

SEMINOLE TRIBE OF FLORIDA

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February 10, 2011

Tribal Officers:

MITCHELL CYPRESS
Chairman

PRISCILLA D. SAYEN
Secretary

MICHAEL D. TIGER
Treasurer

VIA E-mail to reg.review@nigc.gov

Tracie L. Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairperson
Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Attn: Lael Echo-Hawk

Re: Comments on Notice of Inquiry and Request for Information; Notice of Consultations (75 Fed. Reg. 70680 (Nov. 18, 2010))

Dear Chairwoman Stevens, Vice-Chairperson Cochran and Commissioner Little:

The Seminole Tribe of Florida (the "Tribe") offers the following comments in response to the National Indian Gaming Commission's ("NIGC") Notice of Inquiry and Request for Information. The Tribe believes the Notice of Inquiry process is an appropriate vehicle for the NIGC to use in soliciting the views of Indian Country as it undertakes a comprehensive review of the regulations promulgated to implement the Indian Gaming Regulatory Act ("IGRA"). The Tribe appreciates the opportunity this process provides for it to present its views. Although the Tribe will no doubt have detailed comments to make on any specific regulatory changes the NIGC may propose, the Tribe has identified several regulations it believes should be regulatory priorities for the NIGC. Following is a brief summary of the need to address each of these regulations, and a suggested process for doing so. They are presented in order of priority.

1. *25 CFR Part 518 – Self Regulation of Class II*

The IGRA recognizes the primary role of tribes in the regulation of Class II gaming, and creates a mechanism for tribes to self-regulate Class II gaming. 25 U.S.C. § 2710(c)(3). This provision has never been properly implemented by the NIGC, and as a result, tribes have not



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been able to obtain certificates of self-regulation for Class II gaming in the manner intended by Congress. The current regulations governing the self-regulation of Class II gaming, 25 C.F.R. Part 518, impose burdensome requirements that go far beyond what is required in the IGRA, and as a result are contrary to law. Revising the Part 518 regulations to bring them in line with what the IGRA requires should be an immediate priority for the NIGC.

The NIGC indicated in the Notice of Inquiry that it is aware of tribal criticism that 25 CFR Part 518 "is overly burdensome to tribes seeking to obtain certification and that the burden of completing the process significantly outweighs the benefits gained from self-regulation." 75 Fed. Reg. 70683. The Tribe agrees. But the Part 518 regulations are not merely "burdensome" – they are inconsistent with the IGRA.¹

The IGRA requires tribes to demonstrate that they have continuously operated Class II gaming for at least three years, and that they meet the following seven criteria:

- Have effective and honest accounting of all revenues;
- Have a reputation for safe, fair and honest operation of the activity;
- Have been free of evidence of criminal or dishonest activity;
- Have adequate systems for accounting for all revenues from the activity;
- Have adequate systems for investigations, licensing and monitoring of employees;
- Have systems to investigate, enforce and prosecute violations of its gaming ordinance and regulations; and
- Conduct operations on a fiscally and economically sound basis.

25 U.S.C. §2710(c)(4). The Part 518 regulations, however, expand these seven criteria to over thirty. Further, the two original requirements in § 2710(c)(3) for eligibility to petition the NIGC for a certificate have been supplemented to require tribes to submit voluminous amounts of data and reports. By so dramatically expanding the scope of information required, the current Part 518 regulations severely limit tribal rights to take advantage of their right to self-regulate Class II gaming under the IGRA.

The existing Part 518 regulations also limit tribal rights once a certificate is obtained. Section 2710(c)(5) of the IGRA provides that once a tribe obtains a certificate of self-regulation,

¹ 25 U.S.C. § 2706(b)(1)-(4).



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it is no longer subject to the requirements of 25 U.S.C. § 2706(b)(1)-(4).² However, 25 C.F.R. § 518.7 requires tribes to effectively "re-satisfy" each of the requirements for eligibility annually, rendering meaningless the exemptions from (1) continuous monitoring, (2) facility inspection and examination, (3) NIGC background investigations, and (4) continuous access to, and audit of, all tribal Class II facility documents.

The existing Part 518 regulations exceed the statutory mandate in other ways as well. For example, 25 C.F.R. §§ 518.3(a)(1)(vii) and § 518.7 require tribes to provide a report and sworn statement to the NIGC from a tribal official explaining how tribal gaming revenues are used in accordance with the purposes outlined in 25 U.S.C. § 2710 (b)(2)(B). This sworn affirmation requirement is not in the statute, and is unnecessary as the tribe already is required to provide the NIGC with an annual audit of the gaming operation pursuant to 25 U.S.C. § 2710(b)(2)(C).

The Seminole Tribe has a proven track record of strong and effective regulation of Class II gaming, and should be able to take advantage of its right to self-regulate Class II gaming under the IGRA without having to satisfy the extra-statutory and unduly burdensome requirements of the existing Part 518. The Tribe believes that the NIGC should make reviewing the requirements of its Part 518 regulations a regulatory priority. While different approaches can be considered, the Tribe believes that the current regulatory structure could be replaced by an appropriate code of conduct, which tracks the statutory requirements for self-regulation, to govern Class II operations. A draft code is attached for discussion purposes.

The NIGC's "Government-to-Government Tribal Consultation Policy" contemplates the use of "consensual policy making mechanisms, including negotiated rulemaking, when formulating and implementing Federal regulatory policies" 69 Fed. Reg. 16973, 79 (March 31, 2004). Given the role of tribes as the primary regulators of Class II gaming, the Tribe believes that the most appropriate mechanism for reviewing the Part 518 regulations is through negotiated rulemaking.

2. *Revise the Class II and Class III MICS (25 CFR Part 542 and 543)*

The Tribe believes that the current and proposed Class II and Class III MICS at 25 C.F.R. Parts 543 and 542 are in need of some further revision. Effective MICS are essential to protect tribal gaming revenues, ensure that gaming is conducted fairly and honestly, and that tribes are the primary beneficiaries of gaming operations. The MICS implicate a number of different areas

² These provisions grant the NIGC the right to (1) shall monitor class II gaming conducted on Indian lands on a continuing basis;
(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;
(3) shall conduct or cause to be conducted such background investigations as may be necessary;
(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter..." 25 U.S.C. 2706(b)(1) – (4).



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of expertise, and as a result strong and effective MICS must be developed with input from a range of tribal officials and representatives. The Tribe believes that Tribal Advisory Committees provide the best avenue for the NIGC to obtain expertise in all of these areas. The Tribe suggests that that the NIGC empanel two new tribal advisory committees of subject matter experts, one to review the Class II MICS and one to review the Class III MICS. Any Tribal Advisory Committee must respect the government-to-government aspect of consultation between the tribally-designated experts who serve on the committee and the NIGC. However, the NIGC must also respect the right of tribes to designate whomever they wish to serve as their representatives before the NIGC, as well as their right to consult with other experts as they choose.

3. *Revise Class II Technical Standards (25 CFR Part 547)*

The Tribe also believes that the Class II Technical Standards ("Technical Standards") require some revision to be cleaned up and updated. The Technical Standards would benefit from the combined expertise of tribal officials, regulators, operators, attorneys and manufacturers. Accordingly, the Tribe believes that the NIGC should empanel a new Tribal Advisory Committee to review the Technical Standards as well.

4. *The facility licensing regulations at 25 CFR Part 559 should be withdrawn in their entirety*

The facility license regulations at Part 559 should be stricken in their entirety since they exceed the NIGC's authority under the IGRA. The IGRA requires tribes to develop their own tribal gaming ordinances that adequately protect the environment and public health and safety on tribal lands, 25 U.S.C. § 2710(b)(2)(E), which the Seminole Tribe has done. Under the IGRA, once the NIGC has reviewed and approved the facility licensing provisions in a tribal gaming ordinance, there is no further role for the NIGC in a gaming facility licensing determination. The Part 559 regulations vastly expand the NIGC's authority in this area in a manner that is inconsistent with the statute.

The Part 559 regulations require tribes to provide the NIGC with a detailed list of environmental and public health and safety laws they have enacted to the NIGC. 25 C.F.R. § 559.5. The implication is that if a tribe does not enact such laws, and provide evidence of doing so to the NIGC, the tribe's license will not be approved. The IGRA, however, does not require tribes to positively enact environmental, public health and safety law. Instead, the IGRA merely requires tribes to enact an ordinance that ensures "that gaming is conducted in a manner" that protects the environment and public health and safety. Such an ordinance could simply require tribes to comply with industry standard building and fire codes, for example, or other laws and standards. The current environmental and public health and safety provisions in § 559.5 effectively dictate that tribes must exercise their sovereignty to enact a tribal ordinance, and then the NIGC Chairperson must judge the adequacy of that enacted tribal legislation as it relates to the environment and the public health and safety. This is far beyond what Congress authorized



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in the IGRA, and is legally unsupportable and unnecessary. We urge the NIGC to take another careful look at these provisions and strike them in their entirety. To the extent that the NIGC is not willing to strike them in their entirety, then the Tribe believes they should be substantially revised through negotiated rulemaking.

5. *Develop new regulations to permit heightened tribal regulator access to NIGC archived licensing data*

The Tribe urges the NIGC to consider developing, through a notice and comment rulemaking, new regulations that formally set forth procedures and requirements for tribes and tribal regulators to access and utilize the licensing information the Commission has already gathered from tribes and archived. This access could easily be granted via the NIGC's existing Tribal Access Portal (TAP). The available information should include information concerning an individual's gaming license or vendor's registration. That information should already be obtainable from the NIGC in a manner that appropriately addresses any of the NIGC's disclosure or privacy concerns.

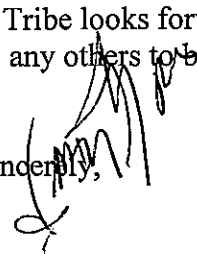
6. *Strike "or lotto" from 25 CFR § 502.3.*

The term "or lotto" as used throughout 25 CFR § 502.3 is used out of context. Section 2703(7)(A) (i)(III) of the IGRA clearly intends lotto to be distinguishable from the game of bingo by listing it with other games that are not bingo. The regulations at §§ 502.3(a) and (b) as written confuse and conflate "bingo" and "lotto," suggesting that they are one and the same by rewording the statute in a manner that leads one to believe that lotto is the same game as bingo. Clearly that is not the case, and that is not what is provided in the IGRA. This change could be made through notice and comment rule-making.

7. *Other Notice of Inquiry Issues.*

The Tribe recognizes there are a number of other issues outlined in the Notice of Inquiry. Given the number of issues and the limited amount of time to address them, the Tribe believes that the NIGC should first give priority to the six issues identified above before it begins consideration of any of the others. The Tribe looks forward to the opportunity to participate and comment on those initiatives, as well as any others to be considered by the NIGC.

Sincerely,


Jim Shore
General Counsel
Seminole Tribe of Florida



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JS/abm
Encl.

TRIBAL GAMING SELF REGULATION CODE OF CONDUCT

The _____ Tribe recognizes the importance of ensuring that its gaming operations conduct Class II gaming activities in a responsible, secure, safe and reliable environment. Consistent with the requirements for self-regulation set forth at 25 U.S.C. 2710(c)(4), the Tribe is committed to complying with the principles contained in this the Tribal Gaming Self-Regulation Code of Conduct. This Code is established to provide employees within each gaming operation with the necessary direction and support to sustain the goals of transparent and regulated casino operations. Compliance with this Code is subject to an annual audit of compliance by an independent and professional third party, with the reporting of findings to the Tribal Gaming Regulatory Authority and the National Indian Gaming Commission.

PRINCIPLES ON WHICH TRIBAL SELF REGULATION STANDARDS ARE BASED

PRINCIPLE 1 – PROMOTE RESPONSIBLE GAMING

The _____ Tribe is committed to promoting socially responsible gaming, and working with customers, to help manage and control problem gaming. The Tribe will ensure that proper controls are established, implemented, and enforced by its employees, and that gaming takes place in a responsible gaming environment.

PRINCIPLE 2 –PREVENT UNDERAGE GAMING

The _____ Tribe will seek to implement all reasonable measures that prevent underage individuals from accessing gaming products. The _____ Tribe will ensure these measures address appropriate age verification, and that employees continuously improve the coverage, quality and effectiveness of real-time verification.

PRINCIPLE 3 – ZERO TOLERANCE OF FRAUDULENT AND CRIMINAL BEHAVIOR

The _____ Tribe will not tolerate fraud or criminal behavior, and strict security measures and gaming supervision will be implemented and enforced to prevent fraudulent activity and any transactions suspected of being potentially connected to money laundering or other criminal activity.

PRINCIPLE 4 –PROTECT CUSTOMER PRIVACY AND SAFEGUARD INFORMATION

The _____ Tribe will ensure that the privacy and confidentiality of all customer information submitted at any point in time is maintained and protected by employees from unauthorized or unnecessary disclosure.

PRINCIPLE 5 –PROMPT AND ACCURATE CUSTOMER PAYMENTS

The _____ Tribe will ensure prompt and accurate processing of winnings and payment requests, subject to appropriate and necessary checks and verification by employees.

PRINCIPLE 6 –RIGOROUS INDEPENDENT ASSESSMENT OF GAMING PRODUCT FAIRNESS AND RANDOMNESS

The _____ Tribe is committed to ensuring that gaming products are subjected to continuous and rigorous independent assessment by employees to ensure products continue to operate in a fair and random manner, and in accordance with published rules.

PRINCIPLE 7 –ETHICAL AND RESPONSIBLE MARKETING

The _____ Tribe will endeavor to employ well balanced advertising and marketing campaigns in line with responsible gaming and conduct principles.

PRINCIPLE 8 –COMMITMENT TO CUSTOMER SATISFACTION AND SUPPORT

The _____ Tribe is committed to providing customers with an enjoyable gaming experience with access to employee support, where they can be assured of timely resolution of disputes.

PRINCIPLE 9 – RESPONSIBLE PRACTICES IN A SECURE, SAFE AND RELIABLE ENVIRONMENT

The _____ Tribe will operate gaming products within an internal control environment that is in line with best practice and which supports the objectives of a secure, safe and reliable environment.