

## **NIGC Regulation Insight**

By Associate General Counsel Eric Shepard

Over the past three years, the National Indian Gaming Commission has made a number of changes to every aspect of the Agency. We began with our consultation process with the goal of strengthening our relationship with tribes and increasing open, candid communication. We then turned to internal Agency operations review, training and technical assistance, and an aggressive review of NIGC regulations. While we continue to reflect and make improvements in every area, there are a number of key changes to our regulations that will affect tribes in the coming months. Additionally, tribes and the NIGC will likely feel the affects of the Federal budget sequester.

In 2010, the NIGC embarked on a regulatory review with tribes, tribal regulators and the public to ensure 21st century regulations for a 21st century industry. Since then, the Commission has held more than 50 consultations, considered 20 regulations or potential regulations and adopted and implemented 17 regulations. These new regulations will need to be implemented at nearly every tribal gaming operation. Implementation will require close dialogue with tribal leaders, tribal regulators and tribal attorneys.

Most recently, the Commission adopted amendments to Part 518 – Self Regulation of Class II Gaming. The key changes in Part 518 include: an emphasis on a tribe's ability to regulate gaming; elimination of redundant submission requirements and; a defined and streamlined process for the review of self-regulation petitions by the full Commission. These changes are aimed at clarifying and streamlining the process for obtaining a certificate of self-regulation for those tribes that wish to do so.

As with part 518, many of the new regulations reflect the diversity of tribes and their gaming operations; from a 12 machine operation in a rural location to a large facility in a more urban setting. For example, the new Part 543--Minimum Internal Controls for Class II Gaming-- provides a foundation from which tribes can build their own Tribal Internal Control Standards suited to their own unique structure and circumstances.

Currently, the Commission is reviewing comments in response to its most recent notice of proposed rulemaking, which seeks to amend Part 543 to include requirements for surveillance of kiosks. After the Commission has reviewed and considered all public comments, a final rule will be published in the Federal Register. We thank those tribes that submitted comments on the proposed amendment to Part 543. As has been the Commission's experience since 2010, many tribes provided insightful comments that will inform the final rule.

In adopting these regulations, the Commission was mindful that tribes would need time to implement them. As a result, the regulations have different implementation timelines.

To assist tribes in implementing the new regulations the Commission created a regulation summary, which identifies major regulatory changes and cross-references the new and old regulations. The regulation summary can be obtained from the NIGC website at

[www.nigc.gov](http://www.nigc.gov). If a tribe or tribal regulator has questions regarding the new regulations, the NIGC has seven regional offices able to assist. Our regional staff is ready to provide training and technical assistance on a variety of issues, including new and revised regulations.

The Commission has also furthered the ACE initiative – Assistance, Compliance and, when necessary, Enforcement. ACE is a commitment to Indian country that the Commission is here, first and foremost, to work with tribes to identify issues and find solutions. As part of our commitment to assistance, in 2012, over 2,000 participants attended 84 NIGC training events throughout Indian country. Through these trainings we have helped ensure compliance throughout the Indian gaming industry.

The Commission will continue to consider training and technical assistance as critical to its regulatory mission in Indian country. However, some non-mission critical services may be affected by the Federal budget sequester.

On March 1, 2013, the President was required by law to issue a sequestration order. This order reduced budgetary authority for Fiscal Year 2013 by approximately \$85 billion for all Federal accounts. At the Department of the Interior, over \$800 million will be cut from bureaus and offices over the next several months. This means that, unless Congress is able to reach a debt reduction deal that affects sequestration, the NIGC, along with the rest of the Federal government, will have its budget reduced by approximately five percent each year for a period of 10 years.

The Commission made extensive efforts to exempt the NIGC from sequestration cuts due to the fact that we are a fee-for-service agency funded solely by tribal funds. Unfortunately, despite our efforts, we have been advised that five percent of the NIGC's funds will be sequestered. We will continue to monitor the impacts to NIGC for this fiscal year and next.

The NIGC is dealing with sequestration in a number of ways. The Commission has taken measures to maximize efficiency and streamline operations by curtailing travel, eliminating overtime and compensatory time, and leaving some staff positions vacant. We will prioritize mission-critical activities and, although we will continue to assist tribes in other ways, some processes may take longer than normal. For example the Office of General Counsel regularly issues "declination letters" opining whether agreements need to be submitted for the Chairwoman's approval as a management contract, or raise sole proprietary interest issues. While the Commission recognizes the importance of this process to tribal economic development, tribes should expect longer review times. The Commission encourages tribes to submit agreement as far in advance as possible and to allow at least six to eight weeks for review.

Despite these challenges, as we move forward, the Commission will continue to engage in candid, open communications with tribes; improve Agency efficiency; review regulations to ensure effective oversight; and provide training and technical assistance to achieve full compliance with IGRA and NIGC regulations.

*Eric Shepard serves as Associate General Counsel at the National Indian Gaming Commission. He can be reached by calling (202) 632-7003. For more information about the NIGC, visit [www.nigc.gov](http://www.nigc.gov).*