

CHAPTER 8.7 LIQUOR CONTROL ACT

§ 8.7.1 **Legislative Findings.** The Saginaw Chippewa Tribal Council hereby finds as follows:

- § 8.7.1.1 The Council has authority to adopt this Act pursuant to powers vested in it by Article VI, sections 1(e), (i), (j), (k), (n), (o), and Article VI, section 2 of the Amended Tribal Constitution, said Constitution and Bylaws having been ratified by the Tribe on March 27, 1937, and approved by the Secretary of Interior on May 6, 1937, with revised amendments approved on November 4, 1986. Further, the Supreme Court held in *United States v. Mazurie*, 419 U.S. 544 (1975), that Congress through 18 U.S.C. 1161 delegated to Indian tribes authority to control the introduction, distribution, and use of alcoholic beverages into Indian country.
- § 8.7.1.2 The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Isabella Reservation ("Reservation") is a matter of special concern to the Tribe.
- § 8.7.1.3 Federal law as embodied in 18 U.S.C. 1161 provides that certain sections of the United States Code, commonly referred to as Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the state in which such act or transaction occurs, and with an act duly adopted by the tribe having jurisdiction over such area of Indian country.

§ 8.7.2 **Declaration of Policy.**

- § 8.7.2.1 The Council hereby declares that the policy of the Tribe is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation, and to promote temperance in the use and consumption of alcoholic liquor by increasing tribal control over such activities on the Reservation.
- § 8.7.2.2 The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation shall be lawful, provided that such activity is conducted by the Tribe or by an authorized tribal enterprise, and is in conformity with this Act. Such conditions are necessary to increase the Tribe's ability to control and regulate the distribution, sale, and possession of alcoholic liquor, while at the same time provide an important and necessary source of revenue for continued

operation of the tribal government and delivery of tribal governmental services.

§ 8.7.3 **Short Title.** This Act shall be known and cited as the "Saginaw Chippewa Liquor Control Act."

§ 8.7.4 **Purpose.** The purpose of this Act is to prohibit the importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation except pursuant to a license issued by the Council under the provisions of this Act and other tribal laws.

§ 8.7.5 **Application of 18 U.S.C. 1161.** The importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation shall be "in conformity with" this Act and the laws of the State of Michigan as that phrase is used in 18 U.S.C. 1161.

§ 8.7.6 **Incorporation by Reference of Michigan Laws.**

§ 8.7.6.1 In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: Sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions, including such other laws prohibiting the sale of alcoholic beverages to certain categories of individuals. Said tribal laws which are defined by reference to the substantive areas of Michigan laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan to off-Reservation transactions unless otherwise agreed by the Tribe and State; provided, that nothing in this Act shall be construed as a consent by the Tribe to the jurisdiction of the State of Michigan or any of its courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Act nor shall anything in this Act constitute an express or implied waiver of the sovereign immunity of the Tribe.

§ 8.7.6.2 The Tribe, for resale by the Tribe, shall purchase spirits from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission, at the same price and on the same basis that such beverages are purchased by similar licensees.

§ 8.7.6.3 In the event of any conflict or inconsistency between "adopted and applied" Michigan laws and this Act, the provisions of this Act shall govern.

§ 8.7.6.4 Whenever such Michigan laws are incorporated herein by reference, amendments thereto shall also be deemed to be incorporated upon their effective date in the State of Michigan without further action by the Council.

§ 8.7.7 **Administration of Act.** The Council, under its powers vested under the Constitution and Bylaws and this Act, shall exercise all of the powers and accomplish all of the purposes as set forth in this Act, which may include the following actions:

- (a) Adopt and enforce rules and regulations for the purpose of effectuating this Act, which includes the setting of fees;
- (b) Execute all necessary documents; and
- (c) Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Act.

§ 8.7.8 **Sovereign Immunity Preserved.**

§ 8.7.8.1 The Tribe, and all of its constituent parts, which includes but is not limited to tribal enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived in writing by the Tribe.

§ 8.7.8.2 Nothing in this Act, and no enforcement action taken pursuant to this Act or otherwise, including without limitation the filing of suit by the Tribal Council to enforce any provision of this Act or other tribal law, 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.

§ 8.7.9 **Applicability Within the Reservation.** This Act shall apply to all persons within the exterior boundaries of the Reservation, consistent with applicable federal laws.

§ 8.7.10 **Interpretation and Findings.** The Council in the first instance may interpret any ambiguities contained in this Act.

§ 8.7.11 **Liberal Construction.** The provisions of this Act shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

§ 8.7.12 **Savings Clause.** In the event any provision of this Act shall be found or declared to be invalid by a court of competent jurisdiction, all of the remaining provisions of this Act shall be unaffected and shall remain in full force and effect.

§ 8.7.13 **Effective Date.** The effective date of this Act is the date that the Secretary of the

Interior publishes the same in the Federal Register.

§ 8.7.14 **Prior Inconsistent Acts.** Except as provided otherwise under applicable federal law, this Act shall be the exclusive tribal law governing the introduction, distribution, sale and regulation of alcoholic beverages within the Isabella Reservation. This Act shall supersede any and all tribal laws that are inconsistent with the provisions of this Act, and such laws are hereby rescinded and repealed.

§ 8.7.15 **Computation of Time.** Unless otherwise provided in this Act, in computing any period of time prescribed or allowed by this Act, the day of the act, event or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For the purposes of this Act, the term "legal holiday" shall mean all legal holidays under tribal law.

§ 8.7.16 **Definitions.** In construing the provisions of this Act, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise:

(a) Alcohol means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(b) Alcoholic liquor or "alcoholic beverage" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which is fit for use for beverage purposes. The following eight subclassifications comprise the entire universe of alcoholic liquor: beer, wine, spirits, alcohol, sacramental wine, brandy, mixed wine drink, and mixed spirit drink. Alcoholic liquor or alcoholic beverage does not include the exceptions set forth in Mich. Comp. Laws s436.4 (Mich. Stat. Ann. s 18.974).

(c) Applicant means any person who submits an application to the Tribe for a liquor license and who has not yet received such a license.

(d) Beer means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

(e) Brandy means an alcoholic liquor as defined in the federal regulations, 27 CFR s5.22(d) (1980).

(f) Constitution and Tribal Constitution, as used throughout this Code and elsewhere under tribal law, means the Constitution and Bylaws of the Saginaw Chippewa Indian Tribe of Michigan, approved by the Secretary of the Interior on May 6, 1937, amended on November 4, 1986, under the authority of Section 4 of the Saginaw Chippewa Indian Tribe Distribution of Judgment Funds Act, Public Law 99-346, 100 Stat. 676 (June 30, 1986), including all subsequent amendments ratified and approved pursuant to tribal and federal law.

- (g) Council means the elected Tribal Council of the Saginaw Chippewa Indian Tribe of Michigan acting as the governing body of the Tribe pursuant to the Tribe's Constitution.
- (h) License means a liquor license issued by the Saginaw Chippewa Tribal Council under the provisions of this Act authorizing the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes on or within the Reservation consistent with federal law.
- (i) Licensee means any holder of a liquor license issued by the Tribe and includes any employee or agent of the Licensee.
- (j) Manufacturer means any person engaged in the manufacture of alcoholic liquor.
- (k) Mixed wine drink means a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any one (1) or more of the following: Nonalcoholic beverages; flavoring; coloring materials; fruit juices; fruit adjuncts; sugar; carbon dioxide; or preservatives.
- (l) 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 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.
- (m) Person means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust estate, tribe, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and any other Indian tribe, band, or group, whether recognized by the United States or otherwise. The term shall also include any tribal enterprise and licensee.
- (n) Reservation Unless otherwise provided by applicable federal law, the Isabella Reservation includes five full and two one-half adjoining townships located in Isabella County, Michigan that were withdrawn and reserved for the benefit of the Tribe by Executive Order of President Pierce dated May 14, 1855, and selected by the Indians pursuant to the Treaty of August 2, 1855, 11 Stat. 633, and described with specificity and reaffirmed in Article II of the Treaty of October 18, 1864, 14 Stat. 657, as the north half of township 14 [Chippewa Township], and townships 15 [Denver Township] and 16 [Wise Township] north, range 3 west; the north half of township 14 [Union Township] and township 15 [Isabella Township] north, range 4 west; and townships 14 [Deerfield Township] and 15 [Nottowa Township] north, range 5 west, within Isabella County, Michigan, and all other lands added to the Reservation by executive order, act of Congress, proclamation or declaration of the Secretary of the Interior or other authorized federal official, or otherwise under federal law, including, without limitation, lands in Isabella County and Arenac County, Michigan that were added to the Isabella Reservation and described by declaration of the Secretary of the Interior on September 9, 1983, 48 FR 176 (1983), and shall include, without limitation, all lands, whether held in fee or trust and regardless of ownership, title, or patent, without regard to date of issuance; and all waters, waterways, streams and rivers; all highways and roadways, public or private;

rights of way and easements, without regard to ownership or title of the land; and all airspace in a column above all such lands and territory.

(o) Sacramental wine means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.

(p) Sale means the exchange, barter, traffic, furnishing, or giving away for commercial purposes any alcoholic liquor.

(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 21% by volume, except sacramental wine and mixed spirit drink.

(r) Tribal Court means the Tribal Court of the Saginaw Chippewa Indian Tribe of Michigan.

(s) Tribal enterprise means the Tribe or any activity or business owned, managed, or controlled by the Tribe or any agency, subordinate organization, or other entity of the Tribe, where the organic documents establishing such enterprise expressly allow for the sale of alcoholic liquor.

(t) Tribal law means the Tribal Constitution and all laws, acts, codes, resolutions, and regulations now and hereafter duly enacted by the Tribal Council.

(u) Tribe means, and "tribal" refers to, the Saginaw Chippewa Indian Tribe of Michigan.

(v) 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 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

§ 8.7.17 **Prohibition of Unlicensed Sale of Liquor.** This Act prohibits the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes other than where conducted by a tribal enterprise in accordance with this Act. No license shall be issued to any person or entity other than a tribal enterprise. The federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Act, and violators shall be subject to federal law.

§ 8.7.18 **Authorization to Sell Liquor.** Any tribal enterprise applying for and obtaining a license under the provisions of this Act shall have the right to engage only in those alcoholic liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

§ 8.7.19 **Classes of Licenses.** The Council shall have the authority to issue any one or more of the following classes of liquor licenses within the Reservation:

(a) "Retail on-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where alcoholic beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

- (b) "Retail on-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.
- (c) "Retail off-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.
- (d) "Retail off-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.
- (e) "Manufacturer's license" means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Reservation.
- (f) "Temporary license" means a license authorizing the sale of alcoholic liquor on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion. The Council may, by appropriate Council action, limit or restrict the number of licenses issued or in effect in its sole discretion.

§ 8.7.20 **Application Form and Content.** An application for a license shall be made to the Council and shall contain the following information:

- (a) The name and address of the licensee, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the sale of alcoholic liquor;
- (b) The specific area, location, and/or premise(s) for which the license is applied for;
- (c) The class of liquor transaction applied for (e.g., retail on-sale general license, etc.);
- (d) Whether the applicant has a state liquor license;
- (e) A sworn statement by the applicant to the effect that none of the applicant's officers and directors, and employees with primary management responsibility related to the sale of alcoholic liquor, were ever convicted of a felony under any law, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Act; and
- (f) The application shall be verified under oath and notarized by a duly authorized representative.

§ 8.7.21 **Transfer of License.** Each license issued or renewed under this Act is separate and distinct and is transferable from one licensee to another and/or from one premises to another only with the approval of the Tribal Council. The Tribal Council shall have the authority to approve, deny, or approve with conditions any application for the transfer of any license. The transfer application shall contain all of the information required of an original applicant under section I.G.19 of this Act and shall be signed by both the licensee and transferee. In the case of a transfer to a new premises, the application shall contain an exact description of the location where the alcoholic liquor is proposed to be sold.

§ 8.7.22 **Term and Renewal of License.** All licenses shall be issued on a calendar year basis

and shall be renewed annually. The applicant shall renew a license by, prior to the license's expiration date, submitting a written renewal application to the Tribal Council on the provided form, and paying the annual license fee for the next year.

§ 8.7.23 **Investigation.** Upon receipt of an application for the issuance, renewal, or transfer of a license, the Tribal Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Act have been complied with, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

§ 8.7.24 **Public Hearing.** Upon receipt of an application for issuance, renewal, or transfer of a license, and the payment of all fees required under this Act, the Tribal Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by United States mail, postage prepaid, at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Reservation. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance, renewal, or transfer, the class of license applied for, and a general description of the area where the alcoholic liquor will be or has been sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and to limit or prohibit repetitive testimony.

§ 8.7.25 **Tribal Council Action on the Application.** The Tribal Council shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by Tribal Council resolution.

§ 8.7.26 **Denial of License, Renewal, or Transfer.** An application for a new license, license renewal, or license transfer may be denied for one or more of the following reasons. Solely for purposes of this section and section I.G.26, "applicant" means licensee in the event of a renewal, and licensee and/or transferee in the event of a transfer.

- (a) The applicant has materially misrepresented facts contained in the application;
- (b) The applicant is presently not in compliance with tribal or federal laws;
- (c) Granting of the license (or renewal or transfer thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribe;
- (d) The applicant has failed to complete the application properly or has failed to tender the appropriate fee; or
- (e) A plea, verdict, or judgment of guilty, or the plea of nolo contendere by an applicant's officer or director, or an employee with primary management responsibility related to the sale of alcoholic liquor, to any offense under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic liquor.

§ 8.7.27 **Temporary Denial.** If the application is denied solely on the basis of subsection I.G.25(d) (sic) [perhaps § 8.7.26(d) was intended], the Tribal Council shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

§ 8.7.28 **Multiple Locations.** Each license shall be issued to a specific licensee. Separate licenses shall be issued for each of the premises of any business establishment having more than one address. In the case of the sale of alcoholic beverages on boats, a separate license shall be issued for each boat regardless of the fact that the boats are moored at one location or owned by one person.

§ 8.7.29 **Posting of License.** Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

§ 8.7.30 **Suspension or Revocation of License.** Whenever it is brought to the attention of the Tribal Council that a licensee, through action or inaction:

- (a) has materially misrepresented facts contained in any license application;
- (b) is not in compliance with tribal or federal laws;
- (c) failed to comply with any condition of a license, including failure to pay a required fee;
- (d) has had a plea, verdict, or judgment of guilty, or a plea of nolo contendere entered against one of its officers or directors, or managers with primary responsibility over the sale of alcoholic liquor, to any offense under federal or state law prohibiting or regulating the sale, use, or possession, of alcoholic liquor;
- (e) failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Tribal Council or its authorized representative; or
- (f) suspension or revocation of the licensee's Michigan liquor license.

§ 8.7.31 **Initiation of Suspension or Revocation Proceedings.** Suspension or revocation proceedings are initiated either: by the Tribal Council, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or by any person who files an accusation with the Tribal Council. The accusation shall be in writing and signed by the maker. Both the accusation and resolution shall state facts showing that there are specific grounds under this Act which would authorize the Tribal Council to suspend or revoke the license(s). The Tribal Council shall cause the matter to be set for a hearing before the Tribal Council on a date no later than thirty (30) days from the Tribal Council's receipt of an accusation or adoption of the resolution. Notice of the time, date, and place of the hearing shall be given the licensee and the public in the same manner as set forth in subsection I.G.23. The notice shall state that the licensee has the

right to file a written response to the accusation or resolution, verified under oath and signed by the licensee, ten (10) days prior to the hearing date.

§ 8.7.32 **Hearing.** Any hearing held on any accusation shall be held before a majority of the Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tribal Council. The Tribal Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Tribal Council shall be final.

§ 8.7.33 **Delivery of License.** Upon suspension or revocation of a license, the enterprise shall return the license to the Tribal Council. In cases involving suspension, the Tribal Council shall return the license to the enterprise at the expiration or termination of the suspension period, with a memorandum of the suspension written or stamped upon the face thereof in red ink.

§ 8.7.34 **General Penalties.** Any person adjudged to be in violation of this Act, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil fine of not more than five hundred dollars (\$500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar (\$500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may be imposed under applicable law.

§ 8.7.35 **Initiation of Action.** Any violation of this Act shall constitute a public nuisance. The Tribal Council, on behalf of and in the name of the Tribe, may initiate and maintain an action in Tribal Court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Act. Any action taken under this section shall be in addition to any other penalties provided for in this Act. The plaintiff shall not be required to give bond in this action.

§ 8.7.36 **Inspection.** All licensed premises used in the storage or sale of liquor, or any premises or parts of premises used or in any way connected physically or otherwise, with the licensed enterprise, shall at all times be opened to inspection by any tribal inspector.

§ 8.7.37 **Contraband; Seizure; Forfeiture.**

§ 8.7.37.1 All alcoholic liquor within the Reservation held, owned, or possessed by any person or licensee operating in violation of this Act is hereby declared to be contraband and subject to forfeiture to the Tribe.

- § 8.7.37.2 Within three (3) weeks following the seizure of the contraband, a hearing shall be held by the Tribal Council, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.
- § 8.7.37.3 Notice of the hearing shall be given to the person from whom the property was seized, if known prior to hearing. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on the Reservation. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.
- § 8.7.37.4 If upon hearing, the evidence warrants, or if no person appears as a claimant, the Tribal Council shall thereupon enter a determination of forfeiture and order such contraband sold or destroyed forthwith.

Legislative History

Liquor Control Act, enacted June 26, 1997 by Res. No. 97-067 (app'd by the Sec'y of the Interior and effective on 11/21/97; 62 Fed.Reg. 62338).