

NIGC – Notice of Inquiry for Regulation Review

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Why Regulatory Review?

- IGRA provides for the enactment of appropriate regulations to implement the Act.
- Executive Order 12,866 “Regulatory Planning and Review” and the Regulatory Flexibility Act require every Agency to submit a Semi-Annual Regulatory Review to the Federal Register in April of each year.



Consultation!

- Executive Order 13,175 “Consultation and Coordination with Indian Tribal Governments”
- Executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.



Consultation!

Executive Order 13,175 “Consultation and Coordination with Indian Tribal Governments”

Section 3 – Policymaking Criteria

- (c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:
- (1) encourage Indian tribes to develop their own policies to achieve program objectives;
 - (2) where possible, defer to Indian tribes to establish standards; and
 - (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.



What is a Notice of Inquiry?

- Notice of Inquiry (NOI) is a tool used to solicit comments and feedback from constituents regarding the NIGC regulatory review agenda **before** we begin drafting rules
- **3 Primary Questions**
 - What?
 - When?
 - How?



NOI – Process: 8 Consultations

California – San Diego (Sycuan Band of the Kumeyaay Indians)	January 11, 2011
California – Cache Creek (Yocha Dehe Wintun Nation)	January 12, 2011
Northwest – Shelton, WA (Squaxin Island Tribe)	January 14, 2011
Oklahoma – Norman, OK (Chickasaw Nation)	January 18, 2011
Southwest – Santa Ana Pueblo	January 20, 2011
Washington, DC	January 24, 2011
Great Plains – Rapid City	February 1, 2011
East – Hollywood, FL (Seminole Tribe of Florida)	February 3, 2011



NOI – Process

- NOI Published Nov. 18, 2010
- Comment period closes FEB. 12, 2011
*(86 day comment period)

All written comments & consultations transcripts will be posted on the Tribal Consultation page of the NIGC website at www.nigc.gov.



NOI – What Regulations?

**These are suggestions ONLY!
The Commission has taken no
position on which regulations
should be revised.**



NOI – What Regulations?

NOI: Section IV

Part 502 – Definitions

- (1) Net revenues
- (2) Management contract

Part 514 – Fees

- (1) “Calendar year” v. “fiscal year”
- (2) GAAP definition of “gross gaming revenue”
- (3) Fingerprinting processing fees
- (4) Late payment system for late fee submittals in lieu of enforcement action



NOI – What Regulations?

NOI: Section IV

Part 518 – Self Regulation

“burden” v. “benefit”

Part 523 – Review and Approval of Existing
Ordinances or Resolutions
Obsolete?



NOI – What Regulations?

NOI: Section IV

Part 531 – Management Contracts: Collateral Agreements

- Review Collateral Agreements for sole proprietary
interest concerns?

Part 533 – Management Contracts: Approval of Management Contracts

- Add disapproval for contracts not submitted in
accordance with submission requirements; or
- Contract does not contain the regulatory requirements
for approval



NOI – What Regulations?

NOI: Section IV

Part 537 – Management Contracts: Background investigations

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

Proceedings before the Commission

- Should the regulations contain more detailed procedural rules?



NOI – What Regulations?

NOI: Section IV

MICS and Technical Standards

- What to do with Class III MICS?
- What to do with current draft of Class II MICS?
- What to do with technical standards regulations? Do they need updated? Revised?

Pilot program for background investigations for licensing

- Should the pilot program be formalized into regulation?



NOI – What Regulations?

NOI: Section IV

Fingerprinting for Non-Primary Management Official or Key Employees

- Option to allow Tribes, at their discretion, to submit fingerprint cards to NIGC for vendors, consultants and other non-employees?

Part 559 Facility License Revise?



NOI – What Regulations?

NOI: Section IV

Inspection & Access to Records

- Clarify the authority of the NIGC to access records at off-site locations, including those owned by 3rd parties?

Enforcement

- Should the Chair have the discretion to withdraw an NOV?



NOI – What Regulations?

NOI: Section V – Potential New Regulations



NOI – What Regulations?

NOI: Section V – Potential New Regulations

- Tribal Advisory Committees or other method to include tribal comments when drafting a regulation.
 - How to select members?
 - When should a committee or other mechanism be put into place?



NOI – What Regulations?

NOI: Section V – Sole Proprietary Interest

- Regulation to identify when Sole Proprietary Interest is violated & provide a process for Tribes, at their option, to submit documents to NIGC for review and determination?



NOI – What Regulations?

NOI: Section V – Communication Policy

- How should the NIGC communicate with Tribes?
 - Tribal Council/Executive Branch
 - Gaming Commissions
 - TGRA
 - Formal v. informal communication



NOI – What Regulations?

NOI: Section V – Buy Indian Act

- Require the NIGC to give Indian preference to qualified Indian owned businesses when purchasing goods or services as defined by the “Buy Indian Act”



NOI – What Regulations?

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should be revised.**



NOI – When? & How?

In what order to we revise the regulations?

By what method?

- Tribal Advisory Committee
- Notice of Proposed Rulemaking and written comment
- Negotiated rulemaking
- Separate tracks?
- Other?



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NOI – Process

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- Send Comments to: reg.review@nigc.gov



NOI – Commitment

- Every comment received will be reviewed and considered.
- The regulatory review agenda will be accompanied with an explanation for how the agenda was set.
- Decision-making process will be transparent.



NOI – Process

- Agenda finalized in April, 2011
- Substantive work begins!



Questions?

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