



MUCKLESHOOT TRIBAL COUNCIL

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February 11, 2011

The Honorable Tracie L. Stevens, Chairwoman
The Honorable Steffani A. Cochran, Vice Chairwoman
The Honorable Daniel J. Little, Associate Commissioner
National Indian Gaming Commission
1441 L. Street, NW, Suite 9100
Washington, DC 20005

RE: NIGC Notice of Inquiry - November 17, 2011

Dear Commissioners:

This is sent in response to the Notice of Inquiry received by this Tribe. We are extremely pleased about the thoughtful approach the NIGC is taking under its new leadership and appreciate the opportunity to comment on various topics essential to the continued viability of Indian Gaming.

Attached you will find the summary of comments prepared by staff of Muckleshoot's Gaming Agency and Gaming Operations who are extremely knowledgeable on Indian Gaming issues. We hope you find the information helpful as you determine regulatory priorities for the coming years.

Sincerely,

A handwritten signature in cursive script that reads "John Daniels Jr.".

Vice
Virginia Cross, Chairperson
Muckleshoot Tribal Council

**MUCKLESHOOT INDIAN TRIBE RESPONSE TO NOTICE OF INQUIRY
AND REQUEST FOR INFORMATION DATED NOVEMBER 17, 2011**

IV. Regulations Which May Require Amendment or Revision

A.) Part 502 – Definitions of This Chapter

(1) *Net Revenues.* **Further clarification required** **Priority - Low**

- Should certain definitions be changed?

(1)(a) *Net Revenues-management fee:* Conforming accounting definitions to Generally Accepted Accounting Principles (GAAP) would, as a general rule, make far more sense than trying to maintain definitions that vary from GAAP. That said, it is noted while both Net Revenue and Net Income are measures of earnings, they have very different meanings from an accounting standpoint. Revenues generally refer to top line earnings (i.e., before expenses), while Income refers to bottom line earnings (i.e., after expenses). Accordingly, if the goal is to determine the earnings against which management fees may be taken, it might be easiest to refer to them as “Net Income before Management Fees” and require footnote disclosure of the same.

(1)(b) *Net Revenues-allowable uses:* The determination of what funds can be used for the IGRA specified allowable uses should be left up to the Tribe. Minimum bankroll requirements under the MICS already provide guidance on cash reserves that the Casino must retain.

NIGC should not have responsibility to oversee Tribal debt obligations. Lenders, Tribal Casino operators, management companies and Tribal government officials have the responsibility to assure that Tribes: 1) Don't incur more debt than they can repay; 2) Retain sufficient funding to repay outstanding principal and interest when due; and, 3) Limit by originating documents the amount of funding that can be otherwise removed from the operation for non-operational activities. If the above steps haven't been put in place any Federal regulations, by their nature would be a retroactive review, after the damage has been done. There are enough motivated and interested parties on all sides of the issue – particularly after recent well publicized defaults by Tribes – to assure that debt obligations are structured in a way to assure repayment. While lenders and Management companies may not be motivated to assure the overall long-term financial integrity of the gaming operation, they are motivated in the short to medium-term to assure its continued operation.

(2) *Management Contract:* **No clarification required** **Priority - Low**

- Should the definition of *management contract* be expanded to include any contract, such as slot lease agreements, that pays a fee based on percentage of gaming revenues?

The simple answer to whether the definition of the term management contract should be changed is NO. The NIGC's role would best be limited to identifying areas/management contracts where problems have occurred in the past and allowing Tribes and the market to patrol itself.

B.) Part 514 – Fees: Clarification required Priority - Medium

- Comment on whether the Commission should consider revising this part to base fees on the gaming operation's fiscal year by changing "calendar" to "fiscal."

We have no position on this.

- Should the Commission consider amending this part to define *gross gaming revenue* consistent with the GAAP definition of this term?

Yes, as identified above, we believe it is appropriate to have commission terminology match to the extent possible Generally Accepted Accounting Principles (GAAP).

- Should the Commission consider amending this part to include fingerprint processing fees?

We believe that the fingerprint processing fee should be documented in its regulations.

- Should the Commission consider a late payment system in lieu of a Notice of Violation?

We believe it is more appropriate to establish a late payment system in lieu of a Notice of Violation (NOV). The Notices are often picked up by local press that interpret them as a violation that calls into question the integrity of Tribal Gaming, as opposed to the simple failure to pay a bill or file a Statement that may have been overlooked by a change of personnel. The commission can develop other effective options for encouraging timely payments. As suggested in the Commission's questions, an NOV could be issued in instances of gross negligence or wanton behavior or if the dollar amount not paid would result in an economic benefit to the Tribe from its failure to pay.

- How should the Commission consider making changes to this section?

Provided the rulemaking process is followed, we have no opinion on how the Commission determines how the changes are formulated for this section.

C.) Part 518 – Self-regulation of Class II Clarification required Priority - Low

- Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of part 518 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

We do not believe the Certificate of Self-regulation is worth the effort. While there are reductions in fees, all reporting and other duties appear essentially unchanged with or without the Certification.

D.) *Part 523 – Review and Approval of Existing Ordinances or Resolutions* **Priority - Low**

- Should the Commission consider eliminating part 523 as obsolete?

We believe it is likely that this section is obsolete and should be eliminated. As it is likely obsolete, its retention or elimination should be of a low priority.

E.) *Management Contracts*

1) Part 531 Collateral Agreements **No clarification required** **Priority - Low**

- Should the Commission consider whether it has authority to approve collateral agreements to a management contract?

The Commission's authority is to review Management Contracts and is clear within the current statute. We believe you do not need to consider collateral agreements that don't relate to gaming activities.

2) Part 533 – Approval of Management Contracts **Priority - Low**

- Commission seeks comment on whether an amendment would clarify the trustee standard by adding the following two grounds for possible disapproval under § 533.6(b): The management contract was not submitted in accordance with the submission requirements of 25 CFR part 533, or the management contract does not contain the regulatory requirements for approval pursuant to 25 CFR part 531.

We have no position on this subject and we would give it a low priority for Commission attention.

3) Part 537 – Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract **Priority - Low**

- Should the contractor be required to submit the Class II background information when the contract is only for Class III gaming?

We have no position on this issue at this time. We would also give this a low priority for Commission attention.

F.) *Proceedings Before the Commission* **Priority - Low**

- Should the Commission consider more comprehensive and detailed procedural rules, especially in areas such as motion practice, that are largely unaddressed by the present rules?

We believe this should be a low priority issue for the Commission at this time.

G.) MICS & Technical Standards

1) Part 542 – Class III Minimum Internal Control Standards **Clarification needed Priority - High**

- It has been suggested that the rule should be struck and replaced by a set of recommended guidelines.

The MICS form the underlying basis for our internal controls and as such are a very useful tool. That said, the NIGC's trying to develop and maintain a tool for as broad an application as small Casinos with 50 machines in them and giant ones with over 5,000, makes the MICS a very blunt instrument. Allowing the MICS to be a set of recommended guidelines to be adopted and adapted by Tribal Gaming Regulatory bodies as they deem appropriate is the appropriate response.

Developing broad based policy requirements in Washington D.C. for every gaming facility in the country regardless of its size, location, operational limitations or other attributes is best done in broad strokes that are both expected and encouraged to be refined at the local level. Allowing the MICS to be recommended guidelines that are adapted and adopted by the Tribal Gaming Regulatory Authority would meet this logical view.

Have annual audits provide assurance that the Tribal Management Internal Controls (TMICs) in place are adequate to safeguard the assets of the Tribe they are auditing. That will marry together the internal controls with the local gaming conditions and have an external body provide assurances that they are satisfactory for those conditions. It would also seem to keep the NIGC in adherence to its new defined and welcome mission: Assistance, Compliance and then Enforcement (ACE). The recommended guidelines would provide for Assistance, the adapted and adopted Tribal implementing regulations would allow for the determination of Compliance with conditions-specific internal controls, and the auditor's assurance would provide comfort to the NIGC regarding the adequacy of the internal controls adopted.

2) Part 543 – Class II Minimum Internal Control Standards **Clarification needed Priority - High**

- The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

We have the same belief in regards to Class II MICS as we do with the Class III MICS as outlined above.

3) Part 547 – Minimal Technical Standards for Gaming Equipment Used With the Play of Class II Games
Clarification needed Priority - High

- The Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of this part in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part or another process.

We believe that the Commission should have a role in developing Minimal Technical Standards for Class II Gaming Equipment for wide-area progressives or Central Determination Systems that are not housed/hosted by each Tribe.

Current wide-area progressives are generally hosted in the manufacturer's facility/facilities, with the gaming outcomes and increases in the progressive jackpots determined at that site and then distributed electronically out to all the Tribe's participating in that progressive. It is prohibitively expensive and very inefficient to expect each of the participating Tribes to validate the integrity of the wide-area progressive's gaming outcomes and increases to the progressive meters. As each Tribe only has access to its own participation levels, there is no assurance that the meters are properly being advanced, that all funds dedicated to the progressive are in fact posted to it, and that the selection of the winning numbers are without fraud.

We suspect that most all Tribes simply rely on the integrity of the manufacturer of the wide area progressive or assume that someone else is checking on the process. Having all Tribal Regulatory Authorities auditors travel to the manufacturer's facilities to check on the process would, for obvious reasons, not make any sense.

Here, the Commission could play a valuable role by mandating rules that require independent audit or review of all Class II wide-area progressives that are played on Tribal lands. While the audit issues would be slightly different for Class II Central Determination Systems, the idea and the solution would be the same. The audit results should be required to be provided to each Tribal Regulatory Authority overseeing a Class II or Class III entity participating in the wide area progressive or a non-hosted Central Determination Systems.

This solution would assure the integrity of the Class II wide-area progressives and Central Determination Systems hosted off of the receiving Tribes' reservations, while not entirely disrupting the operations of those vendors by requiring all Tribal entities to conduct an individual audit.

H.) Backgrounds and Licensing

1.) Part 556 – Background Investigations for Licensing **Clarification needed Priority - High**

- Under the program, the Commission allows Tribes to send in a list of employees they either licensed or denied a license along with a one-page Notification of Results (NOR). The

Commission requests comment on whether the pilot program should be formalized into regulations.

Yes, the pilot program has been successful and should be formally incorporated into regulation.

2) Fingerprinting for Non-Primary Management Officials or Key Employees

- Should the Commission adopt regulations that would allow Tribes, at their option, to submit fingerprint cards to the Commission for vendors, consultants, and other non-employees that have access to the gaming operation?

We believe providing Tribes with the option to submit fingerprint cards to the Commission for vendors, consultants, and other non-employees is a good idea.

I.) *Part 559 – Facility License Notifications, Renewals, and Submissions*

Clarification needed Priority - Medium

- The Commission is seeking comment on whether this part should be revised.

We believe that renewals should be automatic unless there is a change in operating conditions.

J.) *Sections 571.1 – 571.7 – Inspection and Access*

No Clarification needed

- Should the Commission revise its regulations in §§ 571.5 and 571.6 to clarify Commission access to records at off-site locations, including at sites maintained or owned by third parties?

Section 571.6.(b) makes clear the Commission authority to be provided the records at a time and place convenient to the Commission's authorized representative – speaking specifically to records stored at off-site locations. Accordingly, no modification to this section is necessary. It should accordingly be provided a low priority for Commission review.

K.) *Enforcement*

- Should NIGC promulgate a regulation concerning withdrawal of a Notice of Violation (NOV) after it has been issued?
Clarification needed Priority - Medium

As presumptively any NOV withdrawal would be done based upon the alleged violation having been cleared or documentation was provided subsequent to the NOV issuance showing that the violation did not occur, the simplest method for its removal should be permitted. As this is not outlined within Part 573, it would make sense to authorize the Chair to withdraw an NOV previously issued, when conditions warrant it.

V. Potential New Regulations

A.) Tribal Advisory Committee

Clarification needed Priority - High

- The Commission seeks comment on whether it should develop a regulation or policy identifying when a Tribal Advisory Committee (TAC) will be formed to provide input and advice to the NIGC and, if so, how Committee members should be selected.

Provided there is adequate time for Tribal consultation and input after the Committee is given an opportunity to provide meaningful, unrestricted input in making its recommendations, having a committee assist the NIGC in the development of regulations can be useful. The NIGC should develop a policy on the selection of members and topics for Tribal Advisory Committees.

B.) Sole Proprietary Interest Regulation

- Should the Commission consider a regulation identifying when the sole proprietary interest provision is violated and providing a process whereby at the Tribe's request the NIGC will review the documents and make a determination?

We have no position on this issue at this time.

C.) Communication Policy or Regulation Identifying When and How the NIGC Communicates With Tribes

Clarification needed Priority - High

- How should the NIGC communicate with Tribes and TGCs if those entities are at odds with each other on a particular issue? Should the NIGC consider requiring a resolution from the elected Tribal council setting forth which entity communicates with the NIGC?

The NIGCs suggestion of identifying a default communication method that would include contact to both the Tribal Council Chair and the Tribal Gaming Regulatory Authority, while allowing a Tribal Council via resolution to designate an alternate communication method would seem to accommodate each individual Tribe's unique governing structure. It should be noted that, aside from formal notices, there are many circumstances that involve informal discussions between Commission staff and the staff of the Tribal Gaming Regulatory Authority and/or its Gaming Operation's staff. Any developed regulation should not be a means to eliminate or restrict such free flowing communication.

D.) Buy Indian Act Regulation

Clarification needed Priority - High

- The Commission is considering 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 Commission should adopt a regulation implementing the Buy Indian Act.

VI. Other Regulations

- While the Commission believes no changes are needed, the Commission is seeking input on whether any of the following Parts of 25 CFR are in need of modification.

A.) Part 501 – Purpose and Scope

No change needed

B.) Part 503 – Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers and Expiration Dates

It is noted that all the OMB control numbers “Expiration” [sic] Dates on the NIGCs website have passed. The Commission should consider updating its website.

C.) Part 513 – Debt Collection

Clarification needed Priority - Low

The notices required under Section 513.4 and Section 513.21 should be sent via certified mail or other method requiring acknowledgment of receipt by the alleged debtor to assure that corrective action or appeal rights are available to the alleged debtor.

No changes needed for the following regulations:

D.) Part 515 – Privacy Act Procedures

E.) Part 517 Freedom of Information Act Procedures

F.) Part 522 – Submission of Gaming Ordinance or Resolution

G.) Part 531 – Content of Management Contracts

H.) Part 535 – Post Approval Procedures

I.) Sections 571.8 – 571.11 – Subpoenas and Depositions

J.) Sections 571.12 – 571.14 – Annual Audits

K.) Part 575 – Civil Fines