



OFFICE OF THE GOVERNOR

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BILL ANOATUBBY
GOVERNOR

March 30, 2012

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street N.W., Suite 9100
Washington, DC 20005

Dear Chairwoman Stevens:

The Chickasaw Nation is pleased to submit written comments in response to the National Indian Gaming Commission's (NIGC) Notice of Proposed Rulemaking on Facility Licensing, 25 C.F.R. Part 559, which was issued on January 31, 2012. The opportunity to participate in this important consultation process is greatly appreciated.

The NIGC's effort to accommodate tribal interests through the proposed removal of certain provisions from 25 C.F.R. Part 559, including the three-year facility license renewal requirement and the burdensome environmental and public health and safety reporting requirements is especially appreciated. It is our hope that the NIGC will continue working closely with tribal governments in developing a final rule that reflects and accommodates the views, needs and objectives of tribal governments.

Thank you for your consideration of the Chickasaw Nation's comments on this important matter. We look forward to continuing to work closely with the NIGC in the spirit of the government-to-government relationship and in accordance with federal law and policy.

Sincerely,

Bill Anoatubby
Bill Anoatubby, Governor
The Chickasaw Nation

Enclosure

Ms. Tracie Stevens

2

March 30, 2012

**COMMENTS OF THE CHICKASAW NATION ON THE
NATIONAL INDIAN GAMING COMMISSION'S
NOTICES OF PROPOSED RULEMAKINGS
25 C.F.R. PART 559:
FACILITY LICENSE NOTIFICATIONS, RENEWALS AND SUBMISSION**

The Chickasaw Nation respectfully submits these comments in response to the National Indian Gaming Commission's ("NIGC") Notice of Proposed Rulemaking on Facility Licensing, which was published in the Federal Register on January 31, 2012. 77 Fed. Reg. 4731. The Chickasaw Nation thanks the NIGC for issuing this Notice of Proposed Rulemaking and appreciates the opportunity to submit comments on this important regulation governing facility license notifications, renewals, and submissions.

In reviewing the proposed rule, the Chickasaw Nation was pleased by the NIGC's efforts to accommodate tribal concerns with respect to the environment, public health and safety reporting requirements, which the NIGC is proposing to eliminate in favor of a much simpler tribal attestation. Tribal governments have long argued that the environment, public health and safety requirements in the current facility license regulations infringe on tribal sovereignty and tribal governments' role as primary regulators of Indian gaming. In our view, matters pertaining to the environment, public health and safety are more properly within the purview of the tribal government. The NIGC, as a federal regulatory body, is more particularly designed to carry out regulatory oversight over Indian gaming, not issues of environment, public health and safety. The proposed change to require an attestation over an extensive submission package thus ensures proper oversight and enforcement of environment and public health and safety requirements.

In the NIGC's preliminary discussion draft of this regulation, the NIGC sought comment on the appropriate amount of time before which the notice requirement would be triggered for temporary and seasonal closures. We previously commented that temporary facility licenses issued for a period not to exceed *180 days* should be exempt from the regulation's notification requirements. The Chickasaw Nation is pleased that the proposed rule incorporates our suggested 180-day language, as it is a more reasonable timeframe and will help reduce administrative burdens for tribal governments issuing temporary licenses for non-permanent closures.

While overall, the proposed rule represents a significant improvement over the current regulation, we note that there are a few remaining issues in the proposed rule that would benefit from additional clarification. First, in light of the NIGC's stated position that "there is no legal requirement for an Indian lands determination prior to gaming on that land," we question the need for a 120-day notice period prior to the opening of a new gaming facility.

Ms. Tracie Stevens

3

March 30, 2012

The Chickasaw Nation agrees with the NIGC's position that an Indian lands determination by the NIGC is not a condition precedent to opening a new gaming facility under IGRA. However, our concern is that the NIGC has not amended the notice period in the regulation to reflect its position on Indian land determinations. If, as the NIGC states, the "notification process does not require the Commission to verify the Indian lands status within the 120-day timeframe," then the primary purpose of the procedure in § 559.2 is to provide notice of a new gaming facility opening. The title of § 559.2, "When must a tribe notify the Chair that it is considering issuing a new facility license" also suggests that the procedures set forth in the section relate only to the review of a tribal government's notice submission.

Thus, the NIGC's role in § 559.2 is limited to verifying the information contained in the tribal government's notice submission to ensure it meets the requirements in § 559.2(b)(1)-(5). Under § 559.2(b)(1)-(5), if the property on which the gaming facility is going to be located is under the superintendence of the Bureau of Indian Affairs, as is the case with most tribal gaming properties, all that is required in the notice submission is the name, address, legal description, and tract number for the property. A 120-day notice period seems unreasonably long if all the NIGC is required to verify is that the notice contains the above information. Moreover, the NIGC's addition of a provision allowing tribal governments to request a 60-day expedited review seems altogether unnecessary for such a limited review. The Chickasaw Nation therefore requests that the NIGC amend proposed § 559.2(a) to include a much shorter notice period than 120 days, such as 30 days, which the Chickasaw Nation believes is a more reasonable and appropriate timeframe for verifying notice submissions.

Also, in our previous comments on the preliminary discussion draft of this regulation, we requested that the NIGC provide guidance as to the circumstances under which the Chair would exercise his or her discretion in requesting additional Indian lands or environmental and public health and safety documentation. In the preamble to this proposed rule, the NIGC explains that it decided against this change since "it is not possible to identify every possible scenario under which the Chair would exercise this discretion." While the Chickasaw Nation appreciates the NIGC's view on this point, we strongly believe standards are needed to govern agency discretion and guard against arbitrary and capricious decision-making. The Chickasaw Nation therefore requests that the NIGC revisit this issue and consider including a standard of at least reasonableness with respect to the Chair's discretion. As a fundamental principle of administrative law, it is essential for the NIGC to incorporate standards for governing agency to exercise discretion.

On a final note, the Chickasaw Nation believes this regulation would benefit from additional provisions addressing the issuance of temporary facility licenses following a natural disaster or some other unforeseeable event that leads to the forced closure of the tribal government's permanent gaming facility. More specifically, the Chickasaw Nation believes there should be an exemption from notification requirements for temporary gaming facilities that are opened for an estimated period of less than twelve months. Such an exemption would be particularly beneficial to the Chickasaw Nation as well as

Ms. Tracie Stevens

4

March 30, 2012

other tribal governments located in areas that are vulnerable to natural disasters and other unforeseeable catastrophic events. When a tribal government is forced to shut down its gaming operations as a result of such a disaster or catastrophe, the opening of a temporary gaming facility on its Indian lands may be necessary to secure critical revenues and guarantee continued funding of governmental programs and services. Under such extraordinary circumstances, the tribal gaming regulatory agency ("TGRA") may issue a temporary facility license for a limited period of time until the permanent gaming facility is fully rehabilitated or reconstructed and ready for re-opening.

The regulation should also acknowledge that TGRAs have the authority to issue temporary facility licenses without being subject to the regulation's notice requirements. Not only would such an exemption be consistent with principles of tribal sovereignty and self-governance, but it would also help minimize disruptions to tribal gaming operations and mitigate revenue losses as a result of a forced closure in circumstances beyond the tribal government's control. By requiring tribal governments to provide thirty (30) days' notice of permanent *and* temporary facility openings, the proposed rule suggests that the opening of a temporary gaming facility must be delayed pending the end of the notice period. Such a delay, however, will most likely have the effect of depriving the tribal government of critical revenues and hinder the tribal government's ability to provide services and programs for its members. To avoid such an outcome, we recommend that the NIGC include an exemption for temporary gaming facility openings that is similar to that being proposed for temporary closures.

Again, thank you for undertaking this major revision of the facility licensing requirements contained in Part 559. It is our hope that you find our comments helpful as you proceed with your deliberations.