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National Indian Gaming Commission  
1441 L Street Northwest, Ste 9100  
Washington, DC 20005

**Re: National Indian Gaming Commission  
Notice of Inquiry / Regulation Review**

Chairwoman Stevens and Commissioners:

Ak-Chin Indian Community  
Cocopah Tribe  
Fort McDowell Yavapai Nation  
Fort Mojave Indian Tribe  
Fort Yuma-Quechan Tribe  
Gila River Indian Community  
Havasupai Tribe  
Hualapai Tribe  
Kaibab-Paiute Tribe  
Navajo Nation  
Pascua Yaqui Tribe  
Salt River Pima-Maricopa  
Indian Community  
San Carlos Apache Tribe  
San Juan Southern Paiute Tribe  
Tohono O'odham Nation  
Tonto Apache Tribe  
White Mountain Apache Tribe  
Yavapai-Apache Nation  
Zuni Tribe

The Arizona Indian Gaming Association (AIGA) respectfully submits our comments regarding the Notice of Inquiry for Regulation review on behalf of the member tribes of AIGA.

With respect to the Commission's request for comment regarding potential changes to Class III Minimum Internal Control Standards, AIGA generally will defer to its members to submit their own comments. In this instance we have conducted a series of meetings to address the NOI as an association. The key points we will raise are a result of these joint meetings.

First, because the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006) makes clear that the NIGC does not possess the power to regulate Class III gaming, the NIGC likewise does not possess the power to promulgate and enforce Class III MICS as regulations. However, many tribes and states find Class III MICS to be helpful as guidance. Accordingly, AIGA urges the Commission to continue to issue Class III MICS as non-binding guidelines. The issuance of guidelines can and should continue to serve as a baseline for regulation through tribal-state compacts.

Second, the NIGC should ensure that tribes have ample input in the development of the guidelines. One avenue for that input should be a Tribal Advisory Committee (TAC), but the TAC should not be the only avenue for tribes to have input, as most tribes necessarily would be excluded from participating on the TAC. Regardless of how members of the TAC may be selected, AIGA recommends that the Commission structure the selection process to ensure broad participation by different tribes, tribal operations and tribal expertise on the regulations being considered. Consider the method by which you have conducted the regional consultation process which enables a cross section of tribal representation.

Our comments are limited the areas of importance that we find to be of priority for our membership. We appreciate the opportunity to engage in constructive input on the regulatory process that supports the integrity of our gaming facilities.

Respectfully,

Sheila Morago  
Executive Director  
Arizona Indian Gaming Association



NIGC Regulation	Title	Comment
502(A)(1)(a)	Net Revenues / Management Fee	<p>The Commission has inquired whether the term “Net Revenues” should be defined differently for purposes of determining management fees under 25 U.S.C. § 2711 and for determining the allowable uses of gaming revenues under 25 U.S.C. § 2710(b). With respect to whether having differing definitions would be desirable, AIGA takes no position, but notes that one or more of its members may take a position on that issue.</p> <p>If the Commission concludes that the term “Net Revenues” should have different meanings for purposes of 25 U.S.C. § 2710(b) and 25 U.S.C. § 2711, AIGA notes the term “Net Revenues” was defined by Congress in 25 U.S.C. § 2703(9), which states:</p> <p style="padding-left: 40px;">“The term “net revenues” means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.”</p> <p>NIGC does not have the power to alter by regulation this statutory definition, which applies to both 25 U.S.C. § 2710(b) and 25 U.S.C. § 2711, regardless any benefit from doing so.</p>

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NIGC Regulation

Title

Comment

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502(A)(2)

Management Contract

The current definition of management contract should *not* be expanded to include any contract, such as slot lease agreements, that pays a fee based on a percentage of gaming revenues. A Management Contract is an agreement to manage the operation of the tribal casino. A tribe may utilize a management contractor for their knowledge, experience, and expertise regarding the day-to-day operation of a casino, management of the gaming floor, including gaming devices, games, personnel, marketing, purchasing, accounting and other aspects of the operation of a gaming facility. Consequently, the tribe agrees to pay the management contractor a percentage fee based upon the management of the casino and success of the operation.

On the other hand, a tribe may pay a percentage of gaming revenues pursuant to a slot lease, or other similar, agreement based upon the performance of those gaming devices. In such agreements, slot machines are leased to a tribe, placed on the casino floor and the gaming manufacturer or lessor receives a percentage of revenue from play of the machine(s). There is usually no involvement in the casino operation beyond providing the machines. Thus, there is no management of the gaming operation.

On whether there should be a definition regarding acceptable compensation to a management contractor, we feel that is currently defined in IGRA as stated in 25 U.S.C. § 2711(c).

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NIGC Regulation

Title

Comment

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514

Fees

We agree with the Commission on changing fees to a fiscal year. A fiscal year calculation would be consistent with the gaming operation's accounting calendar making it easier to base fees. We also agree that fingerprinting processing fees should be included as part of the total revenue collected by the Commission and be reviewed on an annual basis and, if necessary, adjust the fingerprint processing fee accordingly. Finally, we agree that the Commission should utilize a type of "ticket" system to part 514 so that an NOV would only be issued in instances of gross negligence or wanton behavior, or in a dollar amount that allowed the tribe to reap an economic benefit from its failure to pay in a timely manner.

531

Collateral Agreements

The current definition of management contract includes collateral agreements if they provide for management of all or part of a gaming operation. Since the Commission reviews and approves management contracts, which by definition include certain collateral agreements, then such collateral agreements must be included in the Commission's review *and* approval process. The Commission cannot ignore the cumulative affects of collateral contracts that could violate the sole proprietary and other provisions of IGRA, as well as, NIGC regulations pertaining to a ceiling on management contract payments.

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NIGC Regulation

Title

Comment

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533

Approval of Management Contracts

We agree the Commission should clarify the trustee standard and add that two grounds for possible disapproval under section 533.6(b) are that the management contract: did not meet the submission requirements of the 25 CFR part 522, or does not contain the 25 CFR part 531 requirements.

537

Background investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibilities for, a Management Contract

It appears quite clear that pursuant to 25 USC § 2711(d) the Chairman shall not approve “any contract if the Chairman determines that – \*\*\* (4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.” A trustee should only approve such a contract if it knows the background information of the pertinent person(s) operating under such management contract with a tribe. Otherwise, such trustee could be in violation of its fiduciary duty to the tribe. It seems that any confusion in part 537 about whether a management contractor should be required to submit background information could be clarified in 25 CFR part 537.1(a) by either deleting “class II gaming” or adding “class III” after “class II.”

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NIGC Regulation

Title

Comment

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542

Class III Minimum Internal Control Standards

If the Class III MICS are to be revised, the revision process should focus on defining regulatory goals and minimum standards, rather than attempting to dictate specifically how a gaming operation meets those regulatory goals and minimum standards. In many cases, the existing NIGC MICS do not set forth regulatory goals and minimum standards, but rather contain detailed policies and procedures that require gaming operations to meet what often are unstated regulatory goals by following one particular means of implementing the unstated regulatory goals. The MICS instead should instead set goals like reducing the potential for unauthorized transactions through minimum standards such as requiring the involvement of multiple employees from independent departments to authorize a transaction and requiring backup documentation (electronic, paper, or both) that provides a clear audit trail for the transaction.

556 (1)

Background Investigation for Licensing

The “pilot project” should be formalized by regulation and made available to all tribes. The data gathered should also be made available to tribal regulators in the form of a secured database.

NIGC Regulation	Title	Comment
556 (2)	Finger printing for Non-Primary Management Officials or Key Employees	We believe that allowing Tribal Gaming Offices to submit fingerprint cards for vendors, consultants and other non-employees would be a beneficial change. We would support the promulgation of a regulation allowing this process.
559	Facility License Notifications, Renewals, and Submissions	AIGA would like to formally request a report on the usefulness of this process from the time of its implementation
571.1-571.7	Inspection and Access	<p>The Commission requested comment on whether it should revise its regulations in 25 C.F.R. §§ 571.5 and 571.6 to clarify that the Commission has the right to access records at off-site locations, noting that the Commission has been denied access to such records “at times” in the past. AIGA sees no need for such a revision, as the Commission’s right to require a gaming operation to obtain such records and to make them available to the Commission is clearly set forth in the existing regulations.</p> <p>25 C.F.R. § 571.5 provides that the “Commission’s authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records” concerning Class II gaming and requires the representative to provide official identification when doing so. 25 C.F.R. § 571.6 provides that, after a Commission representative provides proper identification, “a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.”</p>

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NIGC Regulation

Title

Comment

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571.1-571.7

Inspection and Access -continued

That same regulation further provides:

“If such papers, books, and records are not available at the location of the gaming operation, the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.”

25 C.F.R. § 571.6(b). If a gaming operation fails to comply with the requirements of 25 C.F.R. § 571.6(b), the Commission should exercise its considerable enforcement powers under the I.G.R.A. to compel compliance—not draft another regulation or revise an existing regulation.