



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

August 8, 2011

Chair Stevens and Members of the Commission  
National Indian Gaming Commission  
1441 L Street NW, Suite 9100  
Washington, DC 20005

RE: Confederated Tribes and Bands of the Yakama Nation comments to  
proposed changes to Regulations Parts 514, 519, 523, 524, 539, 542, 559,  
573 and 577

Dear Chair Stevens and Members of the Commission;

Yakama Nation Council and staff were in attendance at the regulatory review meetings in Tulalip, Washington on July 14-15. Comments were given for the record during this two day meeting. It is our understanding that the National Indian Gaming Commission (Commission) is in Phase I, the Preliminary Drafting Phase in their regulatory review process. This letter contains additional comments to the ones raised to the Commission during the July 14-15 meetings. The Yakama Nation reserves the right to submit additional comments throughout the regulatory review and drafting of proposed and final rules.

The Confederated Tribes and Bands of the Yakama Nation will continue to review and comment on proposed regulations as they become available. The Nation believes these meetings are not a formal Government – to – Government consultation process, but rather an opportunity to give input into the NIGC process. The Nation appreciates the Chair Stevens and the Commissioner's efforts to do outreach for Tribal input during this initial drafting process.

**Part 514 – Fees.** Distinguishing between a late fee and a no payment violation is appropriate. The amount of the late fee proposed as either an actual amount in the regulations or a percentage of the amount due is in question. The Yakama Nation believes the fees should be spelled out in the regulations. This could be in the form of a scheduled incremental fee based on the time frame for lateness of payment. This would provide a clear and advanced notice for Tribes.

Failure to pay the annual fee could amount to a substantial violation leading to the Commission's authority to close the facility. It is appropriate that a notice of violation

precede and not be simultaneously issued with a temporary closure order. 514.1 (c) (12).

**Part 519 – Service** – The method for service of process was discussed. This arrangement for certified mail, an alternative facsimile delivery, or e-mail should be agreed upon by the Tribal Government and the NIGC. The delivery of important documents will always need to be given to the appropriate persons designated to receive service, and the receipt of such service documented. A delivery by fax machine or e-mail is subject to technical and human error. A certified letter delivered to and signed by the Chair of the Yakama Nation is the more appropriate and secure form of service. Unless there is another agreement in place, that is the preferred method of service.

**Part 523 – Review and approval of existing ordinances** – If this proposed regulation only applies to Tribal ordinances before January 22, 1993, the Yakama Nation has no comment. The Tribal Ordinance for Yakama Nation was adopted and approved in 1994.

**Part 524, 539 and 577– Appeals** – The NIGC asked if the appeal provisions in the regulations should be consolidated into one section. Subject to review of the proposed draft of changes to the appeal sections, the Nation's comment is that it may be easier if there is a separate section outlining the appeal processes with a cross-reference to the separate parts which address appealable actions and process for appeal. This would be a partial consolidation, leaving the current appeal sections in place within each Part and having a separate, but not stand alone, appeal regulation. As changes are adopted, there would need to be accurate consistency between sections. There should also be a clear statement as to what an "agency action" subject to appeal is, and what triggers the timing for the appeal.

**Part 542 – Minimum Internal Control Standards for Class III Gaming** – These MICCS should be recommended guidelines only. They should be separate guidelines from the Class II standards and the two guidelines should not be intermixed.

**Part 559 – Facility License Notifications, Renewals and Submissions** - Section 559.2 (b) should be reworded to account for notice and Tribal consultation if the Chair of the Commission is unable to expedite the process for verifying Indian lands status of the place, facility, or location where class II or III gaming will occur. The proposed language leaves open the question of factual scenarios which may delay of the Chair's verification. The Tribe should always be consulted during the initial process of verifying land status, so any questions can be addressed if status comes into question. There are economic hardships that could occur for any delay between a Tribe submitting notice that a facility license for a new place, facility or location will open, and the verification by the Chair that the land meets the requirements of IGRA.

**Section 559 proposed 4 - certification that the gaming facility and operation protects the environment and public health and safety** – The Yakama Nation

Gaming Ordinance was adopted by Tribal Council and approved by the NIGC. The Ordinance already addresses this as required by 25 U.S.C. 2710. This would be a duplicative action and is not necessary. The definition Section 502.22 inherently requires compliance by a Tribe enforcing its own codes, regulations and policies and Tribal-state compacts as well as Secretarial procedures. The idea that this should be “certified” has the appearance of NIGC mistrust and is an unnecessary exercise of intrusion into Tribal Governance.

**Section 573 – Enforcement** – The question of when a “letter of concern” vs. an issuance of a notice for “non-compliance” was raised. It is appropriate that these two actions are spelled out in the regulations and treated separately. It is unclear in the proposed draft whether this is a two step process, or if entirely separate actions cause a “letter of concern” to be issued vs. a notice for “non-compliance”. The former appears to be less formal and resulting in a time period for communication between the Tribal gaming and NIGC. If these are entirely separate actions, a clearer statement about what triggers one or the other actions to occur should be spelled out in the regulations.

The Yakama Nation supports language that allows for voluntary compliance and corrective action when agreed to by the parties. Service of either of these two actions should be spelled out and that these documents are to be served on the Chair of the Confederated Tribes and Bands of the Yakama Nation. There should also be a letter from the Chair of the NIGC which formally closes an investigation of either of a “letter of concern” or notice of ‘non-compliance.’”

Again, thank you for the opportunity to provide these additional comments.

Sincerely,



Max Corpuz Jr., Chairman  
Timber, Grazing, Overall Economic Development Committee of Tribal Council

Warren Spencer Jr., Secretary  
Rick Watlamet, Member  
Gerald Lewis, Member

Cc: Chairman Smiskin  
Yakama Nation Gaming Commission  
Kristen Lumley, Executive Director