



NIGC Commission Next Steps Update

TOPICS

PUBLISHED DATE / ACTIONS

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Series A TOPIC- NIGC Consultation Policy

NIGC Consultation Policy	Series A	Anticipate DTL Letter Early June 2022
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The Commission is currently drafting new features into the existing Consultation policy. The new features will achieve the following: institute virtual video conference as well as in person elements in all future consultation sessions, establish a requirement for the NIGC to update tribal leaders within a set time period following the conclusion of consultation session, and initiate an effort to coordinate NIGC's consultation planning with other federal agencies involved in aspects of Indian gaming. A memorandum implementing these updates is forthcoming.

Series A TOPIC- NIGC Strategic Plan



The Chair will create an NIGC employee committee initiative organized around the four goals. The committee membership will be led by the Chief of Staff, represent a cross section of staff perspectives, and be responsible for advising on the efficacy of formal and internal measures to monitor and assess achievement of the strategic plan goals in daily operations. In addition, the Chair will supplement his current commitment to periodic tribal leader briefings from NIGC senior officials on Agency operations with an extended periodic presentation on the Agency achievements according to the four goals. An internal memorandum and a Dear Tribal Leader Letter outlining these commitments in forthcoming and will be shared in this Next Steps Chart.

Series A TOPIC- KE & PMO



The Commission discussion with tribes on this provision included two areas of consideration. First, the need to address questions about authorities for tribal background and licensing programs' access to criminal history records information via the NIGC fingerprint program. Second, the least disruptive approach to reconcile any NIGC regulatory changes with tribal gaming authorities' respective practices for assessing the eligibility of operation and TGRA employees' licensure.

Series A TOPIC- NIGC Facility License

**25 C.F.R. § 559.2(b) –
Facility License
Notifications and
Submissions**

Series

A

**Published Nov 2021
DTL Letter**

The Commission raised the Chair’s concern with the existing requirements for submissions received by the Chair for a facility notice when circumstances are beyond a tribe’s control. Specifically, the existing regulations require a street address for any new facility in addition to a physical description of the operation’s location. The regulation’s requirement for a street address must be met 180 days before opening. The address requirement exists even when the timing of the address designation is beyond a tribe’s control because assigning a street address requires assistance from a neighboring non-tribal government.

The Commission published a Notice of Proposed Rule Making in November 2021. The Federal Register’s publication notice is available [HERE](#). The Commission anticipates promulgating a final rule modifying the street address notification requirement. This new rule would ensure the NIGC is able to balance two objectives related to the facility license submission process. First, to maintain an accurate accounting of all operations and the operations’ locations—an objective articulated by a 2005 OIG report. And second, avoid subjecting an operation’s opening date to an address designation that is beyond the tribe’s control—an unrealistic burden given the often time intensive and extensive responsibilities a tribe bares during the lead up to a facility opening.

Series A TOPIC- Submission of Gaming Ordinance

**25 C.F.R. Part 552 –
Submission of Gaming
Ordinance or Resolution**



**Published Nov 2021
DTL Letter**

The Commission raised the Chair’s concern with the implementation of existing requirements for submitting an ordinance for the Chair’s review. Specifically, the existing regulations require for approval that a tribe has implemented regulations under which a tribe’s regulatory body may operate. This presents a problem when an initial ordinance must be approved before a tribe’s regulatory body adopts its regulations.

The Commission published a Notice of Proposed Rule Making in November 2021. The Federal Register’s publication notice is available [HERE](#). The Commission anticipates promulgating a final rule in line with the NPRM. The Final Rule would address the circumstance when an inaugural ordinance is seeking approval and therefore a tribe’s regulatory body has not yet established regulations. In addition, and based on tribal representatives’ comments during consultation, the Commission anticipates adopting language to address a concern raised by tribes with the NIGC regulations’ current assumption that every tribe would have a tribal constitution and not operate under another valid authority.

Series A TOPIC- Fee Requirements

**25 C.F.R. § 514.4(c) – Fees
requirements regarding
“Free Play”**



**Published Nov 2021 DTL
Letter**

Commission discussions during late Spring 2020 resulted in broader Agency outreach around the industry's adoption of changing audit standards. This outreach led to the Commission identifying the need to clarify NIGC's expectation regarding whether free play should be included in annual revenue calculations.

The Commission published a Notice of Proposed Rule Making in November 2021. The Federal Register's publication notice is available [HERE](#). The Commission anticipates that it will move forward with language like that found in the NPRM in order to differentiate the NIGC's Assessable Gross Revenue calculation from net and gross revenue calculations. The language will also aim to let each tribe choose whether to include free play in its calculation and it will ensure the NIGC's ability to verify the accuracy of a tribe's AGR submission.

Series A TOPIC- Reducing the Number of Background Investigations

**25 C.F.R. § 537.1(a)(3) –
Reducing the number of
background investigations**

Series

A

**Published Nov 2021 DTL
Letter**

The Commission published a Notice of Proposed Rule Making in November 2021. The Federal Register's publication notice is available [HERE](#). The Commission anticipates it will promulgate regulations to adopt the new rule and thereby reduce the number of investigations required to only those individuals or entities with a ten percent or greater interest, a change from existing NIGC practice of investigating the top ten individuals with a financial interest.

Series B TOPIC- Audit Standards for S&C Gaming

**25 C.F.R. § 571.12-
Audit standards for
Small and Charitable
Operations**



**Published NOV 2021 DTL
Letter**

In past years, the Agency has made clear the IGRA's expectation for all gaming operations on Indian land--including small and charitable operations--will be regulated. Recognizing the existing tools within IGRA, the Commission in recent years has sought to recognize the difference in risk and operational capacity of small and charitable operations when compared to other types of Indian gaming.

The Commission published a Notice of Proposed Rule Making to maximize available tools to reduce finical costs of auditing the financial activity of a small and charitable operation while maintaining a standard of oversight commensurate with the risk of non-compliance associated with a small and charitable operation.

Series B TOPIC- Audit Requirement Disclaimed/Adverse

**25 C.F.R. § 571.12(b) and
571.13 – Audit
requirements regarding
disclaimed or adverse
audits**



NPRM & Bulletin

The Commission consulted with tribes to explore the acceptability of disclaimed and adverse audits given the NIGC's reliance on such audits as part of the NIGC's approach to compliance. The feedback from tribes provided an understanding of the circumstances that give rise to such audits as well as a tribe's potential considerations when engaging an independent audit such as

the selection of an acceptable industry audit framework and decisions to consolidate multiple operations audits.

The Commission published a Notice of Proposed Rule Making to begin the practice of not accepting adverse audits. It will continue to accept unqualified, qualified, and disclaimed audits in satisfaction of IGRA's requirements. Based on comments received during the NPRM process stemming from the earlier consultation sessions and regardless of whether a Final Rule is published on this topic, the Agency will likely publish a bulletin on the topic of audits during the 2022 year.

Series B TOPIC- Self-Regulation



In recent years, the Commission has brought attention to its authority to issue certificates of self-regulation to those tribes demonstrating an adequate regulatory capacity. The Commission now wants to increase tribes' access to the petitioning process for a certificate and to bring awareness to this provision in the IGRA. The Commission's consultation sought tribes' views on the existing regulations governing the Office of Self-Regulation, and the petitioning process including the timeframes associated with the Commission's review.

The Commission published a Notice of Proposed Rule Making on April 7, 2022. The Federal Register's publication notice is available [HERE](#). In addition, the Agency published two new bulletins related to the reduced scope of self-regulated tribes' ongoing responsibilities and providing further information about the petitioning process. These bulletins can be found [HERE](#). In addition, the Commission has announced its plans to expand its annual summer series among the eight NIGC administrative regions to now include a summer 2022 summit discussion

dedicated to tribes with a certificate of a self-regulation and tribes interested in petitioning the Commission for a certificate. Finally, the Agency consolidated its resources around self-regulation related topics onto a dedicated part of the NIGC web page. That portion of the NIGC website can be accessed [HERE](#).

Series B TOPIC- Fees Assessments & Reporting



The Chair’s emphasis areas include a commitment to enhancing good governance practices by instituting practices to increase agency accountability. The NIGC’s funding source—which is based solely on fees collected from Indian gaming operations—is a topic around which the NIGC can innovate based on the NIGC commitment to Agency accountability. This opportunity was made even more necessary during the industry-wide closures due to the pandemic. During the start of 2020, the NIGC and tribes alike managed historic budget uncertainty--and the NIGC throughout this uncertainty never received additional sources of funding.

The Commission continues to deliberate the concepts presented to tribes during the consultation. The ongoing discussion centers around increasing forward planning through more communication and collaboration between the Agency and tribes, as well as more responsive NIGC tools to address unforeseen national and regional industry changes. At this point, the Commission may institute a series of policy changes that do not require regulatory updates in order to establish new practices for how the Commission reports fee and budget related information.

Series B TOPIC- Powers of the Commission Regarding Background Investigations

**25 U.S.C. § 2706(b)(3) –
Powers of the Commission
Regarding Background
Investigations to be
Conducted**



**Under Discussion –
TBA**

The Indian Gaming Regulatory Act enumerates Commission authorities the Commission may exercise by a majority vote. These authorities are separate from the Chair’s distinct authorities and include commonly used powers such as the power to set fees and the power to promulgate regulations. A less commonly used authority is the authority to cause a background investigation to be conducted.

The Commission discussed with tribes the potential to use its authority to cause a background investigation to occur in order to resolve questions about the authority under which tribes utilize the NIGC fingerprint program to conduct tribal background and licensing. The Commission is likely to implement regulations in order to clarify and make defensible its use of this statutory authority as the basis for tribes’ access to criminal history records information. The Commission continues to draft regulations that it will likely publish as a proposed rule.

Series C TOPIC- MICS and Tech Standards Technology Review

**25 C.F.R. Parts 543 & 547 –
Minimum internal control
standards & minimum
technical standards
regarding technological
enhancements and threats**



**Under Discussion –
TBA**

The Commission's focus on supporting cybersecurity in the Indian gaming industry has included a review of any NIGC requirements with the potential to discourage sound cybersecurity practices.

The Commission does not anticipate that it will propose any regulatory changes in this area without further discussion with tribal representatives and believes the existing regulations currently do not interfere with tribes' adoption of cybersecurity mitigation measures such as cashless systems and cloud-based data storage. There does exist the opportunity to modernize these areas of the regulations in a way that would provide an incentive for tribes. The industry as well as individual operations would benefit from operation's implementing and maintaining strong cybersecurity practices. The Commission remains aware that any industry-wide action must be wary of the diversity of tribal operation's long-term planning, individual risk profiles, and investment ability to enhance capacity around cybersecurity.

Series C TOPIC- Temporary Closure Provisions for EPHS Violations

25 C.F.R. § 522.4(b)(7) and 25 C.F.R. § 573.4(a)12 — Ordinance Approval & Temporary Closure Provisions Applicability to Existing EPHS matters related to technology threats



Bulletin

The Commission sought a conversation with tribes on the broad topic of cybersecurity and how to build on lessons learned from the NIGC's interpretation of existing environment, health and public safety (EPHS) requirements for all operations in the context of the public health pandemic. Specifically, the Commission sought to explore how the regulations current deference to tribal gaming regulatory authorities' attestation to the applicability and enforcement of EPHS standards could provide a framework for how gaming operations assess potential risk and respond to a cyber-event. This framework would also provide the NIGC with a

proven approach to a quickly emerging threat upon which the NIGC can participate, and the public can rely.

The Commission does not intend to promulgate any regulatory changes that would bind the Agency to making an association between a cyber-security threat at a gaming operation and public safety responsibility under IGRA. However, the Commission at this time sees an opportunity to develop a bulletin to highlight NIGC resources related to preparation for and the possible implications of the imminent jeopardy created by a cyber-security threat at an operation including automated physical security infrastructure. In addition, the Commission intends to continue to establish agency-wide expertise in safety and health matters across its Compliance division and Training program. This effort will rely in part on the recently established NIGC Safety and Health Manager position as well as the NIGC Technology division's auditing expertise. You may access the portion of NIGC website dedicated to the NIGC Technology Divisions [HERE](#).

Series CTOPIC- Adding Misuse of Revenue to the Substantial Violations List

**25 C.F.R § 573.4(a) –
Adding Misuse of Gaming
Revenue to the Existing
Substantial Violations List**



Bulletin

For any substantial violation, the Chair may bring a temporary closure order that would be appealable to the full Commission. The Commission consulted with tribes to understand potential implications for expanding this list to include the misuse of net gaming revenue. This proposed change would emphasize the importance of this explicit requirement in IGRA. Also, the potential temporary closure tool would provide an additional remediation measure that could avoid a prolonged financial burden on a tribe that flows from a Civil Fine Assessment for such a violation--these assessments are typically upheld per a settlement agreement that

includes multiple years of civil fine payments, thus binding future tribal councils. A list and brief description of the existing temporary closure orders can be found [HERE](#). It was also discussed that use of a temporary closure order by a Chair resulting from one of the existing enumerated violations occurred approximately 12 times in the Agency’s history nearly 30-year history. The Commission continues to view the protection of tribal assets as a core part of its regulatory role and the misuse of net gaming revenue as a potentially significant attack on the IGRA measures that lawmakers set out to protect those assets. Those views, however, were tempered by tribal concerns with the risk of over-zealous enforcement that a Chair may exercise. Such an excessive use of the Chair’s authority may infringe on a tribe’s own sovereign role in managing and protecting its assets in accordance with IGRA. Some tribes’ comments also held the view that the Chair’s existing enforcement tool of a Civil Fine Assessment was an appropriate deterrent to the threat a misuse of net gaming revenues posed to a specific tribe and to national Indian gaming industry’s overall reputation. Currently the Commission does not intend to promulgate regulations on this topic without further consultation with tribes. The Chair continues to prioritize significant misuses of gaming revenues as a key area for the NIGC’s enforcement and monitoring.

Series C TOPIC- Background Investigations Process Enhancements



The Commission consulted with tribes on the impact of promulgating regulations to modernize and harmonize its current regulations with the NIGC’s existing practices for conducting background investigations. These investigations are needed as part of the Chair’s management agreement review process in order to determine the suitability of a potential management agreement. While there have been improvements in the efficiency of the background process,

the regulations do not currently reflect those practices or obligate the NIGC via the regulations to follow those processes.