

**Response to the National Indian Gaming Commission's Notice of Inquiry and
Request for Information; Notice of Consultation**

**Provided by the Port Gamble S'Klallam Tribal Gaming Agency, Kingston,
Washington
January 14, 2011**

A. Part 502 (1) Net Revenues

- (1) Should the Commission consider definitions for the following two terms: Net Revenues – management fee; and Net Revenues – allowable uses:

The Port Gamble S'Klallam Tribal Gaming Agency recommends a new definition for Net Revenues – allowable uses.

- (a) Should the language used in the Commission's definition of Net Revenue be revised to be consistent with GAAP, i.e., "Net Income plus Management Fee"?

In this instance, the General Accepted Accounting Principals (GAAP) is recommended by the Port Gamble S'Klallam Tribal Gaming Agency.

- (b) Net Revenues, allowable uses: Should the Commission consider adding a new definition for Net Revenues – allowable uses that is based on cash flow? For example, should the new definition be "Cash flow" equals "Net Income plus depreciation minus principal loan payment and reserve fundings"?

The Port Gamble S'Klallam Tribal Gaming Agency recommends tribal parties should consider the overall financial integrity of the gaming operation before funding other tribal programs.

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

No. The definition for a Management Contract is very vague. The NIGC does not define what percentage, and is this a one time fee or will it be renewable? This may slow the entire licensing process with the NIGC involvement in all contracts.

B. Part 514 – Fees

The Commission is interested in receiving comment on whether the Commission should consider revising this part to base fees on the gaming operation's fiscal year. Currently, the fee is calculated based on the calendar year.

No comment on fiscal year vs. calendar year.

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

The Port Gamble S’Klallam Tribal Gaming Agency believes NIGC form is already straightforward.

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

The Port Gamble S’Klallam Tribal Gaming Agency would like further clarification on this matter.

Could the costs to run a Tribal Gaming Agency also be deducted because we are a requirement?

Should the commission consider a late payment system in lieu of a Notice of Violation (NOV) for submitting fees late?

Port Gamble S’Klallam Tribal Gaming believes a late payment system would be better due to the serious nature and implication of a NOV.

Should the Commission consider adding 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?

The Port Gamble S’Klallam Tribal Gaming Agency looks forward to discussion on this matter and its possible implementation.

C. Part 518 – Self-Regulation of Class II

The NIGC has heard that this regulation is overly burdensome to tribes seeking to obtain certification and that the burden of completing the process significantly outweighs the benefits gained from self-regulation. The Commission is seeking comment whether this part should be revised.

The Port Gamble S’Klallam Tribal Gaming Agency prefers the existing relationship with the NIGC.

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

Should the Commission consider eliminating part 523 as obsolete? The regulation applies only to gaming ordinances enacted by tribes prior to January 22, 1993, and not submitted to the Chairwoman.

The Port Gamble S'Klallam Tribal Gaming Agency believes this regulation should be eliminated.

E. Management Contracts

(1) Part 531 Collateral Agreements

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

No comment.

(2) Part 533 - Approval of Management Contracts

This part outlines the submission requirements for management contracts. While the Commission has disapproved management contracts for a variety of reasons including the trustee standard, the 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.

No comment.

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

This part addresses the background investigation submission requirements for the management contractor. Although minor revisions were made in 2009, there appears to be some confusion about whether the contractor should be required to submit the Class II background information when the contract is only for Class III gaming. IGRA does specify approval of Class II and Class III management contract as a power of the Chairwoman.

No comment.

F. Proceedings before the Commission

The NIGC is considering amending the regulations that govern appeals of the Chairwoman's actions on ordinances, management contracts, notices of violations, civil fine assessments, and closure orders. 25 CFR part 519; 25 CFR part 524; 25 CFR part 539; 25 CFR part 577. Except for some minor changes in 2009, these parts remain unchanged for their original adoption in 1993.

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?

No comment.

G. MICS and Technical Standards

***(1) Part 542 – Class III Minimum Internal Control Standards**

Comment is requested from the tribal gaming community and other interested parties regarding whether the NIGC's Class III MICS have a positive impact on the industry, and if changed to a guideline, what, if any, impact that might have on tribal gaming?

If the regulation is struck, how would such action impact the tribal regulators and operators?

The Port Gamble S'Klallam Tribal Gaming Agency asks what would happen to our External Audit since they are audited to the MICS?

Recommended Guidelines could always be added to our internal MICS, and we support having recommended guidelines.

The Tribe and State co-regulate Class III, with the Tribe being the primary regulator, through the Compact. The Tribe is the primary regulator for class II using the NIGC MIC's as the standard.

*However, there is some confusion because of Part 542 and the fact that the NIGC fees are based on both Class II and **Class III** income. **This discrepancy needs to be clarified.***

It is the opinion of the Port Gamble S'Klallam Tribal Gaming Agency that Part 542 should be struck.

***(2) Part 543 – Class II Minimum Internal Control Standards**

Should tribal gaming regulatory authorities be provided an opportunity to provide comment on the proposed rule before public meetings? Should comment be sought from accounting practitioners?

Tribal Gaming regulatory authorities should be provided an opportunity to provide comment on the proposed rule before public meetings.

What is the reason for seeking comments from accounting practitioners?

Rather than the standard notice, we would like the TGA Directors to be notified by e-mail when comments are desired in a timely manner. This would eliminate any need for a Tribal Advisory Committee.

(3) Part 547 – Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games

Should NIGC start with the current proposed draft?

Can you explain why Part 547 needs revision?

The Port Gamble S’Klallam Tribal Gaming Agency believes the Commission should start with current draft if revisions are needed.

Rather than the standard notice, we would like the TGA Directors to be notified by e-mail when comments are desired in a timely manner. This would eliminate any need for a Tribal Advisory Committee.

H. Backgrounds and Licensing

(1) Part 556 – Background Investigations for Licensing

The Commission is seeking comment on whether regulations should be promulgated to formalize the pilot program.

The Port Gamble S’Klallam Tribal Gaming Agency agrees the pilot program should become a 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 fingerprints cards to the Commission for vendors, consultants, and other non-employees that have access to the gaming operations?

Yes, the Port Gamble S’Klallam Tribal Gaming Agency strongly agrees that we should have the ability to be able to submit fingerprint cards to the NIGC for Class III vendors, consultants, and other non-employees that have access to the gaming operations.

Rather than the standard notice, we would like the TGA Directors to be notified by e-mail when comments are desired in a timely manner. This would eliminate any need for a Tribal Advisory Committee.

We don’t believe a suitability Report submission would be necessary in this instance.

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

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

We are comfortable with the current regulation.

Rather than the standard notice, we would like the TGA Directors to be notified by e-mail in a timely manner when comments are desired. This would eliminate any need for a Tribal Advisory Committee.

J. Sections 571.1 - 571.7

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?

We would like more clarification on this matter.

***K. Part 573 – Enforcement**

Should NIGC promulgate a regulation concerning withdrawal of a Notice of Violation (NOV) after it has been issued?

An NOV is the last step in a process. If you review the matter with the tribe prior to issuing and NOV, there should be no reason to revoke. It should be the final outcome.

V. Potential New Regulations

***A. Tribal Advisory Committee**

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 member should be selected.

The Port Gamble S’Klallam Tribal Gaming Agency would like the TGA Directors to be notified by e-mail in a timely manner when comments are desired. This would eliminate any need for a Tribal Advisory Committee.

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?

No comment.

***C. Communication policy or regulation identifying when and how the NIGC communicates with Tribes**

Should the NIGC develop a regulation or include as part of a regulation a process for determining how it communicates with tribes?

*Communication should be to **all** parties via e-mail in a timely manner when comments are desired.*

The Port Gamble S’Klallam Tribal Gaming Agency would like the TGA Directors to be notified by e-mail in a timely manner when comments are desired and/or for rule changes.

We would much prefer this method over “formal communication” with regular mail. This would eliminate any need for a Tribal Advisory Committee.

Government to Government communication should be formal. If the NIGC is just talking about rule changes or comment requests then e-mail notification would be fine. The two forms of communication are totally different and must be handled appropriately.

D. Buy Indian Act

As an agency with regulatory responsibilities wholly related to tribes, the Commission seeks comment on whether it is appropriate to promulgate such a regulation.

*The Port Gamble S’Klallam Tribal Gaming Agency believes that if all things are equal (pricing, quality, availability, etc.), **and** there is no possibility of a conflict of interest due to the fact that the NIGC is an independent regulatory body, then we would agree with the Buy Indian Act.*