

1 NATIONAL INDIAN GAMING COMMISSION
2 REGULATORY REVIEW
3 TRIBAL CONSULTATION AGENDA
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10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 July 11, 2012

12 9:00 a.m.
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19 Brooks, California
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25 Pages 1 - 62

APPEARANCES

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- TRACIE STEVENS, NIGC Chairwoman
- DAN LITTLE, Associate Chairman
- ERIC SCHALANSKY, Regional Director
- LARRY ROBERTS
- MICHAEL WILLIAMS
- WENDELL LONG
- HENRY MANUELITO
- ED MAGDALENO
- TIM ADAMS
- TAMARA SULLIVAN
- KATHRYN OGAS
- JOSEPH AITA
- SARAH MURRAY
- NIMISH PUROHIT
- MICHAEL HOENIG
- JENNIFER WARD
- NANCY GRAY
- REST WEST
- PATRICK R. BERGIN

1 WEDNESDAY, JULY 11, 2012, 9:28 A.M.

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3 MS. STEVENS: Good morning. Be please sure
4 to help yourself to some refreshments back there.
5 There's coffee and drinks and snacks back there.
6 We'll go ahead and get started. I appreciate
7 everybody waiting. We wanted to wait a little bit
8 longer for everybody to have an opportunity to get
9 here and settle in.

10 If you all look, and I'll put it on the
11 record, I want to thank the tribe Yocha Deha for
12 hosting us. We don't have anyone here from the tribe
13 today, so we will be bypassing the opening statements
14 from the tribe, but I do want to say I appreciate the
15 tribe hosting us. I know they had a number of other
16 things going on this week.

17 Everyone should have received a packet of
18 information with an agenda and the Powerpoint that
19 we'll be going over this morning.

20 To start, I'd like to say welcome to
21 everybody. Anyone who has been to one of these
22 consultations on these particular regs, welcome back,
23 and for those who have not, welcome. We'll be going
24 over two proposed rules today, Part 547, Part 543 on
25 Class II, and what we'll do is we'll start with

1 introductions of people who are representing tribes,
2 so we will start to my right down here, and then once
3 we introduce tribal representatives, we'll introduce
4 the NIGC representatives.

5 MR. WILLIAMS: My name Michael Williams.
6 I'm with the Tule River Tribe Gaming Commission, the
7 Tule River Tribe.

8 MR. LONG: Good morning, everyone. Wendell
9 Long, member of the great Choctaw Nation of Oklahoma.
10 I'm the CEO representing Casino Del Sol Resort, the
11 Pascua Yaqui Tribe, in beautiful Tucson, Arizona.
12 Quick plug. We just opened our hotel. Anyone who
13 wants to come down in the winter, give me a call.

14 MR. MANUELITO: Henry Manuelito with Bishop
15 Paiute Gaming Commission.

16 MR. MAGDALENO: Morning. Ed Magdaleno,
17 Sycuan Gaming Commission.

18 MR. ADAMS: Tim Adams with Shingle Springs
19 Tribal Gaming Commission.

20 MS. SUILLIVAN: Tamara Sullivan, Lytton
21 Tribal Gaming Commission. I'm lead executive
22 director.

23 MR. OGAS: Kathryn Ogas, attorney for Lytton
24 Rancheria.

25 MR. AITA: And Joe Aita, commissioner of

1 Lytton Tribe.

2 MS. STEVENS: Okay. And we'll go ahead and
3 move on to our staff. I'm going to start -- well,
4 wait.

5 Nancy? That only happens when you sit in
6 the back of the room.

7 MS. GREEN: All by myself, right? Nancy
8 Green, Green Law Firm, Chickasaw Nation, Oklahoma.

9 MS. STEVENS: Thank you.

10 And we'll go ahead and start with our staff.
11 If you want to introduce yourself, we'll cover those
12 outside, and then we'll move in.

13 MR. WEST: Good morning, everyone. My name
14 is Rest West. I'm a senior auditor with the audit
15 staff.

16 MR. SCHALANSKY: Good morning. Eric
17 Schalansky. I'm the region director for the
18 California, Sacramento region.

19 MS. MURRAY: Morning. My name is Sarah
20 Murray. I'm counsel to the chairwoman. I'm a member
21 of the Cheyenne River Sioux Tribe in South Dakota.

22 MR. PUROHIT: Morning. I'm Nimish Purohit.
23 I'm the acting director of training and technical
24 assistance as well as the gaming technology liaison
25 for the commission.

1 MR. HOENIG: Good morning. My name is
2 Michael Hoenig. I'm an attorney with the Office of
3 General Counsel.

4 MS. WARD: Good morning. I'm Jennifer Ward.
5 I'm also an attorney with the Office of General
6 Counsel.

7 MR. ROBERTS: Morning, everyone. My name
8 says Larry Roberts. I'm a member of the Oneida
9 Nation of Wisconsin and the general counsel for NIGC.

10 MR. LITTLE: Good morning, everyone. My
11 name is Dan Little. I'm the associate commissioner
12 of NIGC. I want to welcome everybody who are
13 attending today. It's been a long process, and it's
14 very important to the commission that we reach out to
15 tribes and come to the regions where you all are to
16 ensure that your voice is heard while we review and
17 make changes to the part regulations, so I want to
18 thank you all for coming out this morning, and I
19 really look forward to hearing all your comments
20 today.

21 MS. STEVENS: Okay. Before I introduce
22 myself, I want to acknowledge the two administrative
23 assistants that are sitting outside that you all
24 probably had the opportunity to meet. That's Angela
25 Eutsler and Kim Khuu. They work for the regions out

1 here in the -- Sacramento and Temecula offices?

2 MR. SCHALANSKY: Just Sacramento.

3 MS. STEVENS: Just Sacramento. So I do want
4 to give them a hands-up for our staff out in the
5 region here without which we could not get this
6 organized, so thanks to the region and to the staff
7 out here.

8 My name is Tracie Stevens, I'm a member of
9 the Tu Lado Tribes out of Washington State, and I am
10 the chairwoman of the NIGC, and echoing what
11 Associate Commissioner Little said, we're glad that
12 you all could make it today.

13 Hearing tribal input for these regulations
14 that we've been talking about for almost two years
15 now, it's really important, and as we go along in the
16 presentation, we'll talk more about how we've gotten
17 to where we are now with these proposed rules that
18 are in the federal register.

19 If you look at your agenda, we've tried to
20 lay it out so there is some anticipation of what we
21 will speak about at what particular time, so today we
22 will be starting with Part 547, the technical
23 standards, and following that, we'll talk about
24 Part 543 which is minimum internal control standards
25 for Class II.

1 Now we may take these out of order, we may
2 move along faster or slower depending on how the
3 group and the interaction goes here today.

4 We also -- if you see at the bottom of the
5 first section, "Tribal Opening Statements," one thing
6 we try to do in trying to -- in addition to having
7 some structure to our agenda, offer opportunities for
8 tribal representatives to make statements to any part
9 of today's agenda. We understand that your schedules
10 are very busy, and there are a number of other
11 issues, if you're a tribal leader, that you have to
12 deal with besides gaming, but if you are part of your
13 gaming commission, that you actually have other work
14 that you need to do.

15 So we'd like to open the floor for opening
16 statements. If anyone needs to, you know, read
17 something into the record or has a statement in
18 advance because of your schedule, you may need to
19 leave, we do offer that time now to make any opening
20 statements. Okay. If not, then we'll go ahead and
21 get started on the Powerpoint. Follow along on your
22 sheet.

23 Consultation. Tribal consultations are
24 between tribal governments and the federal government
25 only. Tribes and their designees can attend only and

1 participate in these. These are not public meetings,
2 and they're not open to the public nor are they open
3 to the press.

4 More on consultation. In keeping with the
5 spirit of Executive Order 13175, consultation,
6 coordination with Indian Tribal Government,
7 Section 3, the policymaking criteria covers how we go
8 about -- how we're directed to go about consultation
9 with tribes, and under 3(c)(3), in determining
10 whether to establish federal standards, basically
11 what we're doing as an agency now is speaking with
12 tribes before we make the decision to implement a
13 change. We talk about the necessity of a change with
14 the tribes first. That's been the process that's
15 been going on since we did our first Notice of
16 Inquiry in November of 2010, asking tribes which
17 regulations need to be addressed in what order, and
18 from that came our Notice of Regulatory Review, which
19 is the process that we're in now, and in that
20 process, we've discussed with tribes which
21 regulations we should address, came up with an agenda
22 in the schedule, and in this process, we've covered a
23 dozen -- or at least about 20 regulations and have,
24 in the process, circulated drafts based on the
25 comments we received from tribes. So the drafts --

1 the discussion drafts that came before the proposed
2 rule that you're looking at today had tribal
3 contribution. So in keeping with the spirit of the
4 section, we talk about these things before we go to
5 the official rulemaking process. We're in that
6 process now, and, you know, consultations with tribes
7 and their input with discussion drafts preceded
8 today's meeting.

9 We're committed to a clear and transparent
10 process. All consultations are transcribed. Our
11 transcriptionist is over there, and all written
12 comments and transcripts will be posted on the NIGC
13 website. Every comment that we receive will be
14 reviewed and considered. Any proposed or final rule
15 will include a summary of the comments as you may see
16 in the federal register for these two rules.

17 So with that, I'll turn it over to Dan, and
18 we'll move on to the substantive part of today's
19 discussion.

20 MR. LITTLE: Okay. Good morning again. So
21 we're going to talk about group three of the Notice
22 of Regulatory Review, and those include Part 547, the
23 minimum technical standards for equipment used in
24 Class II gaming, and then Part 543. Those are the
25 mix for Class II gaming. Before we even really get

1 started, I want to talk about -- add a little on to
2 what the chairwoman had said about the process of how
3 we got to it, and I do want to kind of mention that
4 the commission did establish a tribal advisory
5 committee, and there was some participants from this
6 region that sat on the advisory committee, and I want
7 to kind of point them out, especially since there was
8 some tribes represented. Kathy Hamilton Linton,
9 great participant, we really appreciate all her hard
10 work, so please pass along our hello from the
11 commission.

12 John McGee from Pertama, he was actually at
13 the Arizona consultation recently, he did a great
14 job, and then Jason Blue Lake, so very good input and
15 was very helpful for the commission and in helping us
16 develop, you know, some ideas and some thoughts and
17 help us explain on the ground what a lot of the
18 tribes are facing when trying to implement
19 regulations at this commission with the forum, so
20 very thankful. It was a contentious process at
21 times, but, you know, I think, like the chairwoman
22 had said recently, I don't know if she remembers
23 saying it, but, you know, we want a good regulation.
24 How we get there, that's another story. It may not
25 be a quick process, but as long as we get a good

1 regulation, that's the goal, and I think when you've
2 got, you know, some very forthcoming conversation and
3 discussions, it's not always going to be comfortable,
4 but at the end of the day, I think tribes did a good
5 job of getting their concerns raised, and the
6 commission heard it, and the staff heard it, too,
7 because we were relying on them to help us, you know,
8 make some good regulations. So it was a good
9 process, and I'm very thankful for being able to
10 participate in that on behalf of the commission.

11 So proposed rule overview, next slide. I
12 said we're going to talk about Parts 543 and 547. We
13 had originally published or put on our website
14 discussion draft on March 16th with the comment
15 period that ended May 27th.

16 As we go through the Powerpoints here, the
17 attorneys at the -- you know, Mike and Jeff -- I'm
18 sorry -- they will go through basically comments that
19 we've heard on the discussion drafts and then any
20 changes that we've made. We received over a hundred
21 comments on discussion draft, which, you know, this
22 commission, we all came from a tribe, we all worked
23 in tribal organizations, and I actually worked in
24 D.C. for a tribe, and a lot of times, you know, being
25 on the other side, I knew that whenever a major

1 regulation came up for review, that NAGA and some of
2 the other organizations would send out letters and
3 the tribes would -- you know, basically a form
4 letter, send it in and we'd sign our name to it and
5 that was the process.

6 We received over a hundred comments on the
7 discussion draft, and the commission reviewed every
8 single one of those, and what I was amazed and I'm
9 very grateful for is that these were really good
10 comments. They were not form letters. There was a
11 lot of thought, a lot of effort was put into it, and
12 we are very grateful, and we're very thankful, and we
13 want to thank all of you for being active
14 participants in this process, and that, at the end of
15 the day, is going to be helpful in making sure that
16 we put forth a good regulation, so I want to thank
17 all the tribes for actually, you know, being very
18 involved in that process. So once we -- comment
19 period ended for the discussion draft on the 27th of
20 May, we moved forward, and then we published notice
21 of rules for Part 543 and 547, and that's where we
22 are today.

23 Shortly, I'm going to turn it over to Mike
24 Hoenig to discuss the 547 Powerpoint presentation,
25 but just a couple more things. As the chairwoman

1 said, if there's any tribes that have some prepared
2 statements they want to make, if it's not -- because
3 we're going to move to 547 first. If you want to
4 talk about 543 because you need to leave, please
5 interrupt us at any time. As we go through the
6 Powerpoint, if you have a particular question, you
7 can raise it any time. You don't have to wait until
8 a break. Just grab a mic and say hello, and Mike or
9 Jen will break to let you make your comment. So with
10 that, I'm going to turn it over to Michael to
11 continue with Part 547.

12 MR. HOENIG: Thank you. So, yeah, I'm going
13 to talk about 547, and the Powerpoint here is a very
14 general overview, kind of hitting the high points of
15 what the changes are from the current regulation and
16 even the discussion draft, so I guess the first thing
17 I want to say is that I encourage everybody to look
18 at the preamble that was published, Notice of
19 Proposed Rule. There's a lot of information in there
20 about why the commission is opposed to certain
21 things. There's also request for more information
22 that the commission is looking to receive from
23 everybody, so you can find that on our website. If
24 you haven't taken a look at it yet, I recommend you
25 do so.

1 So jumping into the rule, the proposed rule,
2 generally the first thing to mention is that from the
3 current regulation, the first five sections have been
4 reorganized, and that's just to put them in a bit
5 more of a logical flow, so 547.1, it stays the same.
6 It's just kind of a general purpose statement, the
7 technical standards. We took the definitions section
8 and moved it up to 547.2 since that binds everything
9 that's going to come after. 547.3 is the
10 implementation section. Point four is the rules of
11 general application, the rules that apply to the
12 entire regulation, and point five is the general
13 compliance section, and that's where you start to get
14 into the meat of the regulation. And then within
15 different sections, we reorganize some of the
16 information to put it where we thought it best
17 belonged.

18 So as we go through this, too, there's going
19 to be a couple places where I'm going to turn things
20 over to Nimish, who is our technical expert, so he
21 can better explain some of these things.

22 I guess the very first one is where I'll
23 start doing that, and it's in 547.2 which is the
24 definitions. One of the definitions we added was for
25 EPROM which I'll let Nimish explain.

1 MR. PUROHIT: Thanks, Mike.

2 The EPROM is, everyone's familiar, the
3 compacted slider Class III World. That's a piece of
4 media that actually allows you to not only install
5 all the different types of software in the actual
6 gaming machine, gaming equipment, but also that's a
7 controlled software where everything goes in, and in
8 order to have a kind of a generic language for media
9 on Class II player interfaces, this terminology was
10 introduced in here as well, so that's the reasoning
11 behind that.

12 MR. HOENIG: Thank you, Nimish.

13 One of the changes that we carried over from
14 the discussion draft was to add a definition for
15 "patron." It's used a lot in the regulations, so it
16 made sense to define it. We added definitions for
17 "advertised top prize" and audit mode and the terms
18 "enroll" and "unenroll." There was a definition for
19 "electrostatic discharge," which was somehow dropped
20 from the discussion draft, which is reinserted here.
21 Also, the proposed rule amends the definition of
22 "electromagnetic interference." That was amended
23 based on public comments that were received.

24 The definition for "proprietary Class II
25 system component" was also removed. That was

1 inserted in the discussion draft in an attempt to
2 clarify a certain point which I'm going to let Nimish
3 talk about in just a second. Based on the comments
4 we got, though, it seemed it was adding more
5 confusion than it was alleviating, so it's been
6 removed, and I'm going to let Nimish talk just a
7 little bit about what the original intent was and why
8 it was eventually removed.

9 MR. PUROHIT: Nimish Purohit, NIGC.

10 The reason for inserting the terminology
11 "proprietary Class II system" and "proprietary
12 Class II system component," the main purpose of that,
13 going back a little bit, was when I first joined the
14 commission in 2008, the previous commission had just
15 adopted the technical standards that are in place
16 right now, which is Part 547, and when that was put
17 in and up until when we came onboard, we used to get
18 several questions from independent test labs, from
19 tribal gaming regulatory authorities and from
20 manufacturers that do these technical standards also
21 extend to the back-of-the-house systems of all these
22 different Class II systems communicated, and the
23 answer today is the same that it was back then, is
24 that they don't. They only are required to be tested
25 to whatever the TGRA or the Tribal Union Regulatory

1 Authority requires, so because of that, there was an
2 attempt to kind of put the word "proprietary" in
3 there to say if a Class II system has its own
4 ticketing system and its own accounting system and
5 clear tracking system which doesn't communicate with
6 any of the other class of systems you have, then that
7 has to be tested. However, if a Class II system is
8 communicating with a common back-of-the-house system,
9 then that common back-of-the-house system is not
10 subject to the requirements of 547, so that was kind
11 of the reasoning behind that, but since we got a lot
12 of comments, public comments that kind of said that,
13 "Hey, what you put in here is very ambiguous, and it
14 might have some other legal terminologies associated
15 with the word 'proprietary,'" the commission
16 considered dropping the actual terminology from the
17 discussion draft in the proposed revisions.

18 MR. HOENIG: Thank you, Nimish.

19 So to go with that, then, we had also put
20 the term "proprietary" in a few other places, which
21 was the definition of "cashless system" and the
22 definition of "voucher system," so it's been removed
23 from there as well.

24 The other definition that was changed in the
25 discussion draft -- or I don't think it was changed.

1 I think at one point there had been a recommendation
2 to include the computer system as an agent, and it
3 does not. That was not made in the discussion draft
4 nor is it here, so "agent" does not include computer
5 systems.

6 So 547.3 is "Who is responsible for
7 implementing these standards?" This was moved from
8 where it is in the current regulation, 547.5. This
9 sets out that these are minimum standards and that
10 TGRA may implement stricter standards if it wishes.
11 There is no limitation -- this is not intended to be
12 a limitation on technology. It's not a limitation on
13 technology. That's carried over from the current
14 regulation as well. Only applicable standards apply,
15 so if the machine does not have a particular
16 function, then you don't have to worry about trying
17 to implement the standard that applies to that
18 function. It's only the applicable standards.

19 And finally, this continues the current
20 regulations language that this has no effect on state
21 jurisdiction over Class II gaming or the operation.

22 547.4 is "What are the rules of general
23 application for this part?" This was moved from
24 547.5. The biggest change that you'll find here is
25 in the fairness standards. The current regulation

1 has a minimum odds requirement of 100 million to one
2 for top prizes. That has been removed, and as you'll
3 see as we get a little further into this Powerpoint,
4 a provision was added in the notification section --
5 we'll talk about that in just a little bit -- to
6 require notification of odds. There's no
7 requirement, there's no minimum odds requirement any
8 longer, there's just a requirement that patrons be
9 notified, and we'll get to that soon.

10 The test lab must calculate and/or verify
11 the mathematical expectations and report to the
12 Tribal Gaming Regulatory Authority. So under this
13 requirement, the test lab has to verify the report
14 results.

15 The regulation also states that at the
16 request the TGRA, the manufacturers must submit the
17 mathematical expectations to the TGRA, so if the TGRA
18 gets a test lab report, wants to verify it itself, it
19 can go straight to the manufacturer and request the
20 mathematical expectations.

21 All the gaming equipment and software has to
22 be approved by the TGRA before it can be put on the
23 gaming floor. That's in the current regulation. It
24 was in the discussion draft, and it's carried over to
25 here.

1 And the equipment must perform according to
2 the design and operating specifications just to make
3 sure that the equipment is performing the way it's
4 supposed to.

5 We go to 547.5. "How does a tribal
6 government or TGRA comply with this part?" This
7 section probably got the most comments, I think,
8 particularly the grandfathering provision, so if a
9 machine -- at the time that the current regulation
10 was put into place, a tribe could submit their
11 Class II gaming system for grandfathering, be
12 certified, it could be left on the floor without
13 having to meet the stricter technical standards in
14 the rest of the section. There's a period on that of
15 five years, which will be coming up next year, so we
16 requested -- the commission requested comments on the
17 grandfathering provision, and based on those
18 comments, from the discussion draft, we took out
19 anything on grandfathering the changes that have been
20 made to the discussion draft, and this proposed rule
21 takes it back to where it currently is so that the
22 commission can reconsider everything, take a look at
23 the grandfathering provision based on the comments
24 and start fresh, and as part of that, they're
25 requesting a little more information from tribes --

1 from commenters in general, and one of those is how
2 many Class II gaming systems will be affected if the
3 current date of November 10th, 2013 is extended or
4 eliminated, so just to get an idea of how many
5 Class II gaming grandfathered systems are out there
6 and what would be the regulatory and other impacts of
7 extending the period by three to five years past
8 November 10th, 2013 or removing the time period, so
9 this would extend the amount of time that a
10 grandfathered system could stay on the floor. That
11 could be extended by a number of years, or it could
12 just be eliminated entirely, and the commission is
13 asking for what the impact of doing that would be.

14 Similarly, there was a submission period for
15 a grandfathered gaming systems. If a tribe wanted
16 their systems to be allowed to be continued, they
17 were required to be submitted within 120 days of the
18 past regulation. That 120 days obviously is past
19 now, so there's no way for machines to be resubmitted
20 now.

21 So another piece of information the
22 commission is looking for is how many Class II gaming
23 systems could be potentially submitted to labs if the
24 120-day period is modified, so if there is a new
25 period or if the submission period is done away with,

1 what would the effect be. What would be the
2 regulatory and other impacts of allowing a limited
3 submission period for those systems that did not meet
4 the original deadline? So along the same lines,
5 what's the impact of setting up a new submission
6 period for the grandfathered systems?

7 And finally, another option that the
8 commission is considering for the grandfathered
9 provisions is to do away with the time period that
10 the grandfathered systems may stay on the floor but
11 inserting requirement that would require all
12 modifications made to a machine to be brought into
13 compliance, so modifications would have to be made
14 towards compliance, couldn't keep it at an even level
15 and certainly couldn't go backwards towards less
16 compliance.

17 So if 547 were amended in this fashion to
18 apply only to all modifications, what specific
19 impacts would the amendment have on tribal gaming
20 operations? And similarly but differently, if 547
21 were amended in this fashion to apply to all repairs
22 as well as modifications, so if something breaks and
23 needs to be replaced, that repair also has to be
24 brought into compliance with the technical standards.
25 What effect would that have? Would what be the

1 impact on tribal gaming operations?

2 547.5 also amends -- I'm sorry? Oh, okay.

3 547 also amends the test lab certification
4 requirements from the discussion draft based on
5 public comments. Test labs must note compliance with
6 standards set forth by the TGRA, not any applicable
7 federal laws and regulations. So there was a
8 requirement to the discussion draft that the test lab
9 had to check for basically any federal law that may
10 apply. Comments suggested this was too stringent.
11 Commission made the change to let the TGRA decide
12 what the lab has to test to beyond the technical
13 standards, so that's -- oh.

14 MR. WEST: We have a comment from Nancy
15 Green.

16 MS. GREEN: You know, I don't know if this
17 was the appropriate time to jump in or not. You
18 know, I know that these questions have been put out
19 there regarding this grandfathering provision. I'm
20 also aware that this is probably the most common bond
21 provision and probably the provision that would have
22 the most impact on Indian Country, which I believe
23 those tribes to have Class II gaming, so, you know,
24 in thinking about your questions, it appears to me
25 that if -- let's say that -- you know, if a game

1 needed to be modified, but at that time when that
2 modification needed to be made, it had to be brought
3 up to standard. You know, first the question would
4 be, you know, what -- define "modify." What
5 specifically type of modification would require them
6 bringing the whole game up to standard? You know,
7 second, though, I think that ultimately, even though
8 it delays the impact on Class II gaming, particularly
9 those tribes that have as much as 30, 40 percent of
10 their floor space taken up with these type of games,
11 I think there would still be the same impact. It
12 might be staggered a bit, it may be delayed a bit by
13 virtue of the fact that, you know, these machines
14 aren't going down every day and thus wouldn't every
15 day or all on one day require, you know, the
16 significant modification, but we are still talking
17 about a significant impact. It's just not all in one
18 fell swoop, so to speak, you know. And the same
19 questions would apply to the thought, "Well, what if
20 as the game needed to be repaired?" You know, again,
21 define what sort of repair are we talking about? I
22 mean these games are a little bit, from my
23 experience, and I think others would probably
24 agree -- are pretty much, you know, work-intensive,
25 if you will, in the sense that, you know, we have

1 slot techs and people out on the floor on a daily
2 basis working on these machines, you know. They are
3 making some sort of repair to those machines almost
4 daily, you know. We have bill accepter issues, minor
5 things like lights, you know. There's all sorts of
6 modifications, minor, that may be made, not
7 necessarily on the scale that I think maybe you're
8 contemplating, but still, there's always repairs
9 being made. They have to to keep these machines
10 running.

11 And so, you know, I think there's the number
12 one problem with contemplating, well, you know, maybe
13 we just do this as it requires to be modified, or we
14 do this when, you know, we either upgrade it or
15 remove it when it has to be repaired, you know, you
16 know, define "modification," define "repair," and at
17 the end of the day, we still have a very significant
18 impact to Indian Country, and I think in the
19 chairwoman's opening statement, she talked about, you
20 know, the necessity for a rule, and I know we've had
21 this discussion, not in this location, but on the
22 same topic, so I don't want to just, you know, beat a
23 dead horse here, but there has been no proven
24 necessity for this grandfathering provision, and I
25 think, you know, really what's happened is that --

1 and I realize that this commission's not responsible
2 for implementing the rule, but it's there, and I
3 think that perhaps the response from Indian Country
4 has not been, you know, so great as of yet because
5 the impact hasn't been felt yet, but as of the
6 deadline in 2013, I think there will be a significant
7 response, there will be a significant impact, and
8 because, you know, 30 percent of a tribal gaming
9 location placement is pretty significant, so I think
10 there's going to be a significant response. It seems
11 to me to be, right now, a little problematic with
12 just trying to -- and we appreciate your thought and
13 consideration of this in your questions because, you
14 know, it indicates to all of us that you are, you
15 know, considering, you know, what the best possible
16 change would be, so we all appreciate that, but, you
17 know, it is going to be very problematic for the
18 tribes to, in a cohesive unit, submit to the NIGC
19 information that would answer your questions
20 regarding economic impact. You know, that's not
21 something that everybody has put together as a whole.

22 I am aware that there are certain groups at
23 least that are working to gather this information,
24 and I think some of it will be submitted to you, but
25 I don't know that that's going to be a complete,

1 clear picture of the economic impact across Indian
2 Country, so -- and I know everybody's trying to be
3 responsive, and we appreciate your consideration of
4 those issues because they're very real and
5 significant issues.

6 MR. ROBERTS: I know Commissioner Little
7 wants to speak to this, but Nancy's comments
8 underscore the importance of the public comment here
9 we have because as she recognizes, we have an
10 existing regulation, so purely as a legal matter, we
11 need information for the record so that whatever
12 decision the commission makes is not deemed arbitrary
13 down the road, and so without information from
14 tribes, you know, the commission has an existing rule
15 that they need information and public comment on
16 before they can make a change.

17 MR. LITTLE: Thank you, Larry and Nancy.
18 Thanks for your comments. They're always, you know,
19 very well thought out, and we do appreciate it.

20 On the issue of modifications, this is
21 exactly what we really need to know, and the idea and
22 the thought is -- and, you know, we haven't made any
23 decisions yet, so we're thinking about on a
24 modification, say, for instance, a storage device
25 within a system went back, we needed to replace it.

1 Just that particular component would need to be fully
2 compliant, not the entire device, but just that one
3 component of the system would need to be compliant.
4 That's one of these thoughts and ideas. If there's a
5 particular reason why you don't think that may work,
6 please let us know, and at the end of today, let us
7 know during the comment period.

8 The other idea is the reason for the -- you
9 know, for our desire to be fully compliant is that,
10 you know, the whole purpose of MICS and technical
11 standards is to mitigate risk, and there are areas
12 where these Class II games are not as robust. Now
13 there are not huge areas where they're having
14 problems, but there are areas where they're not as
15 robust because of new technology and things change,
16 and add a newer machine, so what we're just trying to
17 do is we're just trying to -- you know, just mitigate
18 the risk and that if these games are still functional
19 and are still working, the idea behind making, you
20 know, future modifications fully compliant is that
21 it's just one step further to becoming fully
22 compliant.

23 MS. GREEN: And I understand that. I mean
24 obviously, you know, all of the gaming -- Indian
25 gaming has an interest in mitigating risk wherever we

1 can, so we appreciate that, and I hope you didn't
2 mistake my comment. I'm simply pointing out that
3 while we all want to mitigate risk, there just hasn't
4 been a significant amount of risk or harm
5 demonstrated. There's none in the historical
6 evidence that I'm aware of, and so that's simply my
7 point, and given that fact, it makes it very
8 difficult for tribal gaming to accept the idea that
9 we have essentially this rule where we have a -- at
10 least right now, a wholesale recall of a very
11 lucrative category of games, so I don't mean to be
12 throwing rocks in any way. That's simply a fact.
13 And I know that this is something that all of Indian
14 Country is struggling with.

15 But in response to your comment about --
16 let's say, you know, there's some little, small
17 aspect that has to be repaired, but it has to be
18 brought up to the standards at that point and how to
19 address just individual components of the machine.
20 I'm not a technical person, certainly, you know,
21 that's beyond my area of expertise, but I would think
22 generally that that might be difficult, to integrate
23 these upgraded sorts of components into something
24 that's not technically there and ready to accept and
25 communicate with that component, if that makes any

1 sense at all.

2 MR. LITTLE: Yeah, we definitely understand
3 that. We tried to add caller ID to the antiquated
4 phone system at the NIGC, and we shut down the office
5 for about a week. We definitely understand that, and
6 that's the purpose for these specific questions, and
7 I really appreciate you, you know, raising that, and,
8 you know, if there's others, hopefully we'll get some
9 comments on that, whether it could work or whether it
10 may not work, so it's very appreciated. Thank you.

11 Was there any other comments right now that
12 anyone wants to make?

13 Yes, sir.

14 MR. WILLIAMS: Mike Williams, Tule River
15 Tribe.

16 Only, I guess, the question I have is when
17 the commission took into consideration with adopting
18 the -- it's the testing lab certification, did they
19 take into consideration the seriousness of the chips?
20 Because they have -- I know NIGC -- or excuse me --
21 GLI, they have recommendations as to the severity of
22 the chip, making a main chip, an operating system
23 chip, because they give a 90-day replacement, a
24 60-day replacement based on the seriousness of the
25 chip. Do they take into consideration the --

1 MR. PUROHIT: You're talking about the
2 revocations, correct?

3 MR. WILLIAMS: Yeah, the revocations of the
4 status of the chips.

5 MR. PUROHIT: Yeah, right. There's nothing
6 in here about the revocations. What this section is
7 referring to is the actual -- the product itself
8 being deemed that because it was manufactured before
9 a certain date. That's the reason why it has to
10 actually be taken off the floor. But the revocations
11 that you're referring to, there's nothing in here
12 about that. That's left up to the Tribal Regulatory
13 Authority.

14 MR. WILLIAMS: Okay. Thank you. I just
15 wanted to get clarification on that.

16 MR. PUROHIT: Right.

17 MR. LONG: Yeah. Wendell Long, Pascua Yaqui
18 Tribe.

19 Just the comment on Ms. Green's thing. You
20 know, we have these tribal regulatory agencies that
21 now have decades, literally decades in regulating,
22 you know. My personal feeling in and our tribe's
23 feeling is that, you know, we should empower the
24 tribes' regulatory agencies on make these decisions
25 on whether something is capable of being

1 grandfathered, especially since each of the tribes'
2 systems are just so unique in this.

3 MR. LITTLE: Thank you. And, you know, I
4 think we probably agree with you that, you know,
5 Tribal Gaming Regulatory Authorities in this industry
6 have just, you know, developed into some, you know,
7 extremely robust, you know, great regulatory systems,
8 and, you know, the regulation doesn't preclude TGRA's
9 from adding additional requirements or needs as they
10 see fit for, you know, their regulations, so I
11 appreciate your comment.

12 MR. LONG: My comment was, too, that, you
13 know, one size doesn't necessarily fit everyone, and
14 that's the problem with anything with MITC, you have
15 to have everything whereas if you give authority to
16 the Tribal Gaming Regulatory Authorities, or whatever
17 you call them, then -- you know, then they can make
18 that decision.

19 MR. LITTLE: Right. And as we go into 543,
20 we tried to identify areas where we think -- you
21 know, where we can actually move the function while
22 keeping a standard to either the TGRA's or the
23 operations.

24 I forgot to actually mention, and I want to
25 thank -- Tom Olson was another member from your tribe

1 who served on the tribal advisory meeting. He was
2 very helpful.

3 MR. LONG: Very good man.

4 MR. LITTLE: And he is an excellent
5 regulator, so thank you.

6 MR. LONG: He hasn't pulled my license, so
7 I'm happy.

8 MR. LITTLE: Are there anymore questions?

9 MR. WEST: I want to get this gentlemen.

10 MR. BERGIN: Sir, I'm Patrick Bergin, I'm
11 with the law firm of Fredericks Peebles & Morgan.
12 I'm here on behalf of the Flandreau Santee Sioux
13 Tribe and about ten other clients. Thank you.

14 MR. LITTLE: All right. I'll turn it back
15 over to Mike to continue.

16 MR. HOENIG: Okay. Thank you. So I think
17 we left off at the test lab must note compliance with
18 standards set forth by the TGRA, so as I was saying,
19 there's no requirement that the test labs do every
20 federal regulation or law that may be out there. The
21 TGRA will identify, above and beyond what the
22 technical standards require, that the TGRA -- I'm
23 sorry -- that the test lab has to attest to.

24 And there's no changes to 547.6, so we'll go
25 on to 547.7 which is "What are the minimum technical

1 hardware standards applicable to Class II gaming
2 systems?" The player interface must be labeled with
3 the serial number and date of manufacture based on
4 public comments. We changed this based on public
5 comments, that -- the way it was originally phrased,
6 which was "The player interface must display the
7 serial number" was a bit confusing because that's
8 what you call the T.V. screen, or the screen on the
9 box is the display, so we changed that to just be
10 labeled so that the player interface, the serial
11 number has to be on there somewhere.

12 Also remove the reference to Underwriters
13 Laboratory. That was done in the discussion draft.
14 It's carried over to here. One of the other changes
15 that was made, I believe it's here, is that the test
16 lab now just has to confirm that a Class II gaming
17 system has been certified against things like spills
18 and electric shock, electrostatic discharge, things
19 like that. We realize that there are only a few test
20 labs that actually do that, so requiring the test lab
21 to certify it itself is not part of this anymore.
22 They just have to confirm that it has been certified
23 someplace.

24 547.8, "What are the minimum technical
25 software standards applicable to Class II gaming

1 systems?" So here, the discussion draft and this
2 proposed rule have removed any references to
3 entertaining displays, so there's no last game recall
4 requirement, there's no requirement that entertaining
5 displays be included in the last game recall, and
6 that's because the Bingo game is on the card of the
7 entertaining display, the reels, whatever it may be.
8 It also provides for changes in the rules and still
9 allows for there to be changes in the rules of the
10 game, but those changes can't be automatic. No
11 automatic or undisclosed changes of the rules, so the
12 patron has to be notified of any changes.

13 And there's no substantive changes to 547.9,
14 10 or 11, so we'll move on to 547.12 which are the
15 standards for downloading on a Class II gaming
16 system. The proposed order has the requirement TGRA
17 authorize downloads, and it's not been removed in the
18 sense that it is no longer required. It's just that
19 that was viewed as a control standard, so it's been
20 moved to Part 543, the minimum control standards.

21 547 requires that the Class II gaming system
22 be capable of providing download information and that
23 downloaded software must be capable of being verified
24 by the Class II gaming system.

25 And there's no changes to 547.13, so 547.14.

1 This is the standards for the random number
2 generator. This section requires the use of an
3 unbiased algorithm with any bias reported to the
4 TGRA, and I'm going to get Nimish talk about this one
5 as well.

6 MR. PUROHIT: Nimish Purohit, NGIC.

7 I'll try to go slowly on this one for the
8 benefit of the transcriptionist. Very technical
9 section also.

10 But during the tribal advisory committee's
11 discussions, one of the things that the TAC
12 recommended and they talked about was the bias of a
13 random number generator. Now this is not the bias
14 that you might think about that, you know, there's a
15 particular pattern that comes up more often. This,
16 if you take a look in the context of the bias
17 section, is for a scaling algorithm, and one of the
18 comments that we got on this, and that were echoed in
19 similar comments during the proposed rule that we
20 received, is that having no specific bias is a
21 standard very hard to test to, very difficult to test
22 to, so one of the things is like when you look at the
23 particulars that it's in and the language that the
24 tribal advisory committee adopted is that it's not
25 saying the section is no longer saying that there's

1 no biases that are supposed to be tested to. It's
2 just merely stating that if there is a bias that's
3 bound in the scaling algorithm for the random number
4 generator, that bias has to be reported to the Tribal
5 Gaming Regulatory Authority by the independent test
6 lab, and then the Tribal Gaming Regulatory Authority
7 is going to make the decision whether or not this
8 bias is significant or it's not significant, so it's
9 kind of like that language has been put in there to
10 make sure what the TGRA is.

11 Previously, and if you look at the company
12 bulletin that goes with this, there was a specific
13 measure of bias for the scale algorithm of one or a
14 hundred million, which was since rescinded because it
15 was too specific and wasn't applicable to ball drop
16 random number generators and the biases that you have
17 in there. And in that bulletin, too, there was
18 another one that was specifically introduced, so in
19 the interest of not having any future bulletins and
20 not having any specificity there, that language was
21 proposed, and it was adopted by the tribal advisory
22 committee.

23 Our only request is that for those comments
24 that said that this is not a specific standard,
25 please tell us in any future comments on how we can

1 make this more specific so that the standard is more
2 robust in the future.

3 MR. HOENIG: Thank you, Nimish.

4 One of the other changes is based on a
5 recommendation that the commissioner received from
6 the tribal advisory committee, which was to make some
7 of the tests of the random number generator
8 mandatory, and that's the chi square test, the runs
9 test, serial correlation test. There are other named
10 tests, but they're at the discretion of the Tribal
11 Gaming Regulatory Authority.

12 So there's no changes to point 15, so we'll
13 go on to point 16, "What are the minimum internal
14 standards for game artwork glass and rules?" This is
15 what I discussed earlier was there's the -- the
16 proposal rule removes the minimum odds requirement.
17 What it has added is this additional disclaimer that
18 has to be put on the game which is that the odds of
19 hitting any advertised top prize exceed 100 million
20 to one. The player interface must display
21 notification of such, so you have to inform the
22 patron that the odds of winning the top prize are
23 greater than 100 million to one.

24 In the discussion draft, this said "must
25 continuously display this disclaimer." That's been

1 removed. The disclaimer can be put on the rules
2 screen or wherever the TGRA thinks it should be put.
3 It just needs to be there to notify the patron.

4 And finally, 547.17. This is "How does a
5 TGRA apply to implement an alternate standard to
6 those required by this part?" This was called the
7 variance section, and it's been changed from the
8 variance section based on 543 as Jennifer will talk
9 about. 543 uses the term -- used the term "variance"
10 to mean different things for different parts, and
11 it's a little confusing, so the commission decided to
12 make "variance" in this meaning an alternate standard
13 which is basically what this is, so the TGRA can
14 submit or must submit an alternate standard within 30
15 days of its approval. The chair then has 60 days to
16 approve or object, and based on some discussion with
17 the field staff, NIGC field staff, sometimes 60 days
18 is more than enough time to review and make a
19 recommendation on an alternate standard. Sometimes
20 it's not. If it's very complex and it requires more
21 time, the chair can extend the review period by
22 another 60 days. No alternate standard may be
23 implemented unless approved by the TGRA or the NIGC
24 chair, and the appeal of chair objections has been
25 moved out of this section and into the NIGC's general

1 appeal regs, which are going to be or are subpart H
2 of the regulations, which basically is all of the
3 appeals or anything in the regs have been
4 consolidated into this one section. That includes
5 the variances. So that is all for 547.

6 MR. LITTLE: Okay. I'll open the floor up
7 to any questions or statements right now. I'll just
8 remind everybody that if you do have a statement,
9 please state your name and organization for the
10 record.

11 Kathy?

12 MS. OGAS: Kathryn Ogas on behalf of Lytton
13 Rancheria. Better?

14 MR. LITTLE: Better. Much better.

15 MS. OGAS: Okay. Thanks.

16 I just had a question. I know somebody at
17 the last consultation in Arizona had asked about
18 possibly extending the deadline for comments on the
19 tech standards given all your questions. Have you
20 guys given any consideration to that?

21 MR. LITTLE: I know we've gotten a couple
22 written comments submitted, and we are reviewing
23 that.

24 MS. OGAS: Okay. Thanks. Just checking
25 before I started writing.

1 MR. LITTLE: Okay. Thank you.

2 MS. STEVENS: As Dan said, we are
3 considering that, and if we do, we're going to try to
4 give as much advance notice as we can.

5 MS. OGAS: Okay. Thanks.

6 MR. LITTLE: If there's no other comments,
7 we're kind of coming up on a break here. Before we
8 start 543, how about we take the break early, come
9 back a little bit early. Let's say we come back at
10 20 minutes -- 20 of, and then we'll start with
11 Part 543.

12 (Recess)

13 MR. LITTLE: Okay. We're going to come back
14 to order here, and before we start, I'll open the
15 floor back up to any comments, any statements. If
16 anybody had thought about anything about 547 during
17 the break, if you want to mention those now, you're
18 more than welcome to get them on the record. Okay.
19 Then I will turn the mic over to Jen, and she's going
20 to walk through the Powerpoint presentation on
21 Part 543. Just as during the 547 discussion, if you
22 have a question, you don't have to wait until a break
23 or until the end. You can grab a mic and ask a
24 question or make your comment. So there's no other
25 comments?

1 Jen?

2 MS. WARD: Good morning. I'm Jennifer Ward,
3 an attorney with the Office of General Counsel, and
4 we're going to talk about Part 543, the minimum
5 internal control standards for Class II gaming, and
6 this part addresses only Class II games and their
7 associated functions. The proposed rule is based on
8 the discussion draft, and that is a new document that
9 drew ideas and language from several sources, and
10 those included the current MICS, the TAC
11 recommendation, the tribal gaming working group
12 guidance and the 2010 proposed MICS.

13 So generally we made a few changes that
14 occurred throughout the proposed rule. We reviewed
15 the use of agent, person and personnel throughout,
16 and we made changes where appropriate so that we made
17 sure that each time we used the word "agent,"
18 "person" or "personnel," it meant exactly what we
19 intended it to mean. There were some comments that
20 the use of those words were confusing in the
21 discussion draft. And we also inserted as needed
22 language in each of the supervision provisions, and
23 that promotes consistency throughout the proposed
24 rule. We also added supervision provisions
25 throughout all of the sections so they now are in

1 sections such as the patron deposit accounts, lines
2 of credit and surveillance.

3 In Section 543.2, the definitions section,
4 we amended the definition of "drop proceeds" to
5 include financial instruments storage component
6 proceeds. Those are essentially the drop boxes for
7 the machines, and we wanted to make sure that we
8 included both drop boxes for the card games and the
9 machines, so you'll see that now includes both, and
10 the drop definition has been deleted as unnecessary.

11 The process of collecting the boxes of
12 components is described in the drop and count
13 section. Also, the definition of "gaming promotion"
14 has been altered to include only those promotions
15 that require game play to participate, and this is
16 the same as it was in the discussion draft, but I
17 want to point out that this is a change from the
18 current gaming promotions.

19 We've also amended the definition of
20 "sufficient clarity" in both the discussion draft and
21 carried through to the proposed rule here. This
22 continues for 20 frames per second minimum, but it
23 adds the requirement that you be able to clearly
24 identify the activity taking place. And there was a
25 comment earlier that 20 frames per second may limit

1 technology, and the commission invites comment on
2 whether if we change it to 20 frames per second or
3 the equivalent and at a resolution sufficient to
4 clearly identify the activity, if the words or the
5 equivalent resolves any limitation that there may be
6 on technology.

7 Section 543.3, "How tribes complied with
8 this part," these are minimum standards, and a TGRA
9 may establish additional controls that do not
10 conflict with this part. The regulations provide a
11 framework that recognizes the significant role of the
12 TGRA's. In fact throughout this document, the TGRA's
13 established thresholds for investigating variances
14 and to implement the procedures for various
15 standards.

16 MS. SULLIVAN: I actually have a question on
17 that. Tamara Sullivan from Lytton.

18 It's my understanding that the operation
19 should establish a threshold, and TGRA should approve
20 those thresholds. Can you speak to that?

21 MS. WARD: I don't have the regulation right
22 in front of me, but I believe that it's written --
23 Mike and Rest, you may know as well.

24 MS. OGAS: Kathryn Ogas, Lytton.

25 It is written that the TGRA establish them,

1 and so that's pretty much our point. That's not how
2 it works. It's the operation that establishes, and
3 the TGRA approves the comment on considering making a
4 change to the reg to reflect that.

5 MS. WARD: Okay. We'll make a note of that.

6 MS. SULLIVAN: Thank you.

7 MS. WARD: I know that this appears
8 throughout in various places, so it's not just that I
9 can look to one place and say --

10 MS. OGAS: No, you're absolutely right.

11 MS. WARD: It's throughout the regulation.

12 MS. OGAS: Yeah.

13 MS. Ward: I do want to point out for the
14 SICS, the system of internal control standards, each
15 gaming operation must develop and implement them to
16 comply with the tribal internal control standards, so
17 there is that part, but, again, throughout the
18 regulation as it appears, I'll take a look at that.
19 I thought I remembered that in many places it will
20 say "The gaming operation will establish and the TGRA
21 must approve," but it's noted.

22 MS. OGAS: Thank you.

23 MS. WARD: 543.4 talks about the small and
24 charitable exceptions. Now historically the
25 charitable exception came first, and it set a

1 threshold of gross gaming revenue, so if an operation
2 fell under that threshold and also met certain
3 criteria, then they didn't have to comply with the
4 MICS so long as the TGRA approved that. Later, the
5 commission came up with the small operations
6 exception where they had the same threshold, and they
7 didn't have those same charitable criteria. As we
8 look at it now, we're wondering if the small gaming
9 operation exception swallows up the charitable so the
10 charitable is now redundant and not needed because
11 any charitable operations would now fall under the
12 same gaming operation exception. So we're interested
13 in comments on whether it's still necessary. We have
14 heard comments thus far that it may not be still
15 necessary, but if it's not broken, don't fix it, so
16 interested in your comments there.

17 Oh. And I did miss a point on this slide.

18 Oh. Another comment?

19 MS. OGAS: No. I was just trying to get it
20 out of my way, and then I made noise.

21 MS. WARD: I also wanted to point out that
22 tribes have 12 months to comply by establishing and
23 implementing procedures but that any new facilities
24 that are built must come into compliance immediately.

25 Under 543.5, how tribes apply to use an

1 alternate standard, this is just like Mike discussed
2 with the technical standards. We changed the word
3 from "variance" to "alternate standard" because as
4 you know, throughout the MICS, when we talk about
5 variance, what we mean then is when you get a result
6 that's different from what was expected to be the
7 result, so maybe you took in less cash than you
8 expected there -- took in less win than you expected,
9 so to alleviate confusion, we changed the term to
10 "alternate standard," and this means any standard
11 that is different from what the MICS required but
12 still at least as stringent. The TGRA may approve
13 the alternate minimum standard, and then it can be
14 implemented, but they still must obtain the approval
15 from the NIGC chair. The NIGC chair then has 60 days
16 to review it, and, again, just as in the technical
17 standards, if it's determined that we need more time,
18 the chair will take another 60 days.

19 543.8, MICS for Bingo. The Class II gaming
20 system Bingo and the manual Bingo have been combined
21 in one section here based on public comment in the
22 discussion draft.

23 543.7 is now reserved, and this is less
24 procedural than the existing MICS. It requires the
25 TGRA and/or the operation to establish controls that

1 meet the detailed criteria. For example, check out
2 543.8(b)(1) that discusses the Bingo card inventory.
3 The verification of prizes is required for anything
4 over 1,200 dollars, and in the discussion draft, we
5 inadvertently required manual verification of prizes
6 over 1,200 dollars -- under 1,200 dollars per
7 machine, so any prizes that were awarded had to be
8 manually verified and validated even if you had a
9 machine. That was an oversight. We fixed it here in
10 a proposed rule so that the gaming system can serve
11 as one verification and validation signature for
12 prizes over 1,200 dollars and may serve as the sole
13 validator and verifier for prizes understand 1,200
14 dollars.

15 MR. MANUELITO: I have a question. Henry
16 Manuelito.

17 Where it says 60 days, then the chair gets
18 another 60 days, what happens after 120 days and no
19 decision is made? Does it automatically become
20 TGRA's approval?

21 MS. WARD: That was a question that we
22 received in the last round of consultation as well,
23 and I think that's something we're going back to look
24 at. At this point, we don't have anything in the
25 regulation that says what happens. It's not like

1 gaming ordinances where if it goes through for 90
2 days and there's no action, it's automatically
3 approved.

4 MR. HOENIG: The way it's written right now
5 is once the TGRA approves the alternate standard, it
6 can go into technical. Then the chairwoman has 60
7 days or 120 days to approve or disapprove, so I think
8 this is a question we need to clarify in the
9 regulation, what you're talking about, to be clear
10 whether if no decision is made, the alternate
11 standard can go into effect or not, and we have
12 received that once before, and we are looking into it
13 to make it as clear as possible. Thank you.

14 MS. WARD: 543.9, the MICS for pull tabs,
15 they require that pull tabs above 600 dollars --
16 winning pull tabs above 600 dollars require prize
17 verification, and one of the comments we received on
18 the discussion draft said that the requirement to
19 redeem and reconcile a pull tab and then deface it
20 isn't possible to do by the machine, so we've amended
21 this to allow kiosks to redeem and reconcile pull
22 tabs without defacing them as long as those pull tabs
23 are secured and disposed of from the machine in
24 accordance with TGRA policy and procedure, and we've
25 also amended the kiosk definition to clarify that it

1 may be capable of redeeming and reconciling pull
2 tabs.

3 543.10, MICS for card games. This requires
4 the TGRA's to review and approve the cancellation and
5 removal procedures for cards, and it continues the
6 standard that no administrative or overhead fees may
7 be taken from player pool funds.

8 We did receive one comment that supervision
9 section may not provide for adequate supervision of
10 the card room. We request additional comments on
11 this. In this case, the comment was referring to the
12 supervision section which requires the -- if a
13 supervisor is serving as a dealer, then someone from
14 another department may resolve any disputes arising
15 in the card room, and the commenter was concerned
16 that that may not allow for adequate supervision of
17 the card room if the card room supervisor is a dealer
18 doing other activities. So we requested comment on
19 that.

20 543.12, the MICS for gaming promotions and
21 player tracking. The gaming promotion standards are
22 limited here to those promotions that require game
23 play to participate, and as we explained in the
24 preamble for this section, it doesn't apply to
25 promotions such as door prize tumblers where

1 participants may enter simply by dropping a free card
2 into a drum. It requires game play to become
3 eligible for the prize. And player tracking systems
4 are also covered under this section.

5 And 543.13, the MICS for complimentary
6 services and items. Here, this section requires the
7 TGRA and/or the operation to establish specific
8 controls and procedures regarding comps, and it also
9 requires the TGRA to establish the threshold for
10 recording those comments.

11 543.14, the MICS for patron deposit accounts
12 of cashless systems. As it was in the discussion
13 draft, we removed all reference to unrestricted
14 player accounts because it conflicts with the Bank
15 Secrecy Act.

16 And 543.15, the MICS for the lines of lines
17 of credit. This obviously involved establishment of
18 lines of credit, and we've received some comment that
19 this provision may not be necessary, and we've noted
20 in consultations several tribes have told us that
21 they do issue lines of credit. Other tribes have
22 said that they're considering issuing lines of credit
23 in the future, so we invite comment on why this
24 section may not be necessary.

25 543.17 is the MICS for the drop and count.

1 This has been simplified, and there is more TGRA
2 operation discretion. However, drop and count is a
3 very procedural section just by its very nature.

4 543.18, the MICS for cage, vault, cash, cash
5 equivalents and kiosks. Here we've added in the
6 section on kiosks, and we've also added that any cage
7 increase or decrease of 100 dollars or more must be
8 verified, documented and recorded. This is the same
9 as it was in the discussion draft. And also,
10 promotional payments of one hundred dollars or more
11 must be documented.

12 In 543.20, the MICS for information
13 technology and IT data, most of these topics were
14 adopted from the TAC, and you see the list up there.
15 I'll just highlight a few. They include the Class II
16 gaming systems and physical controls, logical
17 security, user controls, remote access, data backups
18 and software downloads. In the software download
19 section, that's the part that was taken from the
20 technical standards because we determined that it's
21 really control standard rather than a technical
22 requirement, so you'll see it there in the IT
23 section.

24 We also added a definition of "system" in
25 the IT section, and this distinguishes this use of

1 the word "system" from the Class II gaming systems
2 term that we used throughout the document, and this
3 was based on public comments.

4 543.21, the MICS for surveillance. This
5 requires cameras with sufficient clarity for the
6 count room, the card tables and the cage and vault,
7 and it also requires that for Class II gaming
8 systems, surveillance must include the jackpot meter.

9 Now in response to public comment, the
10 discussion draft had also required surveillance of
11 the Bingo server, and after we received public
12 comment on that discussion draft, we revised the
13 proposed rule to terminate that surveillance of the
14 Bingo server is not necessary because the physical
15 and logical controls in the IT section are adequate
16 to control against any risk there. And, of course,
17 if the TGRA decides to require additional
18 surveillance of the Bingo server, they can certainly
19 do that if they deem that's appropriate.

20 The commission invites comments here on
21 whether the one-year retention period for
22 surveillance footage is appropriate. I want to
23 clarify here that the normal retention period for
24 surveillance is seven days, but in the case where
25 there's been a detention by security personnel,

1 there's suspicious activity or there's a suspected
2 crime, the MICS require that footage to be retained
3 for one year, and there's been a comment that that
4 may be too long, so we request comment on what's
5 appropriate for your operation. And this section
6 also requires the TGRA approve procedures for
7 reporting suspected crimes and suspicious activities.

8 We noticed that there was a requirement to
9 retain the footage but nothing that explained what
10 you do with that footage when you retain it, so this
11 requires the TGRA to come up with a policy.

12 MR. LONG: Quick question. Wendell Long.

13 Are we talking about just gaming crimes
14 or --

15 MS. WARD: According to MICS, it says
16 "suspected crimes," so presumably that could include
17 muggings, any number of crimes, not just gaming.

18 MR. LITTLE: It'd be helpful in any comments
19 the tribe wants to submit is do we need to define
20 what suspected crime, suspicious activity is, so just
21 for your thoughts.

22 MS. WARD: And I want to clarify. There was
23 also a question in an earlier consultation about some
24 suspicious activity and the comment in reference to
25 the Bank Secrecy Act because it specifically fines

1 what suspicious activity is there and is
2 clarification. We don't intend to limit this
3 "suspicious activity" definition to just what's in
4 the Bank Secrecy Act. This could include a number of
5 things.

6 MR. LONG: Although I wouldn't agree with
7 specifically fines, but --

8 MS. WARD: 543.23, the MICS for audit and
9 accounting, and this takes the annual requirements
10 from the TAC recommendation.

11 And 543.24, the MICS for revenue audit.
12 This has been separated out from audit and
13 accounting, and it specifies the frequency of each
14 testing procedure, and the game section, whether
15 Bingo, pull tabs and card games, those adopt the TGWG
16 guidance, and you'll also see in the MICS on revenue,
17 audit, audit and accounting, this changes here from
18 the discussion draft. They reflect that Bingo has
19 been merged into the single section.

20 And we went through that pretty quickly, but
21 if you have any specific questions or comments, we'll
22 open the floor.

23 MR. BERGIN: Hi. I'm Patrick Bergin with
24 Fredericks Peebles & Morgan.

25 Just going back to the patron deposits and

1 cashless systems, Jennifer, California is considering
2 state, intrastate Internet game. It wouldn't be
3 really travel gaming, it's more stated regulated
4 gaming, but if that were to become law in California,
5 do you think that the patron deposit section would
6 preclude customers from one part of the state from
7 playing in a cashless system with the tribe, say, in
8 the southern part of the state without having to
9 appear to set up that deposit account? I guess what
10 I'm trying to say is if somebody in Sacramento wants
11 to play, I would call Southern California without
12 going down there to open an account and do it online.
13 Do you think that section would prevent them from
14 opening an account with a casino online?

15 MS. WARD: That's a good question.

16 Mike, do you --

17 MR. ROBERTS: This is Larry Roberts.

18 I think it is a good question. I think it's
19 something that's hard to provide a thoughtful
20 response to, but if it's something that the tribe
21 wants to submit to us, we'll definitely take a look
22 at.

23 MR. HOENIG: Obviously, these are just
24 Class II MICS, so we'll be happy to take a look at
25 it. It's in the record here now, so we'll respond.

1 MR. BERGIN: I guess a follow-up question
2 would be do you think the Class II games would apply
3 to state-regulated online poker?

4 MR. ROBERTS: I don't know.

5 MR. BERGIN: I don't either. That's why I'm
6 asking. Okay. Thank you.

7 MR. LITTLE: Next comment on Part 543?

8 We can go back and start asking some
9 questions, if folks would like that, or want to make
10 sure everybody's given an adequate opportunity to
11 make some comments.

12 We talked about -- actually, I don't think I
13 mentioned earlier the comment period ends July 31st.
14 I need to make the comment that there's been a
15 request to extend that reviewing, no decision yet.
16 So there is some time to submit comments. If you
17 think of things after you leave here today and you
18 want to send them in, they can be submitted online,
19 fax or mailed to us. Then all that information is, I
20 think, on the next slide. Here you go. Okay. So if
21 you want to send them, we do post all of the
22 submitted comments on our website at nigc.gov, so if
23 you want to -- we have all the discussion draft
24 comments up there right now and a couple of the
25 comments that have been already submitted for the

1 Notice of Proposed Rule for 547 and 543.

2 MS. STEVENS: This is Tracie Stevens.

3 I also want to add questions to that as
4 well. Certainly if you have comments, submit them,
5 but we also understand that many of you are here on
6 behalf of your tribe or a client. If something comes
7 up as you go back and talk to your representatives
8 from the tribe and you have a question, we do feel
9 questions and all of this contact information are
10 ways that you can ask questions, too, if you think of
11 something after you leave here.

12 Okay. If there are no questions or other
13 comments at this time, I do encourage you to read
14 through these. As Dan said previously in the
15 opening, we have received -- on the discussion draft,
16 we did receive substantive comments on how these
17 would apply to your specific tribe, facility or your
18 gaming commission, and we look forward to more of
19 that. As is our responsibility, we had to be mindful
20 of all of the tribes across the country and how we
21 can best fit the needs of all tribes and meet our
22 responsibilities as the federal regulators, so we
23 look forward to your comments. I appreciate
24 everybody coming out.

25 Do you have any closing thoughts, Dan?

1 Okay. Relay what he just said to me.

2 Please read the preamble of the Federal
3 Register Notice. That's where the questions that we
4 pose are, you know, certainly in this process, and
5 I'm glad that Nancy recognized that we're trying to
6 be as thoughtful and deliberate as we can be about
7 this. You know, answering -- those questions were
8 borne of this process, and we really would like to
9 get as much information as we can as we move forward.
10 As -- you know, this process, as long as it has been,
11 I think it demonstrates our commitment to being as
12 thoughtful to our decision making process as we can
13 and inclusive of tribes' comments and how these work
14 on the ground. Noting that, there are currently regs
15 on the books right now that have been postponed.
16 They were put out in 2008, and they're there, and
17 we've put them on hold while this commission came in.
18 We received a lot of comments from tribes that, you
19 know, those are outdated -- as of the time that this
20 new commission came in, those were outdated, and so
21 this is part of that process of reviewing updated
22 version and the possibility of an updated version of
23 Class II minimum internal control standards, so with
24 that in mind, I mean that as a backdrop, this has
25 been an unresolved -- or unfinished, I should say --

1 regulatory issue for tribes going back to -- I want
2 to say 2005 or '6, and so in knowing -- having come
3 from a tribe, having that uncertainty out there makes
4 it a challenge for the operations and for the
5 regulatory bodies to progress as technology changes,
6 and we do want to finalize these at some point so
7 that tribes are able to move on and have certainty
8 rather than operating in the past with regulations
9 that may not be suitable for today's gaming, so I
10 just always like to remind everybody that that's sort
11 of the backdrop of what we're dealing with here, and
12 your comments on how these will affect your
13 particular operation are very helpful, so please do
14 read the preamble about the registered notice. If
15 you have any questions, feel free to contact us.
16 Please provide your written comments.

17 And I do want to thank everybody for coming
18 out today and wish you all safe travels back home.
19 So thank you.

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REPORTER'S CERTIFICATE

I certify that the foregoing proceedings in the within-entitled cause were reported at the time and place therein named; that said proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California, and were thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said cause of action, nor in any way interested in the outcome of the cause named in said cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2011.

CARRIE PEDERSON
Certified Shorthand Reporter
State of California
Certificate No. 4373

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