7565-01-P

NATIONAL INDIAN GAMING COMMISSION

Notice Of Inquiry and Request for Information; Notice of Consultation

AGENCY: National Indian Gaming Commission

ACTION: Notice of Inquiry; Notice of Tribal Consultations

Authority: 25 U.S.C. § 2706(b)(10); E.O. 13175.

SUMMARY: This Notice of Inquiry and Notice of Consultation advises the public that the National Indian Gaming Commission (NIGC) is conducting a comprehensive review of all regulations promulgated to implement the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 et seq. The Commission is taking a fresh look at its rules in order to determine whether amendments are necessary to more effectively implement IGRA's policies of protecting Indian gaming as a means of generating tribal revenue, ensuring that gaming is conducted fairly and honestly by both the operator and players, and ensuring that tribes are the primary beneficiaries of gaming operations. The Commission's challenge is to adapt its rules to ensure that they promote these values into the future. This review is also being prepared in order to submit the NIGC's Semi-Annual Regulatory Review to the Federal Register in April 2011 as required by Executive Order 12,866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. In compliance with Executive Order 13,175 entitled "Consultation and Coordination with Indian Tribal Governments," the NIGC will hold eight consultations during January and February 2011. This Notice of Inquiry invites

comments and information that will assist the NIGC in understanding the need for revising any or all of the regulations outlined below. The consultations and public comments requested in this Notice are intended to assist the NIGC with completion of the review and in establishing priorities.

Following completion of the consultation and written comment period, the NIGC will review all comments received and create a comprehensive regulatory review agenda schedule. The public comment period ends February 12, 2011. The regulatory review agenda will be released in April 2011 and will include a summary explaining why the NIGC agreed or disagreed with the comments received and why the regulatory review agenda took its final form.

DATES: Submit comments on or before February 11, 2011. See Consultation Meetings, Dates and Locations under SUPPLEMENTARY INFORMATION below for the dates, times, and locations of consultation meetings.

ADDRESSES: Testimony and comments sent by electronic mail or delivered by hand are strongly encouraged. Electronic submissions should be uploaded on the NIGC website, http://www.nigc.gov, or e-mailed to reg.review@nigc.gov. See Electronic Submissions, File Formats And Required Information under SUPPLEMENTARY INFORMATION below for instructions. Testimony and comments delivered by hand should be brought to the consultations. See Consultation Meetings, Dates and Locations under SUPPLEMENTARY INFORMATION below for the dates, times, and locations of consultation meetings. Submissions sent by regular mail should be addressed to Lael

Echo-Hawk, Counselor to the Chair, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street NW, Suite 9100 Washington, D.C. 20005. Telephone: 202/632-7009; email: reg.review@nigc.gov

SUPPLEMENTARY INFORMATION:

I. Consultation Meetings, Dates and Locations

Eight tribal consultations will be held on the following dates, times and locations. Every attempt was made to hold a consultation in each region and to coordinate with other established meetings when establishing this consultation schedule. Please RSVP to consultation.rsvp@nigc.gov.

Week 1

January 11, 2011, from 9 a.m. to 4 p.m. at the U.S. Grant Hotel, 326 Broadway, San Diego, CA 92101.

January 12, 2011, from 9 a.m. to 4 p.m. at the Cache Creek Casino Resort, 14455 Highway 16, Brooks, CA 95606.

January 14, 2011, from 9 a.m. to 4 p.m. at the Little Creek Resort, 91 W. State Route 108, Shelton, WA 98584.

Week2

January 18, 2011, from 9 a.m. to 4 p.m. at the Riverwind Casino – Hotel, 1544 West Highway 9, Norman, OK 73072.

January 20, 2011, from 9 a.m. to 4 p.m. at the Hyatt Regency Tamaya Resort and Spa, 1300 Tuyuna Trail, Santa Ana Pueblo, NM 87004

Week 3

January 24, 2011, from 9 a.m. to 4 p.m. at the Department of the Interior – South Interior Auditorium, 1951 Constitution Ave., N.W., Washington, DC 20240.

Week 4

February 1, 2011, from 9 a.m. to 4 p.m. at the Best Western Ramkota Inn, 2111 North La Crosse St., Rapid City, SD 57701.

February 3, 2011, from 9 a.m. to 4 p.m. at the Seminole Hard Rock Hotel & Casino, 1 Seminole Way, Hollywood, FL 33314.

For additional information on consultation locations and times, please refer to the website of the National Indian Gaming Commission, http://www.nigc.gov. Please RSVP at consultation.rsvp@nigc.gov.

II. Electronic Submissions, File Formats And Required Information

If submitting by website: Participant must complete a form containing the name of the person making the submission, his or her title and tribe or organization (if the submission of an organization), mailing address, telephone number, fax number (if any) and e-mail address. The document itself must be sent as an attachment, and must be in a single file and in recent, if not current versions of: (1) Adobe Portable Document File (PDF) format (preferred); or (2) Microsoft Word file formats.

If submiting by electronic mail: Send to reg.review@nigc.gov, a message containing the name of the person making the submission, his or her title and organization (if the submission of an organization), mailing address, telephone number,

fax number (if any) and e-mail address. The document itself must be sent as an attachment, and must be in a single file and in recent, if not current versions of: (1) Adobe Portable Document File (PDF) format (preferred); or (2) Microsoft Word file formats.

If submitting by print only: Anyone who is unable to submit a comment in electronic form should submit an original and two paper copies by hand or by mail to the appropriate address listed above. Use of surface mail is strongly discouraged owing to the uncertainty of timely delivery.

Copies of the written comments received and any other material may be reviewed on the Tribal Consultation webpage of the NIGC website located at http://www.nigc.gov.

III. Background

The Indian Gaming Regulatory Act (IGRA or Act) (Public Law 100-497), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The purpose of the IGRA was to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns

regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702.

The IGRA authorizes the NIGC to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the Act. 25 U.S.C. 2706(b)(10). The undertaking of this review facilitates effective implementation of IGRA and coincides with Executive Order 12,866 entitled "Regulatory Planning and Review" providing for federal entities to identify agency statements of regulatory priorities and additional information about the most significant regulatory activities planned for the coming year. Additionally, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), agencies publish semiannual regulatory flexibility agendas in the Federal Register identifying those rules that may have a significant economic impact on a substantial number of small entities. In the spirit of transparency and accountability set forth by the President of the United States, the NIGC wishes to provide a comprehensive regulatory review schedule and agenda created after meaningful consultation.

Additionally, Executive Order 13,175 entitled "Consultation and Coordination with Indian Tribal Governments," provides for the NIGC to engage in meaningful consultation with tribal governments prior to taking an action that has tribal implications. Through the development of a comprehensive regulatory review, and in meaningful consultation with tribes, the NIGC hopes to identify those areas of the regulations that need revision, and in further consultation, to revise the regulations as necessary to serve the current needs of the tribal gaming industry.

Over the past several years, the NIGC has adopted, amended and attempted to amend a number of regulations, including a facility licensing regulation, Class II and

Class III Minimum Internal Control Standards, and Class II Technical Standards. The current Commission understands that some interested parties believe that many of the NIGC's regulations need updating or continued revisions. Consistent with Executive Order 13175, consultation should occur before revisions or amendments to regulations. In the past, consultation has often taken the form of a Tribal Advisory Committee (TAC) used to assist the NIGC in drafting the regulations. However, neither the method of appointing members to the TAC nor the joint process of drafting regulations has been without controversy or costs. The Commission recognizes that in order for regulation review and revision to occur that benefits and protects the entire tribal gaming industry, all points of view must be considered and a decision made based on all comments received by the Commission. The Commission seeks advice and input as to how that goal can best be accomplished.

The Commission also requests comment on whether changes to Class II MICS, Class II Technical Standards and Class III MICS are necessary. Currently, the Commission is examining the Class II MICS regulations and how to address the Class III MICS in the wake of the *Colorado River Indian Tribes* decision. The Commission is seeking advice and input as to how to provide necessary updates to the regulations consistent with federal law, tribal sovereignty and tribal expertise in the day-to-day operations.

In sum, the NIGC requests comments about which regulations are most in need of revision, in what order of priority those regulations should be addressed and the process the NIGC should utilize to make revisions.

IV. Regulations Which May Require Amendment or Revision

A. Part 502 – Definitions of this Chapter

The NIGC is particularly interested in receiving comments on whether any of the definitions in part 502 are in need of revision and whether any additional definitions are necessary to protect gaming as a means of generating tribal revenue. In particular, the NIGC is interested in receiving comment on whether the following terms need further clarification:

(1) Net Revenues. Over the years, tribes, CPAs, and others have raised the issue of whether there should be different definitions for Net Revenues when defining what the management fee will be based on pursuant to the IGRA, 25 U.S.C. 2711; or determining net revenues to be used for the allowable purposes as defined by the IGRA. 25 U.S.C. 2710(b). Should the Commission consider definitions for the following two terms: Net Revenues – management fee; and Net Revenues – allowable uses?

(a) Net Revenues – management fee. General Accepted Accounting Principles (GAAP) define Net Income as "Gross Revenues (less Complimentary Sales) subtracting Operating Expenses and Interest and Depreciation." NIGC defines Net Revenue as "Net Income plus Management Fee," which is used by the Commission as the base number to calculate the management fee when the fee is a percentage on net revenue. Should the language used in the Commission's definition of Net Revenues be revised to be consistent with GAAP, i.e., "Net Income plus Management Fee"?

(b) Net Revenues – allowable uses. The IGRA, 25 U.S.C. 2710(b)(2)(B), states "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."

Tribes, tribal gaming commissions, and CPAs have commented that prior to making any decisions for allowable uses of net revenues, the tribal parties should first consider the cash flow of the gaming operation (i.e. deduct principal loan payments, deduct reserve, add depreciation). In addition, others have stated that tribal parties should also consider the overall financial integrity of the gaming operation before funding other tribal programs.

Should the Commission consider adding a new definition for Net Revenues – allowable uses that is based on cash flow? For example, should the new definition be "Cash flow" equals "Net Income plus depreciation minus principal loan payments and reserve fundings"? Is there another calculation that this definition could be based on?

The Commission is seeking advice and input from the tribal gaming industry about these proposed definition revisions, if there are other definitions that need revisions, whether it should be a priority, and whether a Tribal Advisory Committee should be formed to make these change or if another process will be sufficient.

(2) Management Contract. Should the definition of management contract be expanded to include any contract, such as slot lease agreements, that pays a fee based on a percentage of gaming revenues?

Management contractors sometimes believe that the manager should be reimbursed for expenses in addition to earning a management fee or may be paid multiple fees for development, loans, marketing, and non-gaming management in addition to the

gaming management fee. These accumulated payments may result in the manager receiving sums greater than cash flow to the tribe. Should there be a definition regarding acceptable compensation to a manager contractor?

The Commission is seeking comment about whether the Commission should consider amendments to existing definitions or whether additional definitions are necessary, how the Commission should prioritize its review of part 501 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

B. Part 514 – Fees

The NIGC is interested in receiving comments on whether part 514 is in need of revision. In particular, the Commission is interested in receiving comment on whether the Commission should consider revising this part to base fees on the gaming operation's fiscal year. Currently, the fee is calculated based on the calendar year. The Commission understands that it may be difficult to accurately calculate fees based on the calendar year, which may lead to frequent audit adjustments. The Commission is asking for comment on whether this issue may be resolved by changing "calendar" to "fiscal" throughout part 514. Further, if this is a revision that the Commission should consider, the Commission is interested in receiving comment on how to implement the revision. For example, should the Commission consider a revision that would provide for implementation over the course of a 12 to 18 month period with an option for the tribe to determine when they will change their calculation during that time period? On what dates or by what schedule should the Commission set fee rates if this revision is implemented,

given that tribes have different fiscal years? Is this a revision that would be more efficient? Is this a revision that the Commission should prioritize?

Should the Commission consider amending this part to define gross gaming revenue consistent with the GAAP definition of this term? Would amending this definition to industry standards make the fee easier to calculate and to reconcile?

Should the Commission consider amending this part to include fingerprint processing fees? If so, how should the Commission consider including fingerprint processing fees? Should it specify that fees collected from gaming tribes for processing fingerprints with the FBI are included in the total revenue collected by the Commission that is subject to statutory limitation? Should the Commission include a requirement for it to review fingerprint processing costs on an annual basis and, if necessary, adjust the fingerprint processing fee accordingly?

Finally, should the Commission consider a late payment system in lieu of a Notice of Violation (NOV) for submitting fees late? In the past, when a tribe paid their fees after the deadline, we understand that a NOV may have been issued to the tribe. As a NOV could lead to closure of a gaming facility, the Commission questions whether an NOV is an appropriate response to a late fee submittal caused by a change in employees or other minor issue. Should the Commission consider adding a type of "ticket" system to part 514 so that an NOV would only be issued in instances of gross negligence or wanton behavior, or in a dollar amount that allowed the tribe to reap an economic benefit from its failure to pay in a timely manner?

The Commission is seeking comment on the above particular issues as well as other suggested revisions to this part, how the Commission should prioritize its review of

part 514 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

C. Part 518 – Self-Regulation of Class II

The NIGC has heard that this regulation is overly burdensome to tribes seeking to obtain certification and that the burden of completing the process significantly outweighs the benefits gained from self-regulation. The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of part 518 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

D. Part 523 – Review and Approval of Existing Ordinances or Resolutions

Should the Commission consider eliminating part 523 as obsolete? The regulation applies only to gaming ordinances enacted by tribes prior to January 22, 1993, and not submitted to the Chairwoman. The Commission believes there may no longer be any such ordinances. The Commission is seeking comment on whether this part should be eliminated, how the Commission should prioritize its review of part 523 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

E. Management Contracts

(1) Part 531 - Collateral Agreements

Should the Commission consider whether it has authority to approve collateral agreements to a management contract? The current definition of management contract includes collateral agreements if they provide for the management of all or part of a gaming operation. The Commission has taken the position that although the collateral agreements must be submitted, the Commission only approves management contracts. Some tribes have asked the Commission to review the management contract and the collateral agreements and to make a determination as to whether the cumulative effect of the agreements violate the sole proprietary provisions of the IGRA. For example, while the gaming management contract may only require a payment of 5% of the net gaming revenue, combined with the provisions of the collateral agreements, the tribe may be paying in excess of 80% of gross gaming revenue which results in a net loss for the tribe.

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of part 531 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

(2) Part 533 – Approval of Management Contracts

This part outlines the submission requirements for management contracts. While the Commission has disapproved management contracts for a variety of reasons including the trustee standard, the Commission seeks comment on whether an amendment would clarify the trustee standard by adding the following two grounds for possible disapproval under § 533.6(b): the management contract was not submitted in accordance with the

submission requirements of 25 CFR part 533, or the management contract does not contain the regulatory requirements for approval pursuant to 25 CFR part 531.

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of part 533 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

(3) Part 537 – Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract

This part addresses the background investigation submission requirements for the management contractor. Although minor revisions were made in 2009, there appears to be some confusion about whether the contractor should be required to submit the Class II background information when the contract is only for Class III gaming. IGRA does specify approval of Class II and Class III management contracts as a power of the Chairwoman. 25 U.S.C. § 2705(a)(4).

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of part 537 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

F. Proceedings Before the Commission

The NIGC is considering amending the regulations that govern appeals of the Chairwoman's actions on ordinances, management contracts, notices of violations, civil

fine assessments, and closure orders. 25 CFR part 519; 25 CFR part 524; 25 CFR part 539; 25 CFR part 577. Except for some minor changes in 2009, these parts remain unchanged from their original adoption in 1993.

Should the Commission consider more comprehensive and detailed procedural rules, especially in areas such as motion practice, that are largely unaddressed by the present rules? The Commission seeks advice and comment on service of process and computation of time; intervention by third parties; motion practice and briefings; and the nature of written submissions in enforcement appeals. We also would like comment regarding whether a Tribal Advisory Committee should be formed to make the change or if another process will be sufficient.

G. MICS & Technical Standards

(1) Part 542 – Class III Minimum Internal Control Standards

The Commission is seeking comment regarding Class III Minimum Internal Control Standards (MICS). It has been suggested that the rule should be struck and replaced by a set of recommended guidelines. Comment is requested from the tribal gaming community and other interested parties regarding whether the NIGC's Class III MICS have a positive impact on the industry, and, if changed to a guideline, what, if any, impact that might have on tribal gaming? Many tribal gaming regulatory authorities have relied on the regulation to define the foundation of their minimum internal control standards, others have merely adopted the federal rule verbatim, while yet others have drafted their own internal control standards. If the regulation is struck, how would such action impact the tribal regulators and operators?

Additionally, several state compacts incorporate the Class III MICS by reference. If the regulation was struck, how would these agreements be affected, if at all? Some tribes have amended their gaming ordinance recognizing the authority of NIGC to regulate Class III MICS and enforce them. Their state compacts have also been revised recognizing federal oversight as supplanting that of the state to the extent specified in the agreements. If the regulation was struck, what would the effect be on those tribes?

If the Class III MICS are revised but not placed into a regulation, how should NIGC publish them to the industry? Do we involve a Tribal Advisory Committee (TAC) to participate in the revision process? Does that TAC need to be composed of different members than the Class II MICS TAC? How should the members be selected? What process should NIGC utilize to make revisions? The Commission needs input from the tribal gaming community on this very important issue.

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

(2) Part 543 – Class II Minimum Internal Control Standards

The NIGC is currently in the process of revising the Class II MICS. However, the process has come under significant scrutiny and objection by the tribal gaming industry. While we have heard from the industry that the regulations need revision, there have also been many concerns about the process utilized to make the revisions. The Commission is

dedicated to making the necessary updates through a process that is inclusive of all interested parties' concerns and suggestions.

A proposed regulation has been drafted, but questions have arisen regarding the clarity and interpretation of certain sections. Although the applicability of the rule may be limited, the Commission wants to ensure that it be viable and clear to the tribal gaming industry. Accordingly, we are seeking comment on how to proceed. Should tribal gaming regulatory authorities be provided an opportunity to provide comment on the proposed rule before public meetings? Should comment be sought from accounting practitioners? Should a TAC be assembled to provide advice to the NIGC in the administration of the rule once adopted? We would appreciate your thoughts on this idea.

Finally, the Commission is seeking comment on the process of Class II MICS revisions. Should we start with the current proposed draft? Should we establish a TAC to participate? If so, how should the members be selected? What will the revision process be? The Commission needs input from the tribal gaming community on this very important issue.

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

(3) Part 547 – Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games

This part was recently revised through a joint tribal-NIGC working group. While it has been in effect for a short time, the Commission has received comments that the part should be further revised. Should NIGC start with the current proposed draft? Should we establish a Tribal Advisory Committee to participate? If so, how should the members be selected? What will the revision process be? The Commission needs input from the tribal gaming community on this very important issue.

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

H. Backgrounds and Licensing

(1) Part 556 – Background Investigations for Licensing

In 1997, the NIGC began a pilot program which allowed it to effectively perform its duties of regulating background investigations in a more timely fashion while reducing the amount of paperwork submitted and maintained, and accordingly reducing associated costs. Today, a majority of the tribes participate in the pilot program. Under the program, the Commission allows tribes to send in a list of employees they either licensed or denied a license along with a one-page Notification of Results (NOR). The Commission requests comment on whether the pilot program should be formalized into regulations.

The Commission is seeking comment on whether regulations should be promulgated to formalize the pilot program, how the Commission should prioritize this

issue in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review, or another process.

(2) Fingerprinting for Non-Primary Management Officials or Key Employees

Currently, the NIGC reviews fingerprint cards submitted by tribes for Primary Management Officials or Key Employees. However, some tribes have requested the ability to be able to submit fingerprint cards to the NIGC for vendors, consultants, and other non-employees that have access to the gaming operations. Under 25 U.S.C. 2706(b)(3), the Commission may conduct or cause to be conducted such background investigations as may be necessary. Should the Commission adopt regulations that would allow tribes, at their option, to submit fingerprint cards to the Commission for vendors, consultants, and other non-employees that have access to the gaming operations?

The Commission is seeking comment on whether regulations should be promulgated to clarify this issue, how the Commission should prioritize this issue in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review, or another process.

***I.* Part 559 - Facility License Notifications, Renewals, and Submissions**

This part was recently adopted by the Commission. However, the NIGC has received many comments concerning the substance of this regulation from tribes.

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a

Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

J. Sections 571.1 - 571.7 – Inspection and Access

Under IGRA, the Commission may access and examine all papers, books, and records regarding gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission. However, at times the Commission or tribe has been denied access to those records.

Should the Commission revise its regulations in §§ 571.5 and 571.6 to clarify Commission access to records at off-site locations, including at sites maintained or owned by third parties?

The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

K. Part 573 – Enforcement

Should NIGC promulgate a regulation concerning withdrawal of a Notice of Violation (NOV) after it has been issued? The Commission is looking for advice and input regarding whether this is an appropriate issue for a regulation and if so, under what conditions or circumstances the NOV could be withdrawn? Would it be appropriate to allow the NOV to be withdrawn solely at the discretion of the Chairperson? The Commission is seeking comment on this issue, how the Commission should prioritize it in the regulatory review process, and whether the Commission should utilize standard

notice and comment rulemaking, a Tribal Advisory Committee to assist it, or another process.

V. Potential New Regulations

A. Tribal Advisory Committee

The Commission seeks comment on whether it should develop a regulation or policy identifying when a Tribal Advisory Committee (TAC) will be formed to provide input and advice to the NIGC and, if so, how Committee members should be selected. Should the cost of the TAC be a factor when considering whether to form a TAC? The Commission is seeking comment on whether the Commission should consider a regulation on this issue, how the Commission should prioritize it in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a TAC to assist in its regulatory review of this part, or another process.

B. Sole Proprietary Interest Regulation

Many tribes and interested parties have approached the NIGC requesting a determination regarding whether a single agreement, or a combination of agreements, violate IGRA's sole proprietary interest requirement. The IGRA requires that the tribe have sole proprietary interest in the gaming operation. Should the Commission consider a regulation identifying when the sole proprietary interest provision is violated and providing a process whereby at the tribe's request the NIGC will review the documents and made a determination?

The Commission is seeking comment on whether the Commission should consider a regulation on this issue, how the Commission should prioritize it in the

regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

C. Communication policy or regulation identifying when and how the NIGC communicates with Tribes

Should the NIGC develop a regulation or include as part of a regulation a process for determining how it communicates with tribes? The NIGC has a government-to-government relationship with federally recognized tribes. However, given the nature of the NIGC's responsibilities, often the NIGC staff communicates primarily with the Tribal Gaming Commission (TGC) or Tribal Gaming Regulatory Agency (TGRA). While in many instances this means of communication is appropriate and works well, there are also times when the NIGC communicates directly with tribal governments on issues related to broad policy changes or compliance issues such as a Notice of Violation. How should the NIGC communicate with tribes and TGCs if those entities are at odds with each other on a particular issue? Should the NIGC consider requiring a resolution from the elected tribal council setting forth which entity communicates the NIGC? Should such a resolution be submitted with the annual fees or audit? Is this approach unduly burdensome? Alternatively, should NIGC promulgate a regulation or policy establishing a default method of formal communication unless otherwise directed by a resolution? The NIGC recognizes the many differences in tribal government structures. However, would a universal standard for communication that can then be modified by each tribe if they so choose promote more effective regulatory communication?

The Commission is seeking comment on whether the Commission should consider a regulation on this issue, how the Commission should prioritize it in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

Further, the NIGC invites comment on whether to define the types of communication that occur between the NIGC and the tribe and tribal agencies. For example, a letter from the Chairperson regarding upcoming tribal consultations, proposed broad policy changes or Notice of Violation could be considered a form of "formal communication." Additionally, a letter from a tribal chairperson requesting a meeting or a request from the tribe for the NIGC to perform an audit could also be "formal communication." However, the NIGC understands that communications between the NIGC and the tribe, TGC, and TGRA may not be occurring in a uniform manner and wants to provide clarity for all the parties. The NIGC welcomes any comment or suggestions regarding whether the clarification is needed and if it should be formalized into a regulation or policy.

D. Buy Indian Act Regulation

The Commission is considering adopting a regulation which would require the NIGC to give preference to qualified Indian-owned businesses when purchasing goods or services as defined by the "Buy Indian Act," 25 U.S.C. 47. As an agency with regulatory responsibilities wholly related to tribes, the Commission seeks comment on whether it is appropriate to promulgate such a regulation. The Commission is seeking advice and input

from the tribal gaming industry about this issue, and whether a Tribal Advisory Committee should be formed to make the change or if another process will be sufficient.

VI. Other Regulations

A. Part 501 – Purpose and Scope

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

B. Part 503 – Commission Information Collection Requirements under the Paperwork Reduction Act: OMB Control Numbers and Expiration Dates

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

C. Part 513 – Debt Collection

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

D. Part 515 – Privacy Act Procedures

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

E. Part 517 – Freedom of Information Act Procedures

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

F. Part 522 – Submission of Gaming Ordinance or Resolution

The NIGC does not believe these regulations are currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

G. Part 531 – Content of Management Contacts

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

H. Part 535 – Post Approval Procedures

The NIGC does not believe this regulation is currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

I. Sections 571.8 - 571.11 – Subpoenas and Depositions

The NIGC does not believe these regulations are currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to these sections.

J. Sections 571.12 – 571.14 – Annual Audits

The NIGC does not believe these regulations are currently in need of revision. However, we are interested in hearing any comments or suggestions related to possible revisions to these sections.

K. Part 575 – Civil Fines

The NIGC does not believe these regulations are currently in need of revision. While the Commission was interested in seeing tribal dollars paid as a fine for a regulation violation returned to the tribes by funding the Commission activities, federal law prohibits an agency from keeping fines received from entities it regulates, and fines are deposited in the U.S. Treasury. The view is that regulatory agencies would then have an incentive to issue violations. However, we are interested in hearing any comments or suggestions related to possible revisions to this part.

DATED: November 12, 2010.

Tracie L. Stevens,
Chairwoman

Steffani A. Cochran,
Vice-Chairwoman

Daniel J. Little,
Associate Commissioner