

# AIK-OHII INDIAN COMMUNITY

## Community Government

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February 2, 2007

Chairman Hogen and Members  
National Indian Gaming Commission  
140 L Street, N.W., 10th Floor  
Washington, D.C. 20005  
Tel: 202-32-7066

Dear Chairman Hogen and Members of the Commission:

It has come to our attention that the Commission is considering significant revisions to the proposed Class II technical standards based on the recommendations of an ad hoc working group of game machine manufacturers which have developed a set of proposed revisions to the proposed rule. We have also been informed that the NIGC may decide not to issue the classification standards and issue only technical standards regulations. Tribal governments should have an opportunity to comment on any significant amendments prior to the promulgation of any final rule on technical standards.

We have been informed that the manufacturers were able to achieve substantial consensus in developing the recommendations, which is encouraging. Nevertheless, tribal governments must have a chance to comment on any significant amendments. At present, we are not clear as to the Commission's actual plans in relation to these rulemaking activities. Under the circumstances, we will address both contingencies. If the Commission plans to proceed with both classification and technical standards regulations, we view it as essential that tribal governments have a full and fair opportunity to review both sets of regulations and offer additional comments, particularly since the two proposed rules are so closely related. If the NIGC plans only to proceed with technical standards, we view it as essential that tribal governments have a full and fair opportunity to review and comment on the final proposal.

While we are hopeful that the Commission's decision to allow the manufacturer's an opportunity for input produced worthwhile results that will ultimately accrue to the benefit of tribal governments, the Commission's ultimate responsibility is to carry out its mission on a government-to-government basis with representatives of tribal governments. Moreover, it is not at all unusual for federal agencies to publish multiple versions of the same proposed rule, particularly in rulemaking affecting substantial rights or economic impacts. In this case, both circumstances are present; hence we assert that due process and the APA "logical outgrowth" rule weigh in favor of the NIGC's republication of the technical standards for further comment after they are amended.

Sincerely,



Melia M. Carlyle, Chairman  
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To: National Indian Gaming Commission	From: Clarissa Milke, Administrative Assistant
Re: 202632-7066	Pages: 3
Date: 2/2/2007	
Subject: Proposed Class II Technical Standards Letter	CC:
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Comments:	