



NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

REGULATORY ALERT!

TO: NIGA MEMBER TRIBES

**FR: Chairman Ernest L. Stevens
Mark Van Norman, Executive Director
Jason Giles, Deputy Director/General Counsel**

RE: NIGC Revised MICS Regulations

In a working draft dated June 21, 2009, the NIGC has prepared potential revisions to the gaming machine section of the Class III MICS for distribution to its MICS Tribal Advisory Committee (MTAC). The MICS Tribal Advisory Committee met yesterday and today at Poarch Creek, Alabama. The NIGC representatives made a statement indicating that they consider the NIGC as an independent agency that does not need approval for their regulations from OMB.

The NIGC appears to be proceeding in a procedurally deficient manner, so we believe that Indian tribes should oppose the promulgations of these regulations in the absence of prior consultation.

Background of the NIGC Proposal

The proposed provision represent a major expansion of the NIGC's authority into "gaming associated" equipment, such as back-of-house accounting systems, currency processing, player tracking systems, "ticket-in/ticket out", and ticket redemption systems. The content is represented as internal control standards, but the draft establishes "technical standards" for "gaming associated equipment and systems, with potentially significant cost ramifications. These types of systems are very expensive. There is substantial concern that the issuance of the proposed standards will drive costs even higher. Smaller system providers may have difficulty meeting the cost requirements of the new standards.

These standards appear to lean heavily to those casino management computer systems based on the SAS protocol platform. These systems are among the most expensive in our industry (\$5m-\$50m depending on the size of the gaming operations owned by the tribe.) These sections are being proposed irrespective of an operation(s) tier classification, so the cost of compliance with these technical standards will undoubtedly prove to be cost prohibitive to a large segment of our industry and render some operations unprofitable.

Action Needed

Please send letters to the White House, OMB, the Secretary of the Interior, the Chairman of the House Natural Resources Committee and the Senate Indian Affairs Committee. A draft letter is attached for your assistance. Please contact Danielle Her Many Horses, NIGA Legislative Director if you have any comments or suggestions at dhermanyhorses@indiangaming.org.

Honorable Barack Obama, President
(Attn: Kim TeeHee, Domestic Policy Council)
United States of America
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Re: National Indian Gaming Commission, Proposed Regulations

Dear Mr. President:

I am contacting you on behalf of the (_TRIBAL NATION_). The National Indian Gaming Commission is an agency within the Department of the Interior. It's mission to provide background oversight of Indian gaming and to build help tribal governments build strong tribal regulatory agencies to safeguard Indian gaming as a means of generating tribal government revenue. The NIGC's Chairman is holding over for almost five years past his original term and one of the two Commissioner's positions is vacant. We believe that the agency should not draft or publish any new regulations until the new Chairman and a new Commissioner is appointed.

In a working draft dated June 21, 2009, the NIGC has prepared potential revisions to the gaming machine section of the Class III MICS for distribution to its MICS Tribal Advisory Committee (MTAC). The MICS Tribal Advisory Committee met on August 3-4, 2009 at the Poarch Creek reservation in Alabama. The NIGC representatives made statements indicating that they consider NIGC as an independent agency that does not need approval for their regulations from OMB. There has been no consultation with Indian tribes by the NIGC on its proposals. The proposed regulations are ill-advised because they impose unnecessarily high costs on tribal gaming operations and they exceed the NIGC's statutory authority. We respectfully submit that the Administration should not publish these proposed rules.

Moreover, the NIGC is an agency of the Department of the Interior and is required to follow the rules that guide other federal agencies. Specifically, the NIGC must follow:

- Executive Order 13175 on consultation with tribal governments;
- Executive Order 12866 which requires consultation with tribal governments before a rule is published for notice and comment;
- The Federal Advisory Committee Act, which requires presentation of a committee plan to GAO for review prior to the establishment of an advisory committee;
- The Regulatory Flexibility Act, which requires preparation of the economic impact of a regulatory action on small entities and consideration of alternatives that would cost less; and
- The Unfunded Mandates Act, which requires agencies to avoid promulgating rules that impose significant costs on state, local and tribal governments without paying for those costs.

We respectfully request that you act immediately to appoint a new Chairman of the National Indian Gaming Commission; ask Secretary Salazar to appoint a new Commissioner; direct the new Chairman and Commissioner to comply the above referenced executive orders and laws; and delay publication of any new NIGC regulatory proposals until the new Chairman and Commissioner are in office.

Thank you for your thoughtful consideration.

Sincerely,

[Tribal Leader]

Cc: The Honorable Ken Salazar, Secretary of the Interior
U.S. Department of the Interior
18th & C Street, N.W.
Washington, D.C. 20240

The Honorable Peter Orszag
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Chairman Byron Dorgan, Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510
Fax: (202) 228-2589

Chairman Nick Rahall, House Committee on Natural Resources
1324 Longworth House Office Building
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