

# Upper Sioux Community Gaming Commission

Office of Regulation and Enforcement

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Friday, February 11, 2011

Ms. Tracie Stevens, Chairwoman  
National Indian Gaming Commission  
1441 L. Street, NW, Suite 9100  
Washington, DC 20005

Dear Chairwoman Stevens,

We sincerely appreciate the opportunity to provide comments in reference to the Notice of Inquiry published in the Federal Register on November 18, 2010.

As other Tribes and organizations have commented we will follow a similar format to put forth our comments using the same alpha-numeric identifier that was assigned to it within the NOI and those issues that we feel are a priority at this time.

A. Part 502 – Definitions of this Chapter

Net Revenues – Management Fee

We feel that the language should be revised to be consistent with the General Accepted Accounting Principles (GAAP), however, we encourage the NIGC to continue further dialogue with Tribes and with Certified Public Accountants on this issue. This should be a low priority.

Net Revenue – allowable uses.

We do not believe that changing this definition is necessary and view this as a low priority. We further believe that the tribe has the responsibility to determine its net revenue uses based on their approved Tribal Allocation Plan without further oversight by the NIGC. Should this be considered, we would recommend that standard notice and comment would be appropriate for this proposal.

Management Contract

We strongly disagree that this definition should include language including slot lease agreements, loan or development agreements or non-gaming contracts. The tribe

should be the one to determine its own agreements as sovereign nations. Currently, any agreements are stringently reviewed by our Tribal Attorney before they are entered into. Therefore, we feel that non-management contracts should be tribal governmental obligations. If the NIGC decides to move forward on this initiative, we would strongly encourage the appropriate notice and comment standards for this issue. This should be a low priority.

#### B. Part 514 – Fees

We feel that changing fee assessments from calendar year to coincide with a tribe's fiscal year is a low priority. Further, tribes have different fiscal years and some operate on a calendar year basis, and this could hold the potential to be difficult for the NIGC to track every tribe's cycle.

##### Gross Gaming Revenue

We believe that changing the definition to be consistent with GAAP would be a good business practice; however, we don't believe that changing it for the purpose of calculating NIGC fees would need to be consistent with GAAP. We consider this a low priority.

##### Fingerprint Fees

No comment.

##### Notice of Violation (NOV)

We strongly agree that a process should be developed and implemented to address late fee filings, whether that includes an automatic percentage penalty or not. The NOI mentioned issuing a "ticket" to address these types of infractions, which we support. We believe that the issuance of a NOV should be for gross negligence, wanton behavior and other very serious infractions. Although we have not had the experience of receiving a NOV, we consider this a high priority. We also feel that any issues that would be raised in Part 514 be given the standard notice and comment process.

#### C. Part 518 – Self-Regulation of Class II

We have no comment other than to note that we understand that the regulation is burdensome to those tribes that have Class II facilities and would encourage the NIGC to work with those tribes to address those issues within 518.

#### D. Part 523 – Review and Approval of Existing Ordinances or Resolutions

We agree with the NIGC's assessment that this is obsolete and should be eliminated. The standard notice and comment rulemaking would be sufficient. Low priority.

#### E. Part 531 – Management Contracts

##### 1. Part 531 - Collateral Agreements

We believe that tribes should have the option to request review of collateral agreements with the NIGC for assistance as they deem necessary. We would recommend the standard notice and comment process. Low priority.

##### 2. Part 533 – Approval of Management Contracts

We do not feel that this needs revision. Low priority. Standard notice and comment rulemaking should apply.

##### 3. Part 537 – Backgrounds on Management Responsibility for, a Management Contract

No comment. Standard notice and comment rulemaking should apply.

#### F. Proceedings Before the Commission

We do not agree that this regulation needs to be revised to make it more cumbersome and legally challenging. As it stands, we believe that the current process is adequate. If this regulation is pursued for revision, then we would strongly urge the use of a Tribal Advisory Committee. Low priority.

#### G. MICS & Technical Standards

##### 1. Part 542 – Class III Minimum Internal Control Standards

We strongly disagree that this rule should be struck. We rely on the MICS to provide the basic groundwork for our MICR and Internal Control Standards. Although the courts ruled that the NIGC does not have the authority over Class III MICS, we do not believe that this relieves the NIGC from providing the tribes guidance (government to government) through the MICS. In addition, we rely on the checklists and audit guidelines, without these, we feel that risks would go un-noticed. Further, it would handicap tribes that have the MICS tied to their compacts and gaming ordinances. This should be a high priority. A TAC should be used to participate in the revision process.

The TAC should be separate from a Class II MICS TAC. The TAC should lay out the revisions and prioritize them for the commission to review and then submit those to tribes for the standard notice and comment rulemaking process.

## 2. Part 543 – Class II Minimum Internal Control Standards

We strongly agree that those tribes that operate Class II facilities be given the opportunity to provide comment on the proposed rule before public meetings. We also agree that Part 542 and 543 should be a high priority. The aforementioned comment regarding the TAC in Part 543 above should also apply to this issue.

## 3. Part 547 – Minimum Technical Standards for Gaming Equipment Used with the play of Class II Games.

We believe that this has been established to develop technical standards and feel that any revision would best be served by tribal representatives that have the experience and technical knowledge to work on any revision to these standards. As this would naturally tie into the Class II MICS, we also feel this to be a high priority.

## H. Backgrounds and Licensing.

### 1. Background Investigations for Licensing.

We have been enrolled in the pilot program and feel that it should be formalized into the regulations. This is a low priority and we feel that the standard notice and comment rulemaking process should apply.

### 2. Fingerprinting for Non-Primary Management Officials or Key Employees.

Although we support this initiative, we strongly want to make the point clear that it be “at the tribe’s discretion” or at the discretion of the TGRA. We do not feel that the NIGC should necessarily dictate who should or should not be fingerprinted. From my experience dealing with vendors, this could be problematic and delay services and products to the property if it becomes a regulatory standard. We would prefer a guidance policy on this and not make it a regulation. Tribes can then develop their own standards. This is a low priority.

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

We do not have an issue with this standard. This is a low priority issue. No further comment.

## J. Sections 571.1 – 571.7 – Inspection and Access

We do not object to this standard being revised for clarification within these sections. This should be a low priority.

## K. Part 573 – Enforcement

We do not feel that an additional regulation need be developed for the withdrawal of an NOV. This should strictly be an internal NIGC policy. Withdrawal should remain at the sole discretion of the Chairwoman after obtaining evidence that such a withdrawal is warranted. This is a low priority.

## V. Potential New Regulations

### A. Tribal Advisory Committees

We believe a policy should be developed for Tribal Advisory Committee's versus a regulation. Said policy should detail how the TAC functions, its ethics, how it is selected, etc. Once a policy is developed then the standard notice and comment rulemaking should apply. This is a medium priority.

### B. Sole Proprietary Interest Regulations

We strongly support this initiative to develop regulations that would provide for the tribe to request the NIGC's review of any potential violations of sole proprietary interest and make a determination. This would be very beneficial and would protect tribes. It should however, be mindful of tribal sovereignty in making its own business decisions. We will give this a medium priority. Standard notice and comment rulemaking should apply.

### C. Communication Policy or Regulation identifying when and how the NIGC communication with tribes.

We strongly urge the Commission to provide communication to BOTH the tribal council and to the TGRA/TGC. This way there will be no "stove piping" of information that may not be necessarily passed on in a timely manner and deadlines may be missed for "comments" or other issues. This should be a high priority.

### D. Buy Indian Act.

We believe this should be an internal policy issue with the NIGC and not require additional regulation. This is a low priority.

VI. Other Regulations

Part 501, Part 503, Part 513, Part 515, Part 517, Part 522, Part 531, Part 535.

No comment.

Sections 571.8-571.11 – Subpoenas and Depositions.

No Comment.

Sections 571.12-571.14 – Annual Audits.

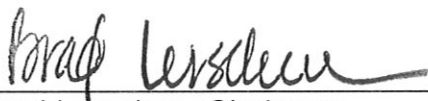
No comment.

K. Part 575 – Civil Fines.

We agree that this section does not need revision.

In closing, we want to thank the Commission for allowing the opportunity to provide comments on the aforementioned issues and look forward to continue to work with the Commission and our Regional Director, John Guerber and our Field Agent, Benjamin Buck, who have provided invaluable service to our Gaming Commission.

Sincerely,



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Brad Lerschen, Chairman  
Gaming Commission  
Upper Sioux Community