

NIGC – Regulation Review Agenda

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Consultation

Executive Order 13,175 “Consultation and Coordination with Indian Tribal Governments”

Section 3 – Policymaking Criteria

- (c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:
- (1) encourage Indian tribes to develop their own policies to achieve program objectives;
 - (2) where possible, defer to Indian tribes to establish standards; and
 - (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.



Regulatory Review – Process

3 Phases

1. Preliminary Drafting Phase – Consultation meetings and written comments
2. Proposed Rule – Consultations and approximately 60 day comment period, if the Commission decides to issue a Notice of Proposed Rulemaking.
3. Final Rule – Approximately 45 day written comment period



Regulatory Review – Process

- 5 Groups of Regulations
 - Group numbers do not indicate priority
 - Groups were developed after considering a number of factors, including
 - subject matter
 - comments received in response to the NOI regarding priority
 - estimated time
 - resources to complete review of the regulation



Regulatory Review – Consultation Process

- Preliminary discussion drafts for consultation will be initial working drafts.
- All meetings will be transcribed.
- Written comments and transcripts will be posted on website.



Commitment

- Every comment received will be reviewed and considered.
- Any Proposed or Final Rule will include a summary of comments received.
- Commission is committed to a clear and transparent process.



Consultation Agenda

- Group 2:
 - Enforcement; and
 - Regulations concerning proceedings before the Commission.
- Group 3:
 - Class II MICS & Class II Technical Standards
- Group 4:
 - Pilot Program; Background and Licensing; Management Contracts



Group 2 Overview

- Group 2:
 - Enforcement; and
 - Regulations concerning proceedings before the Commission, including:
 - Part 519 – Service,
 - Part 524 – Appeals,
 - Part 539 – Appeals, and
 - Part 577 – Appeals Before the Commission



Enforcement

- NOI requested comments on whether the NIGC should promulgate a regulation authorizing the withdrawal of a NOV after issued.
 - Comments received:
 - Regulation is unnecessary because there is no prohibition on withdrawal.
 - A specific regulation outlining the process and circumstances for withdrawal is appropriate.
 - Only the Commission should be able to withdraw a NOV.



Enforcement

- Additional Comments received:
 - An NOV should be expunged after a certain number of years or non-compliance issue resulting in NOV is resolved.
 - NOV's posted on the website should not have identifying information.
 - NIGC should work with Tribes to bring into compliance so an NOV is never a surprise.
 - No need to create a regulation, an agency policy would be sufficient to resolve this issue.
 - If the NIGC and tribe discussed the IGRA violation prior to the issuance of the NOV, then no withdrawal is necessary.
 - Voluntary compliance model should be utilized.



Proceedings before the Commission

- NOI requested comment on whether the rules for proceedings before the Commission should be reviewed.
 - Comments received:
 - A more formal process may be more burdensome, costly and delay the process for review.
 - Any rules should guarantee Due Process.
 - Consolidate all regulations regarding proceedings before the Commission.



Proceedings before the Commission

- NOI requested comment on whether the NIGC should consider more comprehensive and detailed procedural rules for proceedings before the Commission.
 - Comments:
 - Consolidate all regulations regarding proceedings before the Commission.
 - Eliminate Presiding Officer proceedings.
 - Add informal hearing option to Ordinance and Management Contract approval regulations.



Group 4 Overview

- Group 4:
 - Pilot Program
 - Access to fingerprint card processing for non-PMO's and/or key employees
 - Background requirements for Management Contractors
 - Access to off-site records held by a 3rd party
 - Review of Collateral Agreements
 - Definition “Net Revenues – Management Fee”



Pilot Program

- NOI requested comment on whether the Pilot Program should be formalized into regulation.
 - Pilot program allows tribes to submit Notice of Results to the NIGC and to maintain completed applications and investigative reports.
 - All commenters support formalizing the program into either a regulation or policy.



Pilot Program

- Issues –
 - How will this regulation change impact current ordinances?
 - IGRA provides for two notifications to NIGC:
 - 1. Tribe notify the NIGC of the background results; and
 - 2. Tribe notify the NIGC of issuance of a license.
 - How should notice be sent to the NIGC?



Fingerprint Processing

- NOI asked if the NIGC should allow access to fingerprint processing for any employee designated by the Tribe.
 - Comments support this.



Management Contractors: Backgrounding & Licensing

- NOI asked if regulations should be revised to clarify that Management Contractors of Class II and Class III facilities must have a completed background investigation.
 - Comments:
 - Majority of commenters support adding this clarification.
 - Some commenters stated that the NIGC has no authority to approve Class III management contracts or to require background investigations.
 - Some commenters stated this issue is covered by Compact requirements.



Management Contractors: Backgrounding & Licensing

- Additional comments:
 - Some commenters suggest revising the background investigation process related to the approval of a management contract.
 - How could the process be streamlined while maintaining the integrity of the current process?
 - Who would qualify for the streamlined process?



Management Contracts – Collateral Agreements

- NOI asked whether Part 531 should be revised to require the submission and approval of collateral agreements.
 - Comments:
 - Majority of comments support requiring the submission of collateral agreements with the management contracts.
 - Disagreement among commenters regarding whether collateral agreements should be approved by the Chair.



Management Contracts – Collateral Agreements

- Additional Comments:
 - NIGC does not have authority to approve collateral agreements.
 - NIGC should not second-guess a tribal business decision.
 - Requiring approval of Collateral Agreements would discourage private investment.
 - Agreements other than a Management Agreement should be left to the discretion of the Tribe.



Management Contracts – Collateral Agreements

- Additional Comments:
 - NIGC has a trust responsibility to review and approve the Collateral Agreements.
 - Approval of Collateral Agreements protects tribes from sole proprietary interest violations.
 - Approval of Collateral Agreements could discourage a business from attempting to take advantage of a tribe.
 - Approval of Collateral Agreements reduces the risks to both parties.



Access to off-site records held by a 3rd party

- NOI asked whether Part 571 should be revised to clarify NIGC access to papers, books and records, including at sites maintained by 3rd parties.
 - Comments:
 - Revision unnecessary because the NIGC already has access to all records of gaming operation regardless of location.
 - Some commenters suggested only clarifying that NIGC can access off-site locations maintained by 3rd parties.



Access to off-site records held by a 3rd party

Comments:

- Require tribes to maintain all their records on site.
- commenters also stated that the NIGC should only request records within their statutory authority.
- Regulation should be revised to deny NIGC access to Class III records.



Net Revenues – Management Fee

- NOI asked whether the definition of Net Revenues – management fees be defined to be consistent with General Accepted Accounting Principles (GAAP).
 - Comments:
 - Most commenters support this type of revision.
 - Revision would need to remain in compliance with IGRA.
 - If the intent is to change the calculation of Management fees, then different terminology should be used.
 - A repeal of the most recent change to the definition is required to remain in compliance with IGRA definition.



Net Revenues – Management Fee

- Issues –
 - Does the definition need clarification?
 - Would GAAP provide clarification?
 - How can the definition be clarified while remaining in compliance with IGRA definition of “net revenue”?
 - Net Revenue means gross gaming revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees. 25 USC § 2703(9).



Group 3 Overview

- Group 3:
 - Part 543 - Class II Minimum Internal Control Standards
 - Part 547 - Class II Technical Standards



Group 3 - Class II MICS & Class II Technical Standards

- NOI asked how to proceed with the revisions to these Parts.
- Currently, 2008 MICS implementation date is October 13, 2011.
- Additionally, until July 2010, the NIGC was drafting changes to the Class II MICS.
- Alternative draft rules submitted to the NIGC by the Tribal Gaming Work Group are under review.



Group 3 - Class II MICS & Class II Technical Standards

– Issues:

- What are key issues that need to be addressed in the MICS?
- What are key issues that need to be addressed in the Technical Standards?
- How have the Technical Standards worked in the industry?
- How should the NIGC make revisions in the future to address new and advanced technology?



Written Comment Deadlines

- Part 559 – Facility License: June 17



Questions?

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