

NIGC –Regulation Review Agenda

reg.review@nigc.gov

202.632.7009



Consultation

- Tribal consultation meetings are between tribal governments and the federal government. Only tribes or their designees can attend and participate in these meetings. These meetings are not open to the public.



Consultation (cont'd)

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.



Regulatory Review – Process (cont'd)

- All consultations are transcribed.
- Written comments and transcripts are on NIGC website.



Commitment

- Every comment will be reviewed and considered.
- Any Proposed or Final Rule will include a summary of comments.
- Commission is committed to a clear and transparent process.



Consultation Agenda

Group 1

- *Part 559* – Facility License Notifications, Renewals, and Submission.

Group 2

- *Part 573* – Enforcement;
- *Subchapter H – Proceedings Before the Commission*
- *Part 519* – Service;
- *Part 524* – Appeals;
- *Part 539* – Appeals; and
- *Part 577* – Appeals Before the Commission.

Group 4

- *Part 556* – Background Investigations for PMOs and Key Employees;
- *Part 558* – Gaming Licenses for Key Employees and PMOs;
- *Part 537* – Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract.
- *Part 502* - Definitions



Consultation Agenda (cont'd)

Group 5

- *Part 518* – Self Regulation of Class II Gaming.



Group 1 Update

- *Part 514 – Fees*
 - Proposed Rule issued Oct. 11, 2011
 - Comment period closed Dec. 12, 2011
 - Final Rule approved at public meeting on Jan. 25, 2012. Published in Federal Register on February 2, 2012.
- *Part 523 – Review and Approval of Existing Ordinances or Resolutions*
 - Proposed Rule issued Oct. 12, 2011
 - Comment period closed Dec. 12, 2011
 - Repeal approved at public meeting on Jan. 25, 2012. Published in Federal Register on February 2, 2012.
- *Part 559 – Facility License Notifications, Renewals, and Submissions*
 - Proposed Rule will be published Jan. 31, 2012.
 - Comment period closes April 2, 2012.



Part 559 – Facility License Notifications, Renewals, and Submissions

- Proposed Rule:
 - Maintains submittal of information 120 days prior to issuance of license.
 - Tribe can request an expedited review confirming submittal of materials required under Part 559. Section 559.2(a)(1).
 - Chair responds to request within 30 days.
 - Tribe may request a written confirmation from the Chair.
 - Received comments that IGRA does not require an Indian lands determination. Proposed rule does not require NIGC to issue an Indian lands opinion.
 - Received comments that NIGC should clarify that Tribes issue facility licenses, not NIGC. Preamble clarifies this point.



Part 559 – Facility License Notifications, Renewals, and Submissions (cont'd)

- Proposed Rule:
 - Newly issued or renewed facility license sent to NIGC within 30 days of issuance. Section 559.3.
 - Not many comments on this part of the discussion draft.
 - Tribal attestation that Tribe has determined that construction and maintenance of facility and operation is conducted in manner which adequately protects environment, public health and safety. Section 559.4.
 - Comments generally supported this approach. Commentators noted that these areas were covered by other laws and agreements. Commentators further noted that other tribal, federal and state agencies may already regulate this area.



Part 559 – Facility License Notifications, Renewals, and Submissions (cont'd)

- Proposed Rule:
 - Notice to NIGC within 30 days when license is terminated or expires, or if a facility closes. Section 559.5.
 - Notice is not required to be sent to the NIGC for seasonal closures or temporary closures for less than 180 days. Section 559.5
 - Comments generally supported this approach. Some comments suggested shorter periods of time for temporary or seasonal closure.



Part 559 – Facility License Notifications, Renewals, and Submissions (cont'd)

- Proposed Rule
 - Repeals definition of “construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety” at 502.22 and incorporates it in 559.4.
 - Additional information to be provided if requested. Section 559.6.
 - Electronic submissions are accepted. Section 559.7.
 - Comment period closes April 2, 2012.



Group 2 Overview

- *Part 573* – Enforcement
- *Part 502* – Definitions
- NPRM published on December 27, 2011.
- Comment period closes on February 27, 2012.
- Regulations concerning proceedings before the Commission, including:
 - *Part 519* – Service,
 - *Part 524* – Appeals,
 - *Part 539* – Appeals, and
 - *Part 577* – Appeals Before the Commission.
- NPRM published on January 31, 2012.
- Comment period closes on April 2, 2012.



Part 573 – Enforcement

- Proposed Rule:
 - Voluntary compliance is goal of the Commission. § 573.1
 - Outlines a pre-enforcement action process:
 - Letter of concern or warning letter may be provided by NIGC. § 573.2(a)
 - Letter of concern provides available facts and information that may be a violation. § 573.2(b)(1)
 - Warning letter confirms an assessment of the matter and states necessary corrective action.
§ 573.2(b)(2)



Part 573 – Enforcement (cont'd)

- Proposed rule:
 - Pre-enforcement action process (cont'd):
 - Neither letter of concern nor non-compliance notice is “agency action”. § 573.2(b)
 - Either action may provide a time period for the respondent to come into voluntary compliance. § 573.2(d)
 - If recommended corrective action is not completed, enforcement action may be taken. § 573.2(d)
 - The pre-enforcement action process does not limit or constrain the Chair’s discretion to issue an NOV. § 573.2(e)



Part 573 – Enforcement and Part 502 – Definitions

- Proposed rule:
 - To supplement the amendments proposed to Part 573, the Commission proposed defining “enforcement action” to promote clarity to Part 573.
 - *Enforcement action* is defined as any action taken by the Chair under 25 U.S.C. 2713 against any person engaged in gaming, for a violation of any provision of IGRA, the regulations of this chapter, or tribal regulations, ordinances, or resolutions approved under 25 U.S.C. 2710 or 2712 of IGRA, including, but not limited to, the following: a notice of violation; a civil fine assessment; or an order for temporary closure.



Part 573 – Enforcement and Part 502 – Definitions

- Comment period for Parts 573 and 502 closes on February 27, 2012.



Proceedings before the Commission

- Proposed Rule:
 - Would repeal *Part 519 – Service, Part 524 – Appeals, Part 539 – Appeals, and Part 577 – Appeals Before the Commission.*
 - Creates a new Subchapter H – Proceedings before the Commission.
 - NPRM published on Jan. 31, 2012.
 - Comment Period closes on April 2, 2012.



Subchapter H

Proceedings Before the Commission

- Proposed Rule:
 - Subchapter H – Proceedings before the Commission
 - *Part 580* – Rules of general application in appeal proceedings before the Commission.
 - *Part 581* – Motions in appeal proceedings before the Commission.
 - *Part 582* – Appeals of disapprovals of gaming ordinances, resolutions, or amendments.
 - *Part 583* – Appeals from approvals or disapprovals of management contracts or amendments to management contracts.
 - *Part 584* – Appeals before a presiding official of notices of violation, proposed civil fine assessments, orders of temporary closure, the Chair's decision to void or modify a management contracts, the Commission's proposal to remove a certificate of self-regulation and notices of late fees and late fee assessments.
 - *Part 585* – Appeals to the Commission on written submissions of notices of violation, proposed civil fine assessments, orders of temporary closure, the Chair's decision to void or modify a management contracts, the Commission's proposal to remove a certificate of self-regulation and notices of late fees and late fee assessments.



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 580* – Rules of general application in proceedings before the Commission.
 - Definitions
 - Suspension, revocation, amendment or waiver of rules
 - Who may appear
 - Service
 - Burden of proof and standard of review
 - What will final decision contain
 - Effective date of final decision
 - Effect of lack of majority decision
 - Effect of appeal on Chair’s decision



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - Comments suggested that the section concerning who may appear before Commission was too restrictive. Proposed rule broadens standard of who may appear before Commission
 - Comments also expressed concern that the ex parte communications section could stifle otherwise lawful communications. Commission invites comment on how to address ex parte communications.
 - Comment suggested that filing of an appeal should stay the decision of the Chair. Proposed rule does not accept this change.
 - Comments suggested adding a section ensuring that parties have access to record before appellate proceedings. Other parts provide for record to be made available before filing of appellate brief.



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 581* – Motions in appellate proceedings before the Commission.
 - Motion for limited participation in ordinance appeals
 - Motion to intervene
 - Motion before a Presiding Official
 - Motion to supplement the record
 - Motion for reconsideration



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 581* – Motions in appellate proceedings before the Commission.
 - Comments suggested that 10 day time period for opposition briefs on motions for reconsideration was too short. Adjusted definition of day to exclude holidays and weekends if time period is less than 11 days.
 - Comments also suggested that the preliminary draft's standard for reply briefs was too restrictive. Proposed rule provides for reply briefs to motions for reconsideration.



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 582* – Appeals of disapprovals of gaming ordinances, resolutions, or amendments.
 - Who may appeal the disapproval of a gaming ordinance
 - How to appeal the disapproval of a gaming ordinance
 - Motions
 - Motion for limited participation
 - Copy of the record
 - When will decision be issued



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 582* – Appeals of disapprovals of gaming ordinances, resolutions, or amendments.
 - Very few comments on Part 582.
 - Comment suggested more clarity on limited participation. Proposed rule provides more process, including requiring motion for limited participation within 10 days of filing of appeal.
 - Comment also asked for clarity on whether Commission can refuse to grant appeal. Preamble clarifies that Commission cannot refuse to hear an appeal.



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 583* – Appeals from approvals or disapprovals of management contracts or amendments to management contracts.
 - Who may appeal the approval/disapproval of management contracts or amendments to management contracts
 - How to appeal the approval/disapproval of management contracts or amendments to management contracts
 - Motions
 - Copy of the Record
 - Decision – timing



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 583* – Appeals from approvals or disapprovals of management contracts or amendments to management contracts.
 - Very few comments on Part 583. Comment suggested clarity why there may be an appeal of an approval of management contract. Commission addressed that comment in preamble
 - Comment also asked for clarity on which motions will be allowed under this Part. Proposed rule clarifies which motions are allowed.



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 584* – Appeals before a presiding official.
 - Who may appeal
 - How to appeal
 - Motions
 - Motion to intervene
 - When the hearing will be held
 - Copy of the record
 - Hearing process
 - Confidential information
 - Process for settlement or consent decree
 - Objections to recommended decision from presiding official
 - When Commission will issue its decision



Subchapter H – Proceedings

Before the Commission

- Proposed Rule:
 - Comments requested clarification on role of presiding official. Proposed rule provides additional clarification of process.
 - Comments on whether party that has been denied limited intervention should be allowed to submit amicus brief. Proposed rule eliminates limited intervention, still allows for filing of amicus brief at discretion of presiding official.
 - Comment that on closure orders, decision should be made within 30 days on whether or not to make permanent. Proposed rule provides for hearing within 30 days unless waived by appellant and decision by Commission within 30 days of receiving recommended decision.
 - Comment that rule should explain how confidential information should be handled when there is more than one party. Proposed rule adds section addressing confidential information.



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - *Part 585* – Appeals to the Commission on written submissions
 - Who may appeal
 - How to appeal
 - Motions
 - Motions to intervene
 - Copy of the record
 - Decision – timing



Subchapter H – Proceedings Before the Commission

- Proposed Rule:
 - Comments requested clarification on if one party requests hearing before presiding official and one party requests to proceed under Part 585. The proposed rule addresses this issue.
 - Comment that on closure orders, decision should be made within 30 days on whether or not to make permanent. The proposed rule provides for a decision within 60 days.
 - Comment that draft is too restrictive on who may appeal. Tribe should be able to designate who may appeal. The proposed rule provides for tribe to designate representative.



Group 4 Overview

- Proposed rules
 - *Part 556* – Background Investigations for Primary Management Officials and Key Employees;
 - *Part 558* – Gaming Licenses for Key Employees and Primary Management Officials;
 - *Part 537* – Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract.
 - Published on December 22, 2011
 - Comment period closes on February 21, 2012.



Part 556 – Background Investigations for Primary Management Officials and Key Employees; Part 558 Gaming Licenses for Key Employees and Primary Management Officials– Pilot Program (cont'd)

- Proposed Rule:
 - Formalizes the “Pilot Program”.
 - *Part 556* includes all the procedures before a gaming license is issued.
 - Tribes seeking to license a Key Employee (KE) or Primary Management Official (PMO) notifies NIGC of background results within 60 days of starting work. § 556.6(b)(2).
 - Tribe with access to prior investigative materials from another tribe or NIGC may update those materials. § 556.4(b)



Part 556 – Background Investigations for Primary Management Officials and Key Employees; Part 558 Gaming Licenses for Key Employees and Primary Management Officials– Pilot Program (cont'd)

- Proposed Rule:
 - *Part 558* includes all the procedures after a gaming license is issued.
 - After Notice of Results (NOR), the tribe may license a KE or PMO. § 558.3(a)
 - Tribe notifies NIGC within 30 days of license. § 558.3(d)
 - NIGC has 30 days to request additional information. § 558.2(a)



Part 556 – Background Investigations for Primary Management Officials and Key Employees; Part 558 Gaming Licenses for Key Employees and Primary Management Officials– Pilot Program (cont'd)

- Proposed Rule:
 - *Part 558* cont'd:
 - NIGC notification within 30 days of receiving NOR. § 558.2(b)
 - If license issued prior to objection, licensee has right to notice and hearing. § 558.2(d)
 - Tribe must suspend license until hearing. § 558.4(b).
 - Following hearing, tribe notifies NIGC of decision. § 558.4(e)
 - If tribe does not license applicant, must notify NIGC and provide copy of eligibility determination and investigative report. § 558.3(c).



Part 537 – Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract

- Proposed Rule:
 - Provides discretion to reduce scope of background investigation and information to be furnished for any tribe, a tribally owned entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact.
- § 537.1(d)



Part 518 – Self Regulation of Class II Gaming

- Proposed Rule:
 - Shifts focus from the gaming operation to the tribal gaming regulatory agency.
 - Reduce submission of duplicative information.
 - Make certification accessible to all tribes while maintaining existing standards.
 - Comments stated that regulation should focus on effectiveness of regulatory system rather than gaming operation.
 - NPRM published on Jan. 31, 2012.
 - Comment Period closes on April 2, 2012.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.4. Submission Requirements:
 - History of gaming operations;
 - TGRA organizational chart;
 - Employment criteria for TGRA regulators;
 - TGRA funding description;
 - List of current TGRA regulators;
 - Description of the gaming operations accounting system;



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.4. Submission Requirements:
 - List of the internal controls;
 - Description of record-keeping system for investigations, enforcement actions, and prosecutions; and
 - Current tribal gaming regulations if not included in ordinance.
 - Comments suggested that tribes should not be required to submit copies of ordinances and other documents that have already been submitted to NIGC or the BIA. Commission removed requirement to submit facility license and NIGC approved ordinance.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.5. Criteria that must be met:
 - Tribe maintains:
 - effective and honest accounting of revenues;
 - reputation for safe, fair, and honest operation;
 - a fiscally and economically sound basis; and
 - operation generally free of criminal or dishonest activity;
 - Class II gaming has been conducted in compliance with federal and tribal law/regulations.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.5. Criteria that must be met:
 - Tribe has adequate systems for:
 - Accounting of revenues;
 - Investigation, licensing and monitoring of gaming employees;
 - Investigation, enforcement and prosecution of violations.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.5(b). Lists examples of how a Tribe may illustrate it has met the criteria. Examples include:
 - Tribal gaming regulatory body:
 - Monitors compliance with applicable laws and regulations, including MICS;
 - Monitors effectiveness of revenue accounting system;
 - Audits class II gaming activities;
 - Reviews accounting information from operation;



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
- Section 518.7. Process to review petitions.
 - Office of Self Regulation conducts a review of the petition within 30 days. Office notifies tribe if application is incomplete and tribe has 30 days to submit additional information.
 - Within 120 days of application, Office provides recommendation and report to Commission and tribe;
 - Tribe has 30 days to respond to report
 - Commission then issues preliminary findings. Tribe may request hearing after receiving preliminary findings.
 - Commission issues final decision 30 days after the preliminary findings or a hearing, whichever is later.
 - Tribe may withdraw petition anytime prior to final decision.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
- Comments stated that the process for certification needs clarification. Proposed rule attempts to provide greater clarity.
- Comments stated that Commission itself should consider petitions. Under proposed rule, Commission issues preliminary findings and makes final determination.
- Comments stated that process should facilitate collaboration with NIGC to meet approval criteria. Proposed rule provides opportunities for NIGC to provide technical assistance to petitioning tribe through process.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.10. Annual reporting requirements.
 - Independent audit; and
 - Complete resume for all employees of tribal regulatory body hired and licensed by the tribe after receiving certificate of self-regulation.
 - Section 518.11. Tribe has continuing duty to inform Commission of change in circumstance material to the approval criteria of this Part. Given this reporting requirement, Commission removed annual report requirement.
 - Comments suggested Commission define “tribal regulator.” NIGC has not done so in this proposed rule given diversity of tribal regulatory bodies.



Part 518 – Self Regulation of Class II Gaming (cont'd)

- Proposed Rule:
 - Section 518.12. Provides reference to IGRA of NIGC powers limited during self-regulation.
 - Comments stated that the section in the current regulations is unclear and overbroad.
 - Comments suggested removing the section or amending it to reiterate the statutory language of IGRA.



Contact us

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