

# NIGC – Regulation Review Agenda

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# 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.



# Regulatory Review – Process

## 3 Phases

1. Preliminary Drafting Phase – Consultation meetings and written comments
2. Proposed Rule – Consultations and approximately 60 day comment period if a the Commission decides to issue a Notice of Proposed Rulemaking.
3. Final Rule – Approximately 45 day written comment period



# Regulatory Review – Process

- 5 Groups of Regulations
  - Group numbers do not indicate priority
  - Groups were developed after considering a number of factors, including
    - subject matter
    - comments received in response to the NOI regarding priority
    - estimated time
    - resources to complete review of the regulation



# Regulatory Review – Consultation Process

- Preliminary discussion drafts for consultation will be initial working drafts.
- All meetings will be transcribed.
- Written comments and transcripts will be posted on website.



# Commitment

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



# Group 1

- Group 1:
  - Fees
  - Review and Approval of Existing Ordinances or Resolutions
  - Facility Licenses
  - Buy Indian Act regulation
  - Minimum Internal Control Standards for Class III Gaming



# Part 514 – Fees

- Discussion Draft Regulation:
  - Fee calculation to be made based on a gaming operation fiscal year rather than calendar year. Proposed Section 514(a)(1)
  - Fee rate to be published March 1 rather than Feb 1 to allow time for a more accurate preliminary rate. Proposed Section 514(a)(2)
  - Remove “amortization” from Section 514(b)(2)(ii) to reflect existing practices.





# Part 514 – Fees

- Discussion Draft Regulation:
  - Quarterly Payments. Proposed Section 514(c)(2)
  - Clarify that when computing fees, the gaming operation will utilize the Part 514(b) calculation to determine “assessable gross revenues for the previous fiscal year”. Proposed Section 514(c)(4)
  - Notification period for when a gaming operation changes its fiscal year. Proposed Section 514(c)(7)



# Part 514 – Fees

- Discussion Draft Regulation:
  - New Section: Late payment system prior to Notice of Violation. Proposed Section 514(c)(9)-(11)
    - Appeal Options are included
    - Defines “late payment” (payments made within 91 days of end of fiscal year) v. “failure to pay annual fee” (payments made after 91 days of end of fiscal year).
    - “Late payment” results in a fee; “Failure to Pay Annual Fee” is a substantial violation that could result in an NOV and possible closure order.



# Part 514 – Fees

- Discussion Draft Regulation:
  - New Section: Fingerprint Processing Fees  
Proposed Section 514(c)(9)-(11)
    - Clarifies NIGC collection of the fees
    - NIGC publish fee amount bi-annually.
  - Questions:
    - Should the term “admission fee” be changed to “entry fee”? 514(b)
    - Should “tournament fees” be included in examples of “admission” or “entry” fee?



# Part 514 – Fees

- Discussion Draft Regulation:
  - Questions:
    - Definition of Gross Gaming Revenue – NOI asked if the term should be changed to be consistent with the GAAP (Generally Accepted Accounting Principles) for the purposes of calculating the fees.
    - This Discussion Draft does not make this change.
    - Should the Commission define “wager” and “payout”?



# Part 514 – Fees

- Written Comment Period for Draft Fee Regulation closes May 31, 2011.



# Part 523 - Review and Approval of Existing Ordinances or Resolutions

- Only applies to Gaming Ordinances enacted by Tribes prior to January 22, 1993 which were not submitted to the Chair for review and approval.
- Should this Part be repealed?



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

- NOI asked if this part should be revised.
- Comments received:
  - Supported reopening this Part for review
  - Indicated concerns about the process by which the Part was adopted
  - Stated NIGC did not have authority over Environmental, Public Health and Safety (EPHS) issues, which are also covered by other federal agencies



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

- Discussion Draft Regulation:
  - Changes timeframe for tribes to submit notice of a new facility license from 120 to 60 days, with a one-time 60 day extension at the Chair's election. Section 559.2(a).
  - Includes a provision for expediting the process for verifying Indian land status when circumstances permit. Section 559.2(b).





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

- Discussion Draft Regulation:
  - Tribe will send newly issued or renewed facility license to the Chair within 30 days of issuance. Section 559.3.
  - Attestation certifying that the tribe has determined the construction and maintenance of the gaming facility and the operation of the gaming is conducted in a manner which adequately protects the environment and the public health and safety. Section 559.4.



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

- Discussion Draft Regulation:
  - Notice of a facility license sent to the Chair within 30 days when the license is terminated or expires, or if a gaming place, facility, or location closes or reopens. Section 559.5.
  - Indian lands and environmental and public health and safety documentation to be provided if the Chair requests. Section 559.6.
  - Electronic submissions are accepted. Section 559.7.



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

- Written Comment Period for Preliminary Draft Regulation closes June 17, 2011.



# Buy Indian Act

- Comments from the NOI were generally supportive of a potential regulation.
- Allows the NIGC to “Buy Indian” when purchasing goods, services, and property.
- Supported by IGRA, 25 U.S.C. 2706(a)(6), (7).
- Commission intends to distribute a draft regulation soon.



# Class III MICS

- Group 1:
  - Minimum Internal Control Standards for Class III Gaming
  - What structure do we use address the Class III MICS issue?
    - Issue impacts tribes, states and regions differently
- Group 5:
  - Anticipate these meetings will focus on practical implementation building on solutions identified in Group 1



# Class III MICS

- What structure do we use address the Class III MICS issue?
  - CRIT held that the Commission did not have authority to promulgate regulations establishing Class III MICS.
  - Issue impacts tribes, states and regions differently



# Class III MICS

- What structure do we use address the Class III MICS issue?
  - Tribes suggested:
    - Replace Part 542 with recommended “Guidelines”
    - Address through Agency-Tribal compacting process
    - Tribal ordinance incorporating Part 542 with NIGC applying a different fee rate for those tribes.
    - Maintain Part 542 and convene a TAC to update current regulation
    - Repeal Part 542



# Group 2

- Group 2:
  - Enforcement; and
  - Regulations concerning proceedings before the Commission, including: Parts 519 – Service, Part 524 – Appeals, Part 539 – Appeals, and Part 577 – Appeals Before the Commission





# Enforcement

- NOI requested comments on whether the NIGC should promulgate a regulation authorizing the withdrawal of a NOV after issued.
  - Comments received:
    - Regulation is unnecessary because there is no prohibition on withdrawal
    - A specific regulation outlining the process and circumstances for withdrawal is appropriate
    - Only the Commission should be able to withdraw a NOV



# Enforcement

- Additional Comments received:
  - An NOV should be expunged after a certain number of years or non-compliance issue resulting in NOV is resolved.
  - NOV's posted on the website should not have identifying information.
  - NIGC should work with Tribes to bring into compliance so an NOV is never a surprise.
  - An agency policy is sufficient.
  - If the NIGC and tribe discussed the IGRA violation prior to the issuance of the NOV, then no withdrawal is necessary.
  - Voluntary compliance model should be utilized.



# Proceedings before the Commission

- NOI requested comment on whether the rules for proceedings before the Commission should be reviewed?
  - Comments received:
    - A more formal process may be more burdensome, costly and delay the process for review
    - Any rules should guarantee Due Process
    - Consolidate all regulations regarding proceedings before the Commission



# Proceedings before the Commission

- NOI requested comment on whether the NIGC should consider more comprehensive and detailed procedural rules for proceedings before the Commission?
  - Tribal Comments:
    - Consolidate all regulations regarding proceedings before the Commission
    - Eliminate Presiding Officer proceedings
    - Add informal hearing option to Ordinance and Management Contract approval regulations



# Comment Deadlines

- Written Comment Period for Preliminary Draft Fee Regulation (514) closes May 31, 2011.
- Written Comment Period for Preliminary Draft Facility License Regulation (559) closes June 17, 2011.



Questions?

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