



# Spokane Tribe of Indians

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## Spokane Comments – NIGC Consultation February 16, 2012

Since our last submission on December 5, 2011, the National Indian Gaming Commission published eight additional Notices of Proposed Rulemaking and concluded the Tribal Advisory Committee meetings to review the Class II Minimum Internal Control Standards and the Technical Standards and Class III Minimum Internal Control Standards.

### Tribal Advisory Committee

First, we commend the Commission for completing the Tribal Advisory Committee meetings reviewing the Class II Minimum Internal Control Standards and Technical Standards. As the primary regulators for Indian gaming, tribes are truly the experts on the MICS and Technical Standards and we appreciate the Commission's willingness to include tribes in the conversation in a meaningful way. We do recognize that the recent cancellations of the February and March TAC meetings are causing concern to some in the tribal gaming community. We appreciate the Commission's commitment to fiscal responsibility but also believe that so long as there is work to be done on the MICS, in person meetings are the best way to complete that work. Given the recent cancellation in the meetings, we must assume that the necessary work has been completed and the Tribe looks forward to reviewing the proposed regulations and commenting on them during the formal rulemaking process.

As you complete your work finalizing the Class II regulations, please keep in mind that a viable Class II game is the only leverage many tribes have in the wake of the *Seminole* decision. We also recommend the NIGC continue its work under the Stevens Administration to work collaboratively with the DOI and DOJ to develop a collective and coordinated approach which will ensure tribes are in the position that Congress intended when states refuse to negotiate in good faith.

The Spokane Tribe recognizes that the Class III MICS were not included as a topic of discussion during the Tribal Advisory meetings and we applaud the NIGC for leaving the Class III MICS out of that process. However, we must reiterate our previous recommendation that the NIGC establish a clear date to withdraw Class III MICS from its body of regulations, notices and Bulletins. The *Colorado River Indian Tribe* ruling made it clear that the NIGC NEVER possessed the authority to either promulgate regulations or enforce those regulations. While some tribes have embraced the NIGC CLASS III MICS in compacts and ordinances, those tribes did so at their peril. Those tribes can transition into some other type of default MICS through a regulators

organization, or amend their compacts, or defer to some type of industry entity. As the Chairwoman testified before Congress, there is no regulatory void for the NIGC to fill with the promulgation of Class III MICS, guidelines or bulletins. Class III MICS are properly left as a point of compact negotiation between tribes and states.

### **Proposed Rulemaking**

Finally, we are excited to see the publication of the Final Rulemaking for Part 514 and the Notices of Proposed Rulemaking. We strongly support the process of regulatory review the NIGC has undergone during the past 12 months. We applaud the Commission for listening to tribal comments and incorporating them into the Final and Proposed Rules and look forward to publication of other final rules in the very near future.

We very much support the proposed changes in Part 537. The review and approval of management contracts can be a lengthy process and anything that the Commission can do to streamline this process is appreciated. Allowing the Chairperson to create a streamlined process for determining what information should be required from tribes, wholly owned tribal entities and federally regulated banks required to undergo a background investigation and licensure by a state or tribe pursuant to compact provisions is a common sense approach to a complicated, burdensome and costly process.

The Tribe also supports Proposed Parts 556 and 558. These regulations formalize the background and licensing "pilot program" that has been in place for many years and has proven to be very successful. It is reasonable to formalize this program by regulation and allow all tribes to participate in this streamlined process. We understand, however, that different regions may use different formats to submit the notice of results. We recommend the Commission adopt a single form to be utilized by each region, creating uniformity in the process. We also echo the recommendation to eliminate the requirement that a background investigation include personal references from Part 556. Given the advancements in technology, a tribal regulatory agency can easily find information on an applicant without resorting to calling references provided by the applicant.

The revisions to proposed Parts 573 and 502.24 greatly improve the NIGC's Enforcement Action procedures. The Tribe supports these changes as they reflect a more collaborative approach to resolving potential violations of IGRA, regulations or tribal laws and ordinances. As co-regulators, it is vital that the NIGC and tribes work together to ensure compliance while avoiding enforcement actions. This regulation appears to reflect that goal. The clarity provided to tribes through the addition of the definition of "enforcement action" in Proposed Part 502.24 is a common sense but important clarification identifying to both the NIGC and tribes what actions rise to the level of enforcement.



The tiered approach in Part 573 to resolve a potential violation reflects a substantial change in the approach by the NIGC to these types of issues. Previous Administrations did not appear to be troubled when issuing enforcement actions without first contacting the tribe. This new approach is a breath of fresh air and a tangible recognition by the Commission that Tribes ARE the primary regulators of tribal gaming. While we were previously concerned that the draft regulation gave complete discretion to the Chairperson to issue an enforcement action at any time without issuing a letter of concern or warning letter first, we believe the new requirement that the Chair state his or her reasons for bypassing the voluntary compliance process within the enforcement action provides a sufficient threshold for the Chair to meet, thus tempering the use of this discretion. We also recommend changing Proposed Part 558.3 to require the tribe to forward information to the NIGC only if the tribe denies a license, and not if the tribe simply does not license the applicant.

We also support the proposed change eliminating the ability of the NIGC to issue a temporary closure order if a tribe defrauds a customer. Part 522 requires every tribal gaming ordinance to include a patron dispute resolution process and if the tribe alleged of defrauding the customer does not follow this process, the NIGC can then issue an enforcement action. By deferring to this process, the NIGC recognizes the ability of the tribe to both self-regulate and protect its patrons.

The recently published Proposed Part 559 is a major improvement from the current rule. We applaud the Commission for listening to tribal concerns and making appropriate changes to the rule. The timeframes in the proposed rule are reasonable and provide flexibility for tribes when opening or closing a facility. The Spokane Tribe has always objected to the Environmental Public Health and Safety requirements of the current rule. The requirement in the proposed Part 559 that allows an attestation that the Tribe has determined the "construction and maintenance of the facility and operation is conducted in a manner which adequately protects the environment, public health and safety" appropriately reflects the inherent right of a tribe to address the EPHS issues without NIGC oversight.

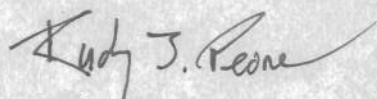
The Tribe also supports the major changes made to Part 518 in the Proposed Rule. Self-regulation is a goal for many tribes but the current regulation made the application and reporting process overly burdensome. By shifting the focus from the gaming operation to the regulatory structure and revising the submission and reporting process, the proposed rule opens the door to self-regulation to all tribes. Additionally, the clarification of the application review process and inclusion of the Commission in the determination process provides a tribal applicant the assurance that their application will be thoroughly vetted and a fair decision reached by the appropriate decision-makers. Finally, the revised reporting requirements are

much improved from the current practice. Overall, the proposed revisions to Part 518 are much needed and should facilitate many more tribes applying for self-regulation certification.

Finally, the changes to proceedings before the Commission process appear to streamline and simplify the process. We support the creation of a subchapter solely on these proceedings instead of the current rules scattered throughout the Chapter. By creating a part dedicated solely to general rules and parts for each type of proceeding, these proceedings are much more accessible to the parties. While these regulations will likely need refinement as they are implemented, they are a vast improvement to the current appeal process.

The Spokane Tribe appreciates the NIGC's efforts in conducting the regulatory review and including the tribes in that review. We look forward to additional collaboration on the proposed rules as they are published.

Respectfully,

A handwritten signature in black ink that reads "Rudy J. Peone". The signature is written in a cursive style with a long, sweeping tail on the letter "e".

Rudy J. Peone

Secretary Elect

Spokane Tribal Business Council