensing of vendor companies and vendor company agents.

H. Renewals

1. Gaming Vendor Licenses shall be reviewed every two (2) years for continuing compliance and shall be promptly revoked if the Gaming Vendor Licensee is determined that Gaming Vendor Licensee or Principal(s):
 - a. has been convicted of any felony or an offense related to gaming activity,
 - b. has knowingly and willfully provided false, material statements or information on the Gaming Vendor License Application
 - c. A Principal is a person whose prior activities, criminal record, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming activity or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of covered games or the carrying on of the business and financial arrangements incidental thereto.¹³
2. As a condition of a CNGC Gaming Vendor License, Licensees have an ongoing

¹³ Part 10 §B(6)

responsibility to inform CNGC Licensing of the following:

- a. Any changes to contact information within five (5) days of the status change in writing;
- b. Any criminal activity or litigation, regardless of the type involving the company and/or the principal and management officials within five (5) days of the occurrence;
- c. Any change in the status and/or the operation of the company with ten (10) days of action;
- d. Supply changes or amendments to the documents that were supplied during the initial application submission, as the resubmission of such documents are not required in the renewal application; and
- e. Any new licenses granted or denied by other regulatory agencies.

I. Gaming Vendor Access Tracking

1. CNE shall develop a system of internal controls to track the arrival and departure of all persons entering any gaming facility on behalf of a Gaming Vendor in a work capacity. These internal controls shall be submitted to CNGC for review and approval, including any changes and/or modifications.

J. Enforcement

1. CNGC reserves the right to take any action deemed necessary with regard to enforcement of this regulation.
2. CNE is prohibited from conducting business with any Gaming Vendor requiring a license from CNGC prior to the issuance of a Temporary Gaming Vendor Permit.¹⁴
3. If CNE is ultimately found, after notice and opportunity to respond, to have willfully and knowingly violated the requirement of this policy and has initiated business with a Gaming Vendor without them first receiving a Temporary Gaming Vendor Permit, CNGC, at its sole discretion, may assess a fine to CNE.
4. In the event of a License suspension, revocation or denial, CNE will be notified within five (5) days of the action. Following the suspension or revocation of a vendor's license, CNE will have thirty (30) days to solicit a new Gaming Vendor, or for the suspended Gaming Vendor to cure the cause of the suspension. In the event CNE willfully and knowingly continues to conduct business with vendor, which has had a Gaming Vendor

¹⁴ Compact Part 10 §B(6)

License suspended, revoked, or denied after the thirty (30) day period; CNGC, at its sole discretion, may assess a fine after notice is provided, and an opportunity for the gaming facility to respond. This fine may be assessed per occurrence.

K. General Rules for Gaming Vendors

1. Any Gaming Vendor, or Gaming Vendor agent(s) individually licensed by CNGC is prohibited from gaming at any casino gaming facility under the jurisdiction of the Cherokee Nation, for the duration of their license, unless that is the purpose of their engagement.
2. All Gaming Vendor agents, whether or not they hold an individual license, must adhere to all CNGC rules, regulations, and directives, as provided in writing by CNGC with approval of gaming license
3. Any Gaming Vendor agent who knowingly allows another person to access the gaming facility by using his/her individual license shall have his/her license immediately revoked and shall be banned from any property regulated by CNGC.