



# LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 384-1489

November 30, 2011

Regulatory Review  
National Indian Gaming Commission  
1441 L Street, NW, Suite 900  
Washington DC 20005

RE: Comments from the Lummi Nation, Regulatory Review Schedule; Tribal Consultation 76  
Federal Register 18457

Thank you for this opportunity to comment on the National Indian Gaming Commission (NIGC) Regulations. In response, the Lummi Nation provides the following comments, suggestions and concerns by sections.

*Group One: Part 514—Fees; Part 523—Review and Approval of Existing Ordinances or Resolutions; Part 559— Facility License Notifications, Renewals, and Submissions; Part 542— Class III Minimum Internal Controls; Buy Indian Act*

## **A. Part 514—Fees**

### **1. Should the Commission consider revising Part 514 to base fees on the Tribe's gaming operation's fiscal year?**

The Lummi Nation has no comment as the fiscal year for the Lummi Silver Reef casino is in line with the calendar year.

### **2. Should this Part define *Gross Gaming Revenue* consistent with Generally Accepted Accounting Principles for the purposes of calculating the fees?**

The Lummi Nation supports uniformity and clarity throughout IGRA for a definition of gross gaming revenue, whether this be through the GAAP definition or some other internationally accepted accounting standard.

### **3. Should this Part include a section on the fingerprinting processing fees?**

The NOI asked whether the Commission should consider amending this Part to include fingerprint processing fees and whether to provide for a review of the costs on an annual basis and adjust the fingerprint processing fee accordingly. Additionally, the NOI asked whether the Commission should consider providing that fees collected for processing fingerprints should be included in the total revenue collected by the Commission that is subject to statutory limitation.

2011 DEC 12 AM 10:18

RECEIVED  
NATIONAL INDIAN  
GAMING COMMISSION

The Nation believes that the fingerprinting fees should be examined on an annual basis and that they be included in the total revenue collected by the Commission that is subject to statutory limitations.

#### **4. Should the Commission consider a late payment system in lieu of a Notice of Violation for Tribes submitting their fees to the NIGC late?**

Yes. A late payment system in lieu of issuance of an NOV would be an effective option to encourage timely payments. NOVs are publicly communicated and should be utilized for major compliance issues. A simple failure to pay a bill or file a statement may occur as a result of change of personnel or other bureaucratic oversight which does not rise to the level of a major noncompliance issue.

#### ***B. Part 523—Review and Approval of Existing Ordinances or Resolutions***

Comments received in response to the NOI suggest repealing this regulation as obsolete. The regulation applies only to gaming ordinances enacted by Tribes prior to January 22, 1993, and not submitted to the Chairwoman. During the Group One period, the Commission will consider repealing this Part.

The Lummi Nation supports cleaning up the regulations. This regulation does not apply to Lummi as the Nation's gaming ordinance was adopted 8/23/1994. For the tribes it does effect, however, the NIGC should ensure that that authority to approve amendments to ordinances approved under this section remains and these tribes do not have to have their entire ordinance re-approved when it is submitted for amendments.

#### ***C. Part 542—Class III Minimum Internal Control Standards***

**The NOI requested comment regarding Class III Minimum Internal Control Standards (MICS). The public was asked to comment on how this issue should be addressed, particularly in light of the decision in the *Colorado River Indian Tribes v. National Indian Gaming Commission*.**

The NIGC does not have authority under IGRA to promulgate regulations regarding Class III gaming. However, some tribes refer to NIGC regulations as the default standard for their Class III MICS. It may be helpful to these tribes if the NIGC were to post or otherwise disseminate (without official "publication") the Class III MICS that they have developed with reference to them as "guidelines" or "best practices."

#### ***D. Part 559—Facility License Notifications, Renewals, and Submissions***

**The NOI requested comment on whether the Commission should consider revising this Part.**

This regulation should be stricken as it adds duplicative burden on the Tribe to resubmit information already possessed by the federal government..

#### ***E. Buy Indian Act Regulation***

**The NOI requested comment on whether the Commission should consider 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.**

The Lummi Nation supports the development of a regulation that gives preference to Indian-owned businesses.

*Group Two: Part 573—Enforcement; Proceedings Before the Commission, Including Part 519—Service, Part 524— Appeals [of disapproval of a gaming ordinance, resolution or amendment], Part 539—Appeals [of approval or disapproval of a management contract or amendment], and Part 577—Appeals Before the Commission*

#### **A. Enforcement**

**The NOI requested comment on whether the Commission should consider promulgating a regulation authorizing the withdrawal of an NOV after it has been issued.**

The NIGC Chair has the ability to issue an NOV and should have the authority to withdraw an NOV. A compliance model or progressive correction approach as opposed to the “all or nothing” NOV should be developed. This model should also grant the Chair the ability to withdraw an NOV after a period of time if a tribe has had no further violations.

#### **B. Proceedings before the Commission**

**The NOI requested comment on whether the Commission should consider more comprehensive and detailed procedural rules for proceedings before the Commission.**

No comment at this time.

*VI. Group Three: Part 543—Minimum Internal Control Standards for Class II Gaming; Part 547—Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games*

**The NOI also requested comment on the Class II Minimum Internal Control Standards (MICS) and Minimum Technical Standards. Specifically, the NOI requested comment on how to proceed with revisions to these Parts.**

No comment at this time.

*VII. Group Four: Part 556—Background Investigations for Primary Management Officials and Key Employees; Part 558—Gaming Licenses for Key Employees and Primary Management Officials; Part 556—Formalizing the “Pilot Program”; Part 571—Monitoring and Investigations; Part 531—collateral Agreements; Part 537—Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract; and Part 502— Definitions*

#### **A. Background Investigations and Pilot Program**

**The NOI requested comment on whether the Commission should consider normalizing through regulation a long-standing “pilot program” under which participating Tribes provide NIGC with concise information pertaining to employees licensed or denied a license in lieu of the process outlined in Part 556.**

The pilot program should be formalized as it currently exists.

**Additionally, the NOI requested comment on whether the NIGC should process fingerprint cards for non-primary management officials or non-key employees.**

The Nation supports having access to NIGC processing of fingerprint cards for non-primary management officials and non-key employees but the Nation notes that it would not necessarily require fingerprinting for all officials and employees in these categories.

### ***B. Management Contracts***

#### **1. Collateral Agreements**

**The NOI requested comment on whether the Commission should consider approving collateral agreements to a management contract.**

The Nation believes that it should not have to seek approval for any management agreement or contract, collateral or otherwise. The requirement for federal approval of management agreements is a continuation of the overly paternalistic relationship between the federal government and tribes.

#### **2. Background Information for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract.**

**The NOI requested comment on whether the Commission should consider amending this regulation to specify that a contractor should be required to submit background information when the contract is only for Class III gaming.**

The Nation does not support this amendment because the NIGC does not have regulatory authority over Class III gaming.

### ***C. Inspection and Access to Records***

**The NOI requested comment on whether there was a need to clarify Commission access to records located off-site, including at sites maintained or owned by third parties.**

The Nation believes that access should be limited to Class II records. The Nation opposes any access for Class III records.

### ***D. Definitions—Net Revenues— management fee***

**The NOI asked whether the Commission should consider whether the definition of *Net revenues— management fee* should be defined to be consistent with the General Accepted Accounting Principles (GAAP) when determining the management fee.**

The Lummi Nation supports uniformity and clarity throughout IGRA for revenue definitions, whether this be through the GAAP definition or some other internationally accepted accounting standard.

*VIII. Group Five: Part 518—Self Regulation of Class II Gaming; proposed new Sole Proprietary Interest regulation; and implementation through regulation of Class III MICS options*

***A. Self Regulation of Class II Gaming***

**The NOI requested comment on whether the Commission should consider amending the process for obtaining a self-regulation certification. The Commission has heard that the administrative burden of completing the process significantly outweighs the benefits obtained from self regulation.**

The Lummi Nation has no comments at this time.

***B. Sole Proprietary Interest***

**The NOI requested comments on whether the Commission should consider a regulation defining *sole proprietary interest* and providing a process through which a Tribe may request the NIGC to conduct a review and make a determination. Many Tribes and other 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 Lummi Nation has no comments at this time.

***C. Class III MICS Implementation***

**Based on the comments received during the Group One period, the Commission will address implementation of changes to Class III MICS during the Group Five period.**

As stated earlier, the Nation believes that the NIGC does not have regulatory authority over Class III gaming and thus Class III MICS, if addressed at all, should be stated as “guidelines” or “best practices.”

The Lummi Nation thanks you for your time and attention to our concerns.

Sincerely,

  
Clifford Cultee  
Chairman, Lummi Nation