

February 7, 2011

Via Electronic Mail: reg.review@nigc.gov

Lael Echo-Hawk, Counselor to the Chair
National Indian Gaming Association
1441 L Street, NW, Suite 9100
Washington, D.C. 20005

RE: Comments on Possible Revisions to NIGC Regulations

Dear Ms. Echo-Hawk:

On behalf of the Pueblo of Taos Gaming Commission, I wish to thank the National Indian Gaming Commission (NIGC) for its efforts for meaningful tribal consultation and to improve the government-to-government relationship with Indian Pueblos, tribes and nations. It is a welcome and much-needed change, particularly coming from a Federal agency that has such influence upon a critical area of tribal economic development and self-sufficiency.

Pursuant to the November 18, 2010 Federal Register Notice of Inquiry and Request for Information, the Taos Pueblo Gaming Commission submits its comments on the proposed regulation revision and the process to be used for conducting such revision.

Please contact Ms. Yvonne C. Trujillo, Executive Director, at (575) 737-9520 should you have any questions. Thank you again for the opportunity to comment on these important regulation changes.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lujan". The signature is stylized with a large initial "L" and a horizontal line extending to the right.

Lawrence Lujan, Chairman

Attachment

Regulation Section	Proposed Amendment	Taos Pueblo Gaming Commission Comments	Priority for Amending
Part 502	Definition of New Revenues – Allowable Uses	TPGC agrees that the definition of “Net Revenues” for purposes of allowable uses under the IGRA should consider cash flow of the operation and the overall financial integrity of the gaming operation before funding other tribal programs. This would take into account loan payments, gaming reserve funding, and depreciation. However, we must make the point that the definition of “net revenues” for purposes of allowable uses is different than the definition of “net win” as defined under the Compact between the State of New Mexico and the Tribes for purposes of calculating the revenue sharing amounts based on Class III gaming revenues.	Not a priority but would be helpful
Part 502	Definition of Management Contract – Expand to Include Slot Lease Agreements	The definition of “management contract” should not be expanded to include slot lease agreements that are based on a percentage of gaming revenues. Often these types of agreements are the only way for a casino to get certain types of machines and vendors may decline to offer these agreements if they are required to undergo the more extensive management contractor approval process. Also this could affect negotiated agreements already in place. However, NIGC should still offer technical assistance and review of slot lease agreements voluntarily submitted by a Tribe since the Tribe may be seeking another opinion on the legality or appropriateness of the lease terms.	Yes – provides clarification
Part 514	Fees – Late Payment Penalties	Issuance of a Notice of Violation for late payment of fees is too severe in most cases, especially if the late submission is due to a minor issue that the Tribe is trying to remedy. A citation system is more appropriate for late submissions with an NOV being issued for only the most severe violations. We agree with consideration of gross negligence, willful and wanton behavior and the dollar amount owed when looking at issuing an NOV for late payment of fees.	Yes
Part 518	Self-Regulation of Class II	No comment – Currently Class III gaming only	
Part 523	Review of Existing Ordinances	TPGC agrees with elimination of this regulation.	Not a priority but would be helpful
Part 531	Management Contracts – Collateral Agreements	While Taos Pueblo does not operate its casino under a management contract, TPGC agrees with NIGC approval of collateral agreements. This will provide additional protection for a Tribe to ensure that the cumulative effect of the management contract and collateral agreements does not violate the sole proprietary requirements and that the Tribe is not being taken advantage of.	Not a priority but would be helpful
Part 533	Approval of Management Contracts – Additional Grounds for Disapproval	While Taos Pueblo does not operate its casino under a management contract, the TPGC agrees with adding the two additional grounds for disapproval. This provides additional grounds to ensure that terms of gaming management contracts adequately protect a Tribe and provide the maximum return to the Tribe.	Not a priority but would be helpful
Part 537	Management Contracts - Background Investigations	While Taos Pueblo does not operate its casino under a management contract, the TPGC agrees with additional clarification of what is required for background investigations for management contractors.	Not a priority but would be helpful

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Various sections	Proceedings before the NIGC	TPGC agrees that there needs to be a clearly defined process and procedural rules for proceedings before the NIGC.	Yes
Part 542	Class III MICS	Taos Pueblo adopted the NIGC MICS as a cost and time effective way of establishing standards for a small casino operation. The TPGC does not recommend that the regulation be struck since it does provide a "standard" for gaming operations to refer to. The New Mexico Compact requires tribes to have standards in place that are at least as restrictive as the NIGC MICS. Changing the term to "guidelines" may not have an effect since the Pueblo is required to have minimum standards so the Pueblo would still need to follow the NIGC "guidance" even if termed "recommended guidance."	Not a priority but would be helpful
Part 543	Class II MICS	No comment – Currently Class III gaming only	
Part 547	Class II MICS – Equipment	No comment – Currently Class III gaming only	
Part 556	Background Investigations for Licensing	Pilot Program – should be formalized as currently established as most tribes participating have shown that the process and procedures work. Do not recommend additional procedures that may slow down processing of the background investigation or result in more work for gaming commissions.	Yes
Part 556	Fingerprinting for Non-Primary Mgmt Officials or Non-Key Employees	It would be helpful if NIGC could provide fingerprinting for non-PMO and non-Key Employees as it allows tribes to access information on all individuals who have access to casino areas. Currently the TPGC uses the New Mexico State Gaming Control Board to process fingerprints for "Key Employees" (who are defined by TPGC regulation and may include positions other Commissions do not consider as "Key Employees."). However, with limited state resources and a change in administration, this alternative avenue may not always be available. TPGC feels that if it expands its requirement to fingerprint vendors, consultants and other non-employees with access to the casino operation, that this should be an "option" that is available through NIGC. The main concern is for the TPGC to have good information about who has access to the casino and expanding fingerprinting to include wider array of individuals as determined by the TPGC would be valuable.	Yes
Part 559	Facility License Notification, Renewals and Submissions	While TPGC understands the need to protect the environment and the public health and safety, the requirements of Part 559 and even the suggested "guidance EPHS" survey impose more stringent burdens on smaller casino facilities like Taos Mountain Casino. While the TPGC takes its responsibilities in ensuring casino and patron safety seriously, it may have to consider going to 3 year facility licenses from the current 1 year facility license because of the burden on the TPGC to ensure that all of the standards and requirements are met in order to timely issue a renewed facility license.	Not a priority but would be helpful

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Part 571.1-571.7	Inspection and Access	<p>There have been instances where tribal ordinances or regulations allow the gaming commission to inspect and access all areas where records pertaining to gaming activities on tribal lands (including Class II gaming) and access has been denied. While this regulation applies to Class II gaming and other matters necessary to carry out the duties of NIGC, it would be helpful if the regulation was clarified to apply to off-site locations owned or maintained by third parties. Whether this would assist tribes in gaining access to off-reservation locations for records pertaining to Class III gaming activities is unclear since this is an area regulated by the Compacts.</p>	Not a priority but would be helpful
Part 573	Enforcement	<p>TPGC agrees that a new regulation should be developed to allow withdrawal of an NOV after it has been issued. Often the tribe will continue to work towards resolution of the issue that resulted in an NOV. If this occurs, and the NIGC deems that proceeding under the full NOV process is unnecessary, then there should be a mechanism to allow the NOV to be withdrawn. Currently, the only process in place is the use of a Settlement Agreement which suspends the NOV enforcement process temporarily while the tribe takes corrective action. However, the NOV is still in place, and has been published and remains on the list permanently. This, in and of itself, is punitive in nature, particularly if the NOV was issued for something like failing to timely submit its fees to NIGC. However, the TPGC feels that the entire NIGC Commission should be involved in the withdrawal decision rather than leave it to the discretion of the Commission Chairwoman in order to have a fair discussion of the issue. But this is provided that the full Commission review will be done as quickly as possible to ensure that the tribe is not unduly or additionally harmed by a delay in deciding to withdraw the NOV.</p>	Yes
	A. Use of Tribal Advisory Committee (TAC) - Process for Amending Existing or Adding New Regulations; Developing Policy	<p>While a Tribal Advisory Committee is helpful to the NIGC when amending its regulations because it allows input from subject matter experts, TPGC has concerns about appointment and representation on the TAC. If there was a way to ensure balanced representation, then a TAC approach would be helpful. However, sometimes drafting by Committee is time and resource intensive. So the TAC approach should only be used for the larger or more contentious regulation revisions or policies.</p> <p>For purposes of amending the regulations and developing policy, the standard notice and comment rulemaking process works because it allows TPGC to submit comments directly to NIGC. However, there is a concern about whether NIGC receives, reviews and considers these comments based on past experiences of TPGC in submitting comments and lack of acknowledgement by NIGC. Another suggestion would be to have regional consultation meetings on larger regulation revisions. Or consider using the regional NIGC field representatives to meet and work with all of the tribes in their region to submit comments that are specific to the tribes and issues in that region. TPGC also recommends continuing with the one-on-one consultations with the Tribes and their commissions as a way to get full tribal input.</p>	Yes

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	B. Sole Proprietary Interest Regulation	TPGC feels that it would be helpful to have a regulation that allows for voluntary submission of a document or series of documents for NIGC review and determination as to whether it violates the "sole proprietary interest" requirements. This provides additional protection for a tribe when considering new agreements or when reviewing existing agreements. Such a regulation will also provide guidance on what constitutes violation of the sole proprietary interest provision. Having this up front may help tribes in developing agreements and prevent getting into business arrangements that violate the provision.	Yes
	C. How NIGC Communicates with Tribes	It is good that the NIGC recognizes the government to government relationship it has with Tribes and is mindful of the respectful process for communicating with tribes – which is generally to the tribal leadership's office. However, as a practical matter, often the amount of correspondence received in the tribal leadership's office can result in delay in information being timely routed to and received by the tribal gaming commissions. The easiest approach is to send all "formal correspondence" to the tribal leadership's office with a copy sent as the same time to the respective gaming commission. Similarly with communications such as email correspondence – the original email could be to the tribal leadership with a "cc" to the gaming commission. TPGC does not believe that a tribal council resolution is needed to establish a point of contact for formal correspondence and communication with the NIGC. This would be unduly burdensome and unnecessary. With regard to what is formal correspondence, any correspondence sent by the tribe's leadership to NIGC should be considered formal correspondence and in line with the government-to-government relationship between NIGC and the tribes. However, there is correspondence and communication between the NIGC and the gaming commissions which are technical in nature and wouldn't be considered formal correspondence. In some instances, that correspondence may not need to go to the tribal leadership. TPGC is unsure that a new regulation will ensure consistency on how to treat correspondence and may make things more complicated.	Yes
	D. Buy Indian Act	TPGC feels that the NIGC should give preference to qualified Indian-owned businesses when purchasing goods or services. However, NIGC will need to consider any conflict of interest issues that may arise if it purchases goods or services from a tribe or tribal businesses that it regulates.	Yes
Parts 501, 503, 513, 515, 517, 522, 531, 535, 571.8 to 571.11, 571.12 to 517.14, 575		No comment	