TRANSCRIPT OF PROCEEDINGS
NRRA CONSULTATION
GLOBAL GAMING EXPO

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Reported by: Kimberly A. Farkas, RPR, CRR

Job No. NJ343907
TRACIE STEVENS: I'd like to take this opportunity to have the representatives that are here on behalf of their tribes introduce themselves before the commission and staff introduce themselves before we introduce ourselves. If we could start over here. If you could state your name and the tribe you're with.

WALTER HAMILTON: My name is Walter Hamilton, Cheyenne and Arapaho tribe. I'm the Chair.

CHEEVERS HEAP OF BIRDS: Cheevers, Heap of Birds, gaming commissioner, Cheyenne and Arapaho tribe.

PATRICK LAWSON: My name is Pat Lawson, chairman Northern Arapaho Gaming Agency.

BRAD SIMMONS: Brad Simmons, Nottawaseppi Huron Gaming Commission, chairman of the gaming commission.

JUSTIN QUISQUIS: Justin QuisQuis, chairman San Pasqual Gaming Commission.

QUEENETTE PETTIFORD: Queenette Pettiford, chairman of the Sycuan Gaming Commission.

TRACIE STEVENS: I'm going to have
someone grab this microphone because I'd like to see who is in the audience as well.

BRIAN McCLATCHEY: Brian McClatchey (inaudible).

UNIDENTIFIED SPEAKER: (Inaudible).

UNIDENTIFIED SPEAKER: (Inaudible).

TRACIE STEVENS: Thank you. That's everyone. I'd like to take this opportunity to point out the commission staff that we have here. When you all came in and registered out in the hallway, you did so with the executive secretary of the commission. And I want to give her a special thanks because she does quite a bit in order for these meetings to take place in setting up. She's conducting an orchestra when we come out to do these meetings and I just want to raise my hand to her because she's done a very good job. If you all get an opportunity to say hello and thank her, that would be great.

Also, way in the back is Dawn Pool. She's our deputy chief of staff. Over here is Melissa, she's a staff attorney from headquarters in DC. Right over here is Larry Roberts, our general counsel; chief of staff Paxton Meyer. Over here is Lael Echo-Hawk, she's the counselor to the
chair. Next to me is associate commissioner Daniel Little. My name is Tracie Stevens, and I am the chairwoman of the National Indian Gaming Commission.

So welcome, everyone. I appreciate the time that everyone is taking to attend this. I know there were a number of other activities taking place here. One of the things that we've been trying to do is piggyback our consultations with events that we know that tribal leaders, regulators, operators, those in the Indian gaming industry that has interest in what we're doing we know they're going to be attending. That way we can consolidate our resources and try to capture as many people as we can. So I appreciate everyone taking the time this morning. It could be a long week so I thank you all for attending.

This is consultation Number 15 on a number of regulations. I think I counted a total of about 21 since we began, either current regulations or potential regulations. When we started in April, we started in May technically, but we announced in April after talking with tribes about regulatory priorities, which regulations we needed to. This is consultation Number 15 since
May going forward on a number of substantive issues with tribes. That's on our agenda here today, the issue that we're talking about.

We have time in here, and we built this in specifically knowing that tribal leaders especially because you're tasked with many more issues besides the ones that we'll be talking about today, with open statement opportunities. So you'll see that on the agenda throughout. And we're following some order here in terms of when we're going to speak about certain issues, but that doesn't preclude anyone from talking, you know, based on their time and their ability to stay in this meeting or have a conflict with their schedule to talk about issues ahead of the agenda if you need to leave early. So you'll see that on there.

After I'm done speaking there's an opportunity for those who have to leave early to make opening statements. Many tribes come with prepared statements or have questions. So that will happen right after I'm done speaking. Then we'll go through the groups, as indicated on your agenda.

Hopefully everybody got a packet. And that's the order in which we'll be following.
We'll be reviewing today's regulations that are the subject of this meeting.

I will remind you, over here next to Melissa is our transcriptionist. These are all recorded. What I'm finding right now is I'm having to put the microphone very close to my mouth so that she can hear me. And for those of you who make statements, you may see us encouraging you to speak up. And this is for the sake of the transcriptionist so she can accurately record what's being said today.

All of these meetings have been transcribed and all of them are posted on our website. So speaking with a clear, loud voice is helpful, and we may remind you. If you could speak up, that would be very helpful.

So at this time I'm going to turn over the microphone to Lael. Sorry. I just said -- I want to take the time right now to open the floor to anybody who has statements or questions or who may need to leave early, earlier than -- if there's issues ahead of us on the agenda and you can't wait, we'll open the floor now for those who have questions or statements.

Yes. Right over here.
PATRICK LAWSON: My name is Pat Lawson with the Northern Arapaho tribe. One of the concerns I have is fingerprinting of our key employees. I'd like to make a request that we are able to fingerprint all employees, not just key employees. I'd also like to make a request to fingerprint anybody that comes on our site.

I know you guys have an agreement with the FBI for fingerprinting. It would make it more secure for our casino to fingerprint everybody. That was basically what I came down to talk about. Thank you.

TRACIE STEVENS: Thank you, Mr. Lawson. We've actually heard that expressed to us over the previous 14 consultations, and I think even prior to that during the notice of inquiry and probably more likely it's been brought up even before this commission was seated. I might turn it over to Lael for just a quick response, what our response has been with regard to whether we can do that or not and what doing that might do with our agreement with the FBI, and if there's any obstacles that we may have having others besides key employees and primary management officials fingerprinted.

LAEL ECHO-HAWK: This won't be much of an
answer, but Larry Roberts, our general counsel's office, has been working with the FBI on our agreement and understanding that we have with them. We've heard that request a lot. And I know that some tribes include in their ordinance who will be fingerprinted and/or who should be fingerprinted. So far we've taken the position if your ordinance says that those people need to be fingerprinted, then we try to accommodate you if we can. But we still have a relationship with the FBI that we're talking to them and making sure that that's something that we can actually do.

Because it has been a concern, and I know that for tribes that utilize our fingerprinting services, it's something that they like to have access to. So we are working on it. If that's something that your tribe wants to do, it should be in your ordinance or regulations so that when you send them in, we have that listed already.

TRACIE STEVENS: Are there others that have questions or opening statements before we move on to the next order of business on the agenda? If not, then I'll again turn the microphone over to Lael. She's going to go through the slides that we have here. In your packet, there is a PowerPoint.
If you want to just read along as you go. She'll go through those regulations on Group One as outlined in the agenda.

LAEL ECHO-HAWK: Good morning. I recognize some of you, so I apologize if it's redundant, but thank you all for coming. We've got a couple minor changes to the PowerPoint. But this is Tribal Consultation. Tribal Consultation meetings: Only tribes and their designees can attend or participate in these meetings and they are not open to the public. This is not a public meeting. This is Tribal Consultation.

This consultation is the practical actual executive order 13.1775. Particularly what we've been doing for the past 14 meetings has been to talk with tribal governments about whether or not we need to establish standards, whether or not rules need to be made and in sort of what way we need to revise our regulatory framework.

When we came in and we started looking at the regulations and the QFRs that guide what the agency does and how tribes regulate their facilities, we found a number of regulations, and we divided them up into regulatory groups so that they're a little more manageable. We numbered them
Groups 1 through 5. Those with numbers do not indicate priority.

As we looked at what the regulations were, we looked at subject matter, we looked at the comments that we received from the notice of inquiry, and sort of estimated the amount of time and resources it would take to do each particular regulation, to review it and potentially revise it. So that those five groups, we'll be going over them today.

We have three phases that we set out. And for the past 14 meetings we've been in the preliminary drafting phase. We have had a number of preliminary drafts that have been published. I am very, very happy to say that right now we have four notices, two of proposed rules, one notice of appeal, and one just informing the tribes that we're not taking action on particular rules. So we're moving into the second phase here beginning this week and moving forward.

And then the final phase will be a final rule if those proposed rules, they need to go into final, then that will be the third and final phase for each rule.

The preliminary discussion drafts, you do
have those in your packet. They are initial draft only. We're taking and listening to your comments and trying to define those so as we go forward into a proposed rule we consider all the comments and address them.

All these consultations are transcribed so we do need you to speak clearly into the microphone, state your name and what tribe you're with. And then all of these transcripts as well as any written comments that we receive, they're all posted on the website. If you have trouble finding those, shoot us an email. We'll help you access those.

The Commission is committed to making sure that every comment is reviewed and considered. I know they do review these comments. Sometimes it's a lot of work, but it is done.

Any proposed or final rule will include a summary of those comments. You can always access those on the website as well. And the Commission is committed to a clear and transparent process.

The agenda for the consultation is here. I do want to make a point of clarification and that is that Group 3 that covers class II and class III minimum internal control standards and the
technical standards for class II, we don't have them on our agenda. If you feel you'd like to speak to those issues, that's fine. We don't have them on our agenda.

The Commission has created a Tribal Advisory Committee, and we're going to set out a series of six meetings to talk about those particular issues. The Federal Advisory Committee has been selected and a press release will be sent out today, so if you're interested in that and who was selected for that committee, pay attention to our website or any other media sources you have access to. We're going to go through these throughout the day.

This morning we're going to start with Group 1. Group 1 starts with Part 514; Part 523, which was a resolution of both review and approval of existing ordinances or resolutions; Part 559, facility license notifications, renewals and submissions.

So right now we have a notice of proposed rule. It is at the federal register for Part 514. And this notice was sent. So this Part 514, the notice of proposed rule will be available on the federal register tomorrow and it will be published
officially on Tuesday. So that is our first notice of proposed rule. I'm very excited about this. You're probably not as excited about it as I am, but I am ecstatic right now.

So what does it do? We sent out a preliminary draft at the beginning of, I think it was in June, and we had a lot of consultation. We had lots of comments. And we've done a couple of things in the notice of proposed rule. We changed the fee calculation to be based on a gaming operation's fiscal year rather than the calendar year. We moved the fee rate application date from February to March. And this is so the Commission has more time to review the statements that come in and they get more accurate preliminary rate.

We've done things like removed the word "amortization" and other terms that were not reflective of actual practice or they weren't industry standard language. So we tried to make this very consistent with what industry standard language is.

We've moved back to quarterly payments. This is actually the requirement of the Act. And even though the NIGC moved to quarterly statements a couple years ago, when we were reviewing the
regulation and looking at the requirements of the statute, we realized that it said quarterly payments, so we're going back to quarterly payments.

We've built in some notification periods so if the gaming operation changes its fiscal year.

We've also added a new section. And this was something that we received one negative comment on this. We set up a system for when a tribe submits their fees late. Instead of receiving a notice of violation, which has happened. In 2009 there were a number of notice of violations sent out to tribes for submitting their fee payments late. We heard over and over again that this was very punitive and sort of the punishment didn't fit the crime.

So we took a look at this and we set up the system so that if a payment is late, anywhere from 1 to 90 days late, there's a graduated percentage rate that the tribe would pay as sort of a penalty type of a fee. The Commission has set that rate at 10 percent for the first 30 days, 15 percent for 60 days late, and then 20 percent if it's over 60 to 90 days late.

You can look at the regulation. The
current draft just has blanks. We went back and
looked at some regulations in other agencies. We
looked at other penalties, sort of percentage fees,
and this is what the Commission came up with. And
it's going to be in the notice of proposed rule
that you'll see tomorrow and then on Tuesday.
We provided appeals of those late
assessments. We included the language in that
section of the regulation. And then we also noted
that the failure to pay an annual fee, which is
paying the annual fee 90 or more days late, could
result in notice of violation.
And then the last section, and it's a
section we added to 514, we formalized in
regulation fingerprint processing fees. We talked
about how we collected fees, what that looks like.
You can see that in the proposed draft that you
have in your packet. And then we noted that we
published the fee amount bi-annually so that we can
keep up. If we get charged a different rate, we'll
publish that so tribes can know what the rate
actually is.
Part 523 we've been over and over again.
This one was sent to the Federal Register as well
and notice of proposed rule making that repeals
this part, anticipate that will be published within the next week as well.

Part 559, which is the facility license regulation, we've been working on this internally and we sent the draft out to tribes, I think it was in June, as well. And we tried to create processes that can ensure that a tribe provide us the information that we need and it's not overly burdensome and it's not regulated -- we're not doing things that perhaps other agencies need to be doing.

The draft had added a process for how a tribe can -- currently what happens in the regulation is if someone sends in a facility license, you're supposed to send it in 120 days before the facility opens. We take a look at that and we review the information in there, just verify that internally we would look at it and make sure that the tribe is actually operating the facility on Indian land eligible for gaming.

That process, we received a number of comments about it. We're trying to be responsive. So we tweaked it a little bit. It's not in your packet.

We've gone to a process where a tribe can
request an expedited review from the Chair. The Chair can respond then within 30 days and the tribe can request written confirmation from the Chair.

We received a number of comments that 120 days is too long and it's sort of arbitrary. If a tribe wants to open a facility, then why do they have to provide a notice to the NIGC 120 days before the opening of the facility, and is there a way that we can make that move faster.

So we tried to build a process where it can happen a little bit faster if they have all the information and it's clear where the land is located -- a number of factors.

From the facility license regulation we removed the renewal requirement. Currently the regulation is a tribe is required to renew their facility license every 3 years. And we removed that. Those newly issued or renewed facility licenses, if a tribe decides they want to renew their facility license, that's up to you. But if you do do that, then that needs to be sent to the agency within 30 days.

Instead of requiring a bunch of documents and a list of -- in the current regulation there's a list of documents and information that needs to
be sent to the NIGC about how they're handling
their public safety issues. We removed that list
and just added a requirement that a tribe submit an
application with an assertion made that the
facility and operation is conducted in a manner
which adequately protects the environment, public
health and safety.

That's language straight out from the
Act.

We asked tribes to send notice to the
NIGC within 30 days from when the license is
terminated or expires or if the facility closes for
more than than 180 days or reopens.

Some tribes close temporarily all the
time, remodeling, those kind of things. Tribes
said over and over again, that's burdensome. Why
do you need to know that. We're just replacing the
carpet. Why do we need to send you a notice.

The current proposed draft is if the
facility is going to be closed more than 180 days,
then you let us know. Additionally, if the
facility is closed seasonally, we have lots of
tribes that operate on a seasonal basis, and if it
is just a seasonal closure, the rule now doesn't
require notice for that.
So that regulation we are working on it. We have to work with other agencies on that one as well so it's taking a little bit longer perhaps to get out, but I'm hopeful that we'll see something out by the end of the month.

And then finally the last potential regulation in this ruling is the buy Indian regulation. We asked tribes if this was something they would like to see NIGC do. To be clear, this is something that tells the agency what to do. This is not the agency telling a tribe what to do. This would be a policy or regulation that tells the agency when purchasing goods or services that they buy Indian.

We've heard lots of support for this. Working with the Department of the Interior and looking at the federal acquisition regulations and trying to figure out how we can make this work within the agency.

If there is any tribal leader that wants to make an opening statement right now, now would be the time also.

PATRICK LAWSON: With the facility licensing, what are you doing with a name change? Just change the name? Is there a timeline for
notification? Also, expiration dates on each game licensing, do we have to notify you every 30 days when we renew our gaming license or can we just send you a copy of it?

LAEL ECHO-HAWK: If you renew the license, yes, we are requesting that you send a notification to the agency -- the regulation requires you to send it in within 30 days after you renew it. I know that a lot of tribes changed their ordinances to comply with this regulation when it came out years ago and they may have now renewal requirements where they didn't before. That's up to you. A tribe can decide whether or not they want to renew it. There is no requirement that you do. But if you do renew it, then send it to the NIGC within 30 days.

We haven't spoken specifically about the name issue. I think we're less concerned about the name of the facility. It's not mentioned in the regulation. We just talk about the legal description of the land. We want to make sure that we have jurisdiction; it's actually land eligible to be gamed on.

I can't remember off the top of my head, but I don't think the regulation says that you have
to send in a name. We just need to be aware of where it's located and the legal description. I think if you change the name, it might be helpful. Our enforcement guys are on the ground. They talk to you. It does say, the name, the address of the property. But we haven't talked about it, so I have to go back and check. But if you change the name, I think that's less important than the location is really what we're interested in.

It's good to be notified. And I know our enforcement on the ground, they're working with tribes all the time. That might be a good way to communicate that. We'll talk about that and try to clarify that for tribes.

TRACIE STEVENS: Others? Yes. Let's move the microphone. Just pull it out of the stand.

NATHAN SMALL: Good morning. My name is Nathan Small, tribal chairman Shoshone-Bannock. If we have a meeting facilitated within the boundaries, is there any regulation if it's on fee land? Does it have to be on trust land or would fee land be? The application is still being considered to put it back in the trust.

LAEL ECHO-HAWK: The Act says Indian land
eligible for gaming. So based on what the land -- we do a separate analysis. We do an analysis on whether or not the land is eligible for gaming, not whether it's trust land. There are different requirements in the Act.

TRACIE STEVENS: Is this specific just to your tribe? Are we talking about -- or is this about what we proposed in the regulation or both.

NATHAN SMALL: I haven't seen it really addressed. There's been a lot of talk about off-reservation gaming be in a trust before you can open a gaming facility. I'm just curious about the land within the boundaries of the reservation, purchased by the tribe.

TRACIE STEVENS: It contains the definition of what is eligible land that gaming can be on by tribes. Generally, we're not talking about tribal specific. Your parcel of land that you're talking about, certainly happy to have Larry talk about what the Act says about that and how we've basically incorporated that into our facility licensing. But if it's specific to your tribe or your application right now, we'd rather probably talk to you on the side about that if it's an issue for your tribe right now. The current regulation
might not apply to your situation right now and we can talk to you about that at a break.

NATHAN SMALL: Okay. Thanks.

TRACIE STEVENS: Justin, did you just raise your hand? Are there other tribal leader comments?

JESS GREEN: My comment relates to 559.6. 559.6 says, A chair requests any land or environmental public health and safety documentation regarding any gaming place, facility or location where gaming will occur.

Again, a request is not a requirement. So if the answer to that question is yes and you didn't make the request, it doesn't address at all whether or not the tribes have to respond. The response language that you put in regard to the question goes much farther than answering the question. It says, A tribe shall provide -- last time I read 2706 it said you have the right to come and see and copy. It didn't say you had the right to command us to appear. It also did not say that you had the right to command us to appear for everything. The two lines that you have say, A tribe shall provide Indian lands or environmental public health and safety documentation that the
chair may in his or her discretion request.

There needs to be some limitation to what you can request because the tribe may not have that. And your sentence is not limited to the restrictions that are in your question.

In other words, your question says "any request." The answer would be, yes, you've requested it. Your response says, yes, the tribe must provide. Then it says the tribe must provide everything you've asked for. If we don't have it, we can't give it to you. Your base law says you can come and see and inspect and copy. It doesn't say you can command we go fetch and deliver.

I take great umbrage to the fact that you're opening the door to that chairman's request that could create a tremendous amount of documents. That's not within the Act. You don't get to make us create stuff.

Again, I salute you; the rest of these reg look real good. This is the only one that gives me that kind of heartburn. Because the question says, do you have the ability to request the information. And the response says you have the ability to make us jump through all kinds of hoops. And I would like to see it reworded a
little bit more.

TRACIE STEVENS: Jess, do you have some suggested language?

JESS GREEN: No, I don't. The question and the response are just miles apart. I think someone just needs to start.

TRACIE STEVENS: From what I can tell, this is an existing reg right now, this language.

JESS GREEN: I understand this has been the previous position. You can command everything you want of us and we're supposed to create it. It's also been the topic of substantial controversy because 2706 doesn't tell you you can summon this stuff.

You couldn't even get this with a subpoena. I could object to a subpoena with this kind of language in it. Saying, I don't possess it and you can't command me to create it in a court of law. Your authority is come and see and copy. And you're changing that to, create for me if I ask you for it. There's a critical difference in if you have it, would you please send me a copy, and, I want something and you need to create it for me because I need it. This discretion request that we must provide is, I think, just too much.
TRACIE STEVENS: Okay. We might be able to take the comments that you've given us today and we'll certainly consider it. Thank you, Jess.

Yes, Sharon.

SHARON HOUSE: Sharon House, attorney with the gaming Commission.

In this particular situation because there has been concern about that area, maybe it just needs to say something like, Directly related to the facility being licensed. That's one.

JESS GREEN: That would be helpful.

SHARON HOUSE: That would be one option as well as, applicable and available.

JESS GREEN: Yes, those two things would be of great assistance if we don't have to go create something.

SHARON HOUSE: Thank you. I can't believe he just honored me with that saying.

JESS GREEN: Sharon, I very rarely disagree with you. I've learned that over many decades.

TRACIE STEVENS: Thank you, Sharon, for that contribution. That's helpful.

Do we have others that have comments?

Any questions about the regulations as we've
described them? And just many of the -- again, I want to reiterate that we've included tribes in this discussion about all of these regs, not just in the substance here, but with the notice. We wanted to know which one we should look at, but also have discussions before we even drafted anything. And then the draft would reflect what occurred. And then we'll continue to receive comments so that we can move forward.

Yes, Joe.

JOE WEBSTER: Thank you. Joe Webster. Not necessarily for all regulations, but for 559, I wonder if there might be some value in circulating revised discussion drafts before getting to the point of putting a rule of thumb. Certainly 559 also self regulation is another one that comes to mind. There might be some value to a back and forth process.

TRACIE STEVENS: Thanks, Joe. We'll take that under consideration.

Do we have other comments? Any questions about the regs that we've spoken to this morning?

We're up for a break right now. It's about 10:15 on the schedule. We'll take a 15-minute break. We'll come back, and if there are
more comments to be made before people leave on parts of the agenda that are for later today, we'll have a statement after we return from the break. So about 15 minutes. We'll be right back.

(Short recess)

TRACIE STEVENS: Let's go ahead and get started again. I do want to mention that we realize that there are a number of other meetings, speeches that are going on right now and other activities that are scheduled at this same time. We'll continue to move through the agenda, and I think it's one of the disclaimers we have on our agenda that based on our attendance levels, we may end early if at a certain point we've gone over all of our subjects or we've lost everybody to more competing interests that might be more exciting. I can't understand that because this is very exciting. As you can see, Lael is very happy.

We have something in the register today that's very exciting. We want you to share in our excitement. Just a disclaimer, depending on the attendance levels and how quickly we move through the agenda, we may end up ending early today.

So I want to open the floor again if there are others who need to make comment before we
move on to the next group. Okay.

So then what we'll do is move on to the exciting world of proceedings in Group 2 and enforcement issues. And I'll turn it over to Lael who can talk about the regs that are under Group 2, if you want to follow along in your PowerPoint.

LAEL ECHO-HAWK: Okay. So Group 2, sort of two major issues. One is Part 573, which is the enforcement regulation and then all the regulations concerning proceedings before the Commission.

We'll start with Part 573, which is enforcement. And what the Commission was trying to do when we were talking about this draft was create a mechanism so that the agency is talking to the tribe before we get to a notice of violation stage. We heard over and over again that tribes would get a notice of violation and they didn't even know what was happening and that there should be some communication between the NIGC and the tribe before a notice of violation was issued.

I heard a gentleman say that a notice of violation should not be a surprise. So that's what we're trying to do. We're trying to build a mechanism that adds that voluntary compliance as a goal of the Commission. We're working through
iterations of this currently and we're talking about what does voluntary compliance mean and how does that all work.

You have in your draft or in your packet a draft of the preliminary discussion draft. And we included the language in there about the voluntary compliance being the goal of the Commission and how we can achieve that.

Two different types of actions. One is a letter of concern, and the second is a noncompliance notice. We've heard lots of comments about this noncompliance notice, and perhaps that is not the correct name for it. So we're playing with the language there as well. I think we kind of were thinking about it in terms of a warning letter.

So what do they do? A letter of concern is a notice sent by the NIGC staff, not by the Chair but by the staff, that says, there's a condition here and we think that it may be a violation of the Act, the regulations, the ordinance. Take a look. Respond and let's talk about how we can make sure that this isn't something that actually gets to a violation.

The warning letter, what we have on the
screen here, noncompliance notice, it says, hey, tribe, we've seen this issue. It actually is a violation. Let's talk about how you can correct this so that we don't have to get to a notice of violation stage.

Now, either one of these can be issued at any time. The idea is -- and we're trying to work this into the reg. The idea is we would start at the lowest level. We would start at a letter of concern if possible. If that is not possible, then you would go to a noncompliance notice or a warning letter. If that's not possible, the Chair does have the discretion to issue a notice of violation.

We've heard lots of comments about that, that it's too much discretion for the Chair. We're trying to clarify that the idea is that we're talking to you and that the NIGC starts at the lowest level possible to address the situation. In some instances that may require the Chair to issue a notice of violation so we do have to leave that requirement in, but it's something we're talking internally about, how do we frame this process.

We have added into the draft internally a timeframe for response. The current -- there's an oversight, I think, on our part. We just didn't
think to put it in the reg. We wanted to make sure that the notice, that either one of these actions leaves the tribe time to respond, and that these actions contain a timeframe for tribes to respond or to address the violation.

    We really hope this will be a collaborative thing in making sure that tribes have lots of notice of the concerns that the NIGC has so that a notice of violation is truly a last resort or issued when absolutely necessary.

    We also have a -- as we were working through Part 573, we realized, well, maybe we need to define what an enforcement action is. So we have done that. This is not in your PowerPoint. I did this last night when I was thinking about it. And we do have this in a notice of rule defining what an enforcement action is just for clarity, tribes know what we're talking about when we say enforcement action.

    The next grouping of regulations in Group 2 all have to do with the proceedings before the Commission. And we're talking about appeals of certain instances or certain disapprovals or approvals that would then go to the Commission. The appeal of these various parts that have been
scattered throughout the regulations and create a new subchapter. How can we make this easier for people to find. How can we make it a process that you can just go to a certain section of the regs and have everything there that you need to know, sort of a one stop shop.

We created this new Subchapter H, Proceedings Before the Commission. And you do have that in your packet. It covers regulations Part 580 and 585. What we tried to do is set up general rules that apply for all these proceedings, what motions can be filed. And then there are four different kind of types of appeals that can happen before the Commission. Appeals of disapprovals or approvals of management contracts.

And then appeals of the notice of violation, civil fine assessment, temporary closure or the decision, Chair's decision, to void or modify a management contract, a late fee or fee assessments. All of those can be appealed to the Commission in one of two ways. You can either go before an official and actually have this hearing process where there's lawyers and motions back and forth and discovery. And that's covered in Part 584.
Part 585 covers those same types of appeals, but it's not in a hearing form. It's all just on written documents submitted to the Commission.

So that's what these sections cover.

Part 580, again, is the general rules, including definitions, service requirements. We've had lots and lots and lots of communications about exparte communications, so they're taking a second look at that, Mr. Green.

We've got motions and appellate proceedings, what kind of motions, what can you file and how can you file it. This is all stuff that lawyers really love. It is important for tribes to know what your options are and how you go about walking through these proceedings.

582, again, gaming ordinances. And a lot of times what we've heard are comments that a lot of this stuff is repetitive. And it is true. You'll see sections in there like what happens when you file late, when you fail to file, what the standards of review are. It is true, a lot of this stuff is repetitive, but it is also specific to that particular section. So we wanted to make sure that it was clear in each section what the process
was for that particular proceeding. So even though
it's duplicated in other parts, it still is
specific to each type of proceeding. So we wanted
to make sure it was laid out in each section.

So Part 584 and 585 all have to do with
when you're in front of the Commission and you had
a notice of violation or some fine assessment, and
you can go one of two ways. You can go the hearing
route or to the Commission.

We just want to point out that when you
go before a presiding official, the presiding
official makes a recommendation to the entire
Commission. And then the Commission makes an
ultimate decision on which way to go with regard to
that particular appeal.

So it's pretty process oriented. Lawyers
like it. The rest of us, I guess I'm aware that
other people might not find it as fascinating as we
do. We try to create a process that's clear so
even if you're not a lawyer, it's something that
you can follow and understand what your rights are
and what the process is.

TRACIE STEVENS: Okay. That is the
fascinating world of proceedings. Very important.
I want to emphasize it is very important. And the
reason why we address these, not only did we hear
from tribes that we should look at this because
there were some processes here that were not clear
or were inconsistent, but we also heard from our
own staff. We have in our general counsel's office
a number of staff attorneys who were excited at the
prospect of being able to rewrite these. And
they've been very helpful in drafting these
proposed changes from the folks who are down in the
weeds and hands on with proceedings before the
Commission for these various different types of
proceedings.

This is something you can talk about, I
know we have a number of regulators here, about
having this incremental process, the step process
before an NOV is issued.

JESS GREEN: Jess Green. 573.3A says,
The Commission may issue a notice of violation to
any person for violations of any provisions of the
Act or its chapter.

I think you need to restrict "any person"
to "a person within your jurisdiction." I don't
think you have jurisdiction over the entire world.
My best for instance is if you leave this language
in here, you're going to have states saying, we
want you to give notice to the government that he's not negotiating in good faith, would you do that, please. You need to restrict who you are sending these violations.

And 573.4 number 8, you say that you can issue a temporary closure based on any person submitting false or misleading information to the Commission. Well, that could be the mayor of a local city. Again, you need to restrict the description of persons there.

In 11 you say, A gaming operation operates class III gaming in absence of a tribal state compact that is in violation of 25 USC.

Those are my specific requests in that section. Thank you.

TRACIE STEVENS: Thank you, Jess. Did we have a comment from the table here? Yes, right over here.

JUSTIN QUIS QUIS: I guess I missed the definition of it or if this was discussed in previous consultations, but I was just curious as to what is considered a reasonable time regarding violations. What would you consider reasonable time?

TRACIE STEVENS: What specific part are
you looking at?

JUSTIN QUIST: I'm looking at 573.3.4. Let's say, for example, number 4, May issue a notice of violation to any persons for violations of any provision and set a reasonable time for correction.

TRACIE STEVENS: It's in the current reg right now and I'm sure that we've talked about this at some point. I appreciate, by the way, your comment. It's a good question.

One of the things, especially with enforcement actions, they are so tribe and situation specific that what might be reasonable, depending on the violation depends on what's happening. It may take a tribe a year to be -- depending on what correction they need to make, it may be less than that. There may be an emergency type situation where the Commission has to take action and reasonable may be less time.

It's hard for me to answer your question because it is so specific to the situation that's occurring. But that gives us enough flexibility and the tribe enough flexibility to be able to respond. And I think that's why we didn't address that.
Sometimes putting in specific deadlines, especially if it's -- it's one thing for us, but it's really another thing for the tribe depending on what the situation is. There are circumstances that may be completely outside the control of the tribe like the death of an employee who might have been the one to be responding or a natural disaster. We want to remain flexible on that so that we're not boxing the tribe in, but determining with the tribe what is a reasonable time for them. I think that's why we had to address that.

Doesn't really give you -- I know my answer doesn't give you a specific time, but it does explain why we have it there.

JUSTIN QUIS QUIS: Sounds like it's case by case basically.

TRACIE STEVENS: Exactly. Yes.

Yes, sir.

BRAD SIMMONS: Brad Simmons, Chairman of the Gaming Commission. We receive a letter from you, a notice of violation or any one of these others that we have a reasonable timeframe, will the letter state in there a timeframe? Is that the purpose of the intent is at that point that's when we'll know what the timeframe is?
TRACIE STEVENS: Yes. And my hope is that our staff, who in these first parts where they may be taking non-NOV steps, that they're talking to you prior to that. Otherwise, they may not have been able to get the information to write the letter beforehand. And they'd be working with you to determine what will be a reasonable time. We wouldn't want to put an unreasonable time in place that would be impossible for the tribe to meet.

TRACIE STEVENS: Yes.

UNIDENTIFIED SPEAKER: Hi. Just one question. Why is the noncompliance notice not agency action subject to challenge?

TRACIE STEVENS: We were looking for ways -- as you know, and I said, and this Commission believes, that assistance, compliance and then enforcement. By statute, enforcement actions are actions of the Chair that are attainable so that, as you said, there's some process in place. But that's the angle of what we're trying to do.

That's, to me, like the most severe action that I can take. And we want to have some informal process in place so that we don't have to get to NOV. And while we do that now and try to get tribes into compliance, there's no process in
place that really defines for our staff and for the
tribes what to expect.

I know there are tribes who do this
within their own ordinances, within their own
jurisdictions. There are other independent federal
regulatory bodies who do something similar. That's
where we're gathering information. We chose to
have it come from staff so that we don't get to a
place where there's going to be an issue.

UNIDENTIFIED SPEAKER: One issue of
certainty is this focus on how the letter or notice
is worded. Tribes operate under a very broad
language that encompass violations of the agreement
or reps or warranties within the agreement with any
notice from a federal agency for noncompliance with
law. So a tribe can be faced with a situation in
which there's a notice of noncompliance from the
federal agency. The tribe would not have had any
opportunity to address or any redress within NIGC
to challenge that determination if it was something
they felt they were not violating.

TRACIE STEVENS: So your concern is how
this might appear to those who are doing business
with tribes? The NOV is pretty clear. And
currently as they stand, from what I'm
understanding you say, that this could be more
potential black marks against the tribe? Okay.

Well, that's something that we'll have to
consider. We're trying to put in place some steps
in the informal process. We heard so much from
tribes about getting whacked with an NOV, that
having it come out of nowhere. And we're trying to
get the "have it come out of nowhere" out of our
vocabulary and try to assist the tribes to come
into compliance at some point they know that they
can count on.

So you've certainly given us food for
thought here on what might be effects beyond what
we intended. So, thanks.

LAEL ECHO-HAWK: One thing we have done
in a draft that we're working on internally is we
added a requirement. There is a set time in the
letter for the tribe to respond or come into
compliance. And then second, once the tribe has --
once the issue has been resolved, then we issue one
of those -- and we'll talk about it in Group 4 --
we issue one of those investigation conclusionary
completion letters so that it's clear this issue
has been resolved, it's gone away, we're not in
this investigative sort of mode. There's
resolution reached one way or the other.

TRACIE STEVENS: Any other comments on 573? How about the proceedings, all the attorney fun stuff? I just want to say before we hand the mic over to Jess, one of the reasons we're doing this is to provide some clarity for non-attorneys. Not every tribe or every regulatory body will initiate this with the help of an attorney. So we're trying to be clearer about processes to the layperson who is a non-legal person when reading this to know what to do. The tribes have representation, but just in case they start down this road before obtaining representation, to be simplified.

JESS GREEN: Your rules here prohibit me from access to members and employees of the Commission. The employees are not deciders of fact, but they, in fact, may be witnesses in regard to whether you follow the correct procedure or the correct procedural notices went out. If I have a technical offense that the notices weren't properly received or that information I was supposed to give you was not properly received or handled, in other words, we got it to you but it didn't get in your files because they put it in the wrong file or you
claim that it doesn't exist, how do I question those people? I have no ability if I don't have access to your staff as a procedural issue to make that inquiry.

You have blocked me out of a very large basis that these kinds of issues are resolved on, and that is, I sent the information to you. I confirmed it was received at a lower level. And your response is, well, I don't have any record of receiving it. Well, I got somebody's name, but I can't even talk to them. You understand my problem? Again, I think that needs to be addressed here.

Again, I know you've addressed some of the issues we've previously raised and I appreciate that, but please keep in mind that the first thing a good lawyer does is, was the procedure followed. Do I have a procedural remedy. Did we, in fact, get that to them. And the procedural breakdown occurred because of one of their lower echelon people simply filed it rather than listing it as being filed. Therefore, I don't have a violation. So I would suggest that you may need to go back and look at that necessity that I feel I might have to question some of your lower echelon
people at least, but I would say make inquiry of 
anyone that is not a decision maker capacity. 

Finally, you do not provide any method 
for me to ask for recusal. I have mentioned this 
before. If you have a daughter, sister, brother, 
spouse that's representing one of the parties, boy, 
that creates a problem for me. If there are 
reasons for recusal that I need to be able to make 
and I need a recusal method. 

In District Court in Oklahoma, if you've 
got a recusal that's been asked for, the rules are 
directly contrary to what you just put here in 
writing. Those rules are that I approach the trier 
of fact. I describe in private the recusal 
problem. I don't describe my facts and 
circumstances. I just simply point out that I want 
you to recuse because you've slept with one of the 
parties. 

TRACIE STEVENS: I didn't. 

JESS GREEN: I'm not accusing. You go 
in, you make that request in private, and they 
refuse every time. Again, it's not published. I 
have no mechanism with all this here to do this in 
any fashion. And I can think of a number of 
reasons why a commissioner ought to be recused. If
you don't want to recuse them for any reason, that's fine. But you've postured it that way without giving me a basis for how I obtain recusal and what your recognized basis might be, and I think that puts me in a very difficult situation as an attorney because I'm going to file something anyway. I simply don't have anyplace in here that you recognize the filing. I think you need to take that seriously.

A lot of commissioners have represented a lot of people in the past. While it may not occur to them that that issue was something they represented a party on four or five years ago, I would much rather come to you and tell you, here's your brief on this issue. Did you forget you wrote it?

I have actually done that with judges and they said, oh, I did, didn't I. I said, yes, sir. Don't you think that creates the appearance of impropriety since you've already taken a position on this. And got them to recuse.

But you already give those automatic recusals when you're a tribal member. I think you ought to have and I would suggest you create a private means because many times that can be real
helpful.

TRACIE STEVENS: Thank you, Jess. Actually, I'm going to have Larry make some comments here or maybe even questions. I know that you have brought this up when we were in Washington, DC, and I actually wasn't there and didn't recall. But I know that we had talked about that in the office recently because we were uncertain what you meant by recusal. Now your comments actually are more specific about what the situation would be and why. So thank you for that.

JESS GREEN: It can be personal. It can be professional. Any of those categories on the reason that rocks get thrown.

LARRY: Just a couple quick responses to your comments. The comment on exparte communications, part of what the Commission has put out in terms of a draft is trying to put a mechanism in place for tribes so that it's very clear what form of communications are allowable and which aren't.

So, for example, Commissioner Little may be at a conference like this, may be pending on appeal before him. Somebody honestly comes out with the same issue and somehow Commissioner Little
has to say, I'm sorry, but that's pending me before. We can't have this conversation.

   We may have to tweak this. We've taken this from other federal agencies, but we may need to tweak it in terms of NIGC. So as the chairwoman said, we have been talking about these issues, that's why we're putting this out as a discussion draft, thinking more about it and addressing the issues to provide the NIGC. The course of work is going to keep going on, comments of appeal, but also making clear what's appropriate and what's not.

   On the second point with regard to a method of recusal, as the chairwoman said, that had come up in the context of a communication and we're going to start looking at that. Obviously, there are complete federal laws, responsibilities in place for ethical issues, but if I heard you correctly, the department is just making clear that there's a process in place. It may not be already clear or not. There is a process for motions before the committee. We can put some sort of -- we can look at some sort of clearer process for allowing a party to make a motion for recusal as well.
JESS GREEN: My other point was I actually appreciate that private, come in your office, did you forget you did hear this four years ago. That has a very valid place because you don't have to publish that. Again, I don't mind handling it any way you want to do it, but a limited approach to recusal sometimes makes good sense.

TRACIE STEVENS: Thank you. Other comments on appeals and proceedings before the Commission?

Since we have some time before lunch and it seems like we've heard the comments that were intended to be made today, we can move on to Group 4. It's in the afternoon section on your agenda. Starting with Group 4 overview. I'll turn it over to Lael one more time.

LAEL ECHO-HAWK: Group 4 had a number of things having to do with background investigations and management contract issues. You do have draft rules in your packet. We started with a pilot program, and it's no longer a pilot program because it's 10 years ago. We worked on that one and a couple of others as well.

So the pilot program, we've formalized that and we've included it in two parts, Part 556
and 558. Tribes are very supportive of this, putting this process in the regulations and allowing all tribes to participate. So what we've done is we've tried to separate what happens before a gaming license is issued by the tribe and what happens after. So Part 556 includes all the procedures that happen before a gaming license is issued by a tribe.

So the pilot program, it allows the tribes to complete their background investigations. And instead of sending all the documentation to the NIGC, the tribe submits a notice of results. And they send it to the region staff and we look at that and evaluate the information there.

The regulation, the proposed draft that you have, it requires -- and this was part of the pilot program -- a key employee or primary management official notify an agency, send us that notice of results no later than 60 days after the applicant begins work. We know that tribes have various licensing structures. Some tribes allow applicants or employees to go to work before, we'll just call it, a permanent license has been issued. Many tribes have temporary licenses. We didn't want to interfere with whatever your licensing
structure is. So we're very careful of that and hopefully we've accomplished that in the regulation.

So the tribe is sent a notice of results. And then Part 556 as you'll see, NIGC looks at it. We've got 30 days to say "object" or "don't object" to this individual. This is new to the pilot program but is included in the statute.

The tribe then is to send the agency notice of license issuance. It's a second step, and we realized in some instances we were not doing that as part of the pilot program. It's a statutory requirement. So we're trying to figure out ways to make that not a burdensome thing. Hopefully we can utilize some websites or email addresses or something. So we're working on that.

We also included in Part 556 the ability for a tribe to obtain background information or background investigation materials from another tribe to simply update that. So you don't have to duplicate the work that was done by someone else over the past several years. So we would then include in Part 556.4.

We know tribes talk to each other; the gaming commissioners are close. Oh, we're hiring
so and so; we have the background information, and that we're not duplicating the work.

So Part 558 is all the procedures that happen after a gaming license is issued. The tribe is free to license that key employee or management official. Again, the notification must come to the NGIC within 30 days. The NGIC has 30 days from receiving the notice of results to request additional information, to object or to not object.

Now, here's where things get a little bit tricky. Oftentimes tribes will issue a license to an individual. They send in the notice of results and issue a license. That's completely fine if that's what you want to do. If you haven't heard back in the NIGC, you are running the risk that the NIGC may say, hey, we need more information and we object to issuing a license to that individual.

If that happens, if the NIGC objects, then the licensee has the right to a hearing. The tribe has to suspend the license, provide a hearing. And then after the hearing is provided, the results of the hearing to the NIGC. If the tribe waits to issue the license and waits to hear from the NIGC and then issues the license, then that hearing process doesn't kick in. So it's only
after the license has been issued by the tribe that
the individual has the right to a hearing.

We're working with our region staff. We
want to make sure that we're responsive, that you
get the information back ASAP. We're going to
include a requirement that the NIGC issues a letter
of no objection so that you have something that
says, we don't object to this person being
licensed. Ultimately it's the tribe's decision.

So that is the pilot program. The other
things that were contained in Group 4, Part 537 had
to do with background investigations. You'll see
in your draft we had included a section for
background. We were going to clarify whether or
not an individual or class II or class III
management contract was sent back. After a lot of
comments that we don't need this, this isn't
necessary. Very soon, within the next week, you'll
see a notice of proposed rule that amends Part 537.
It only adds this provision, not some of the other
provisions you see in the draft we have, that the
chairman exercise discretion in reducing background
requirements. Again, trying to streamline
processes and not repeat things over and over
again.
So you'll see this going out shortly. Probably within the next week it will be in the federal register hopefully, make me happy again.

Part 571, again, this part also had a section there that talks about access to offsite records. We heard many, many comments that you have subpoena authority. That made sense to the Commission. They're not going to include that amendment in this notice of proposed rule. This notice of proposed rule will go out and it will only contain the investigation conclusion that I spoke about earlier in Part 573. So where the NIGC has completed an investigation and it's not going to begin an enforcement action, the Commission will then advise the party by letter that the investigation has been concluded.

This wasn't something that we brought forward initially. This was something that we heard comments from tribes that, you know, an investigation would be done, and then four or five years later as far as the tribes know, nothing has happened. They did not receive a notice that the investigation has been completed and is concluded. So we get to the issue that Elliot was talking about earlier, tribes have to make disclosures,
that would be helpful.

So that's what we're trying to do here. Just a notice. And it doesn't mean that the investigation can't be reopened or that an enforcement action can't be brought in the future, but at this time that investigation is closed.

So you'll see this in the federal register hopefully within the next week as well.

Also in the register, we've been talking about consultation and whether or not we need to define what a collateral agreement is and whether or not we need to say whether the NIGC has the authority to review the management contracts. Tribes were all over the board, and the NIGC has decided not to go forward with making any changes to any regulations related to collateral agreements to the management contractors.

Additionally, we talked about whether or not we need to define what net revenue was. That says, this will be heard, so we're not going to do anything with it.

TRACIE STEVENS: Does anyone have a comment? Jess.

JESS GREEN: Your press announcement has just gone out. Would you please read the names
now?

TRACIE STEVENS: Do you mind if we get through this. I can do it right before lunch.

JESS GREEN: That would be fine.

TRACIE STEVENS: I want to stay on topic and task. But now that you've said that, it's going to be really hard for everybody to remain on task.

We did have some comments earlier on 556 and 558. No, I'm not going to give in to Jess.

So the pilot program, as Lael explained, has been a pilot program for longer than a pilot can be a pilot. And it's actually incorporated by many tribes already, and many tribes are doing it.

We try to capture, as I'm sure she said, before what happens and what happens after in 556 and 558. We did hear some and continue to hear the desire of tribes to put through others besides key employees and management officials and we're working with FBI on how we could do that.

Just be warned that when you put folks through that process, we're going to hold them to the standard as if they are key employees or primary management officials.

The other thing we heard on this topic
was for some tribes they wait until 30 days have elapsed or expired before NIGC can object. Another concern came up about whether or not a tribe issues a temporary license while they're waiting, which we have a right to do. If there's an objection, the tribe would then have to probably pull that license. In order to do that, that licensee now has some rights rather than if they had just waited.

Some tribes do it differently. Some, because of the need to have that employee working right away, as many of you probably experience, issue a temporary license and go ahead and give them their due process for licensing should something come up or the NIGC objects.

I think that's a decision for the tribes that they've brought up to us, on whether they want to wait or go ahead and do a temporary license. I'm not going to comment on that. But tribes can decide whether they want to do that. I know many tribes just go ahead and issue temporary licenses and some tribes just wait and then issue the license when we have basically the green light in NIGC.

Those are the things that came up that I
recall on this particular part. Are there any comments on licensing? I ask about this specifically because I know we have a lot of regulators here.

On comments on 537? Lastly, 571. This goes to the issue that or the comment made back to Elliot in response to more on-the-record processes in place for a tribe with our informal process on 537. Yes. Can we get a microphone back there.

MARVIN OSBORNE: Marvin Osborne, Shoshone-Bannock tribes. I'd like a clarification to this investigation conclusion letter. What is that supposed to mean? Is that a violation issue or is that a criminal finding that you've discovered within the organization? How is that --

TRACIE STEVENS: Just to be clear, we don't have criminal jurisdiction. What this is intended for and what we've heard from tribes is they're left in limbo. They knew there was an investigation going on. They hadn't heard anything from us. When they would call and ask about it prior to our arrival, there was this sort of pending doom, this hamper just over the tribes' head, and they never knew were the investigations concluded. Are you going to do something more.
Should we be holding onto these records that we have that you've asked us about.

And this was our effort to be clear to tribes that we've concluded our investigation.

Now, other federal regulatory agencies do this. So in response to tribes' concerns of these investigations just sort of hung over their head indefinitely -- gaming, gaming violations, that tribes weren't left in limbo. This offered some sort of, I don't want to use the word closure because that gets confused with our parts of our responsibilities, but that the investigation had been completed and we notified the tribe so that that limbo state didn't continue.

Does that answer your question?

MARVIN OSBORNE: Yeah, somewhat. I believe that in cases like this we're out of the one-on one-consultation of the NIGC because it's a matter that concerns the regulations, our laws and the violation that occurred, and it conflicts that we are ending up having with other federal agencies because all the laws that tribes supported, the United States U.S. attorneys or assistants are supposed to help defend the tribes. But we ran into an instance where that is a conflict or a
complete tragedy with the regulation we're trying
to enforce and use versus what the law enforcement
divisions are doing. I mean, it's horrible. But
those are things that could impact us and I think
that we have to somehow or another consult the NIGC
so we don't get a violation because it can be
serious issues that we don't want to announce to
everybody. At the same time, we need to be frank
about what's happening.

TRACIE STEVENS: Okay. Well, there are
two things I want to say in response to your
comments. One, this would be just with regard to
our authorities under ARAB and our actions and how
we're monitoring the gaming operation and working
with the regulatory bodies. We certainly can't
address anything outside of that that might be
happening at other federal agencies, whether that's
DOJ, FBI, U.S. attorneys. That would be outside of
our scope. So we're only speaking to the actions
that the NIGC takes.

Now, with regard to consulting the
tribes, I guess that's one way to put it. What
we're trying to do, as I mentioned, that Elliot
brought up, we're trying to structure our processes
in a way that we're talking to tribes before we
take action so we can get them in compliance and keep them in compliance, whether that's through giving technical assistance or guidance on how to do that, training, something so that we're not using the big hammer in the NOV, because we know how serious that mark is.

So my expectations for our staff is that they are constantly talking with the tribes. If there is an issue coming up, they should be talking with them on a regular basis to bring them into compliance. So we are talking to tribes one on one. And part of our process is we've implemented these, should we adopt them. We'll implement them within our own agency as far as our employees' operating procedures to ensure that we're working as much as we can with a specific tribe on a specific issue. So that helps or gives information regarding your comments.

Any other comments on 571? Can you pull up that press release.

Okay, Jess, are you paying attention? I'll go ahead and read them. I do want to say that we have 56 nominees. And we have the names here. John Magee, gaming commissioner for Pachenga Indians. In California, Kathy Canell (phonetic),
casino general manager; Jason Remos (phonetic),
gaming commission chairman; Daniel Magee, gaming
commission administrator; Brian Callahan, gaming
commission executive director; Christina Thomas,
office of gaming regulation compliance executive
director; Steve Gargan (phonetic), gaming
commissioner; Jeffrey director of gaming; Michelle
Sicona (phonetic) gaming commission executive
director Confederated tribe; Rea Culo (phonetic)
genral manager; Mia, and I'm not even going to try
to pronounce her last name, gaming commission
compliance director Comanche Nation;
Robin Lanfee (phonetic) commissioner; Matthew
Morgan gaming commissioner; Thomas Wilson; and
Carlene Chino, gaming commissioner executive
director of Navajo Nation.

That's a total of 15 individuals out of the 56. I want to be very clear that we received,
as I said, I think it was a total of 56, I could be wrong, nominees all very well qualified. All
responded to our call for nominations with our request to see a myriad of qualifications from
people out on the ground. What we were striving to do in picking these individuals is to get regional
balance based on a number of factors for different
regions.

We know that the Great Plains area is the largest for us in terms of the number of facilities and tribes. There are other regions that are smaller than that. And trying to find some regional balance. We tried to find class II class III balance. We tried to find regulators and operators and also we are fortunate to have some folks who are or have been tribal leaders.

We did have some restrictions that I want to be clear about. Because we're operating as the Federal Advisory Commitment Act, it's exempt from that Act because tribes, state governments and local governments are exempt from FACA. Because this is a government to government interaction, we're not following FACA. But even with that, there are strict guidelines that we have to follow.

The people that are nominated, we made that clear in our nomination letter, that they had to be -- they speak only for the tribe they represent and that the governing body of that tribe had to give authorization for that individual to do so. So it had to be the governing body of the tribe. Because the tribe is the government with which we have a government to government
relationship. We did get some that came from just
the Gaming Commission. We did clarify with this
them. They had to turn back in a governing body
letter that says that individual speaks for them.

Following that, because they were trying
to find regional balance, I don't want it to be
construed that they're from the region, they
represent that region, because they cannot
represent anybody but their own tribe and they
can't be a lobbyist. That's the other thing.

We had to do some background on these
individuals with this administration, which we
support wholly, and to make sure that they were
appropriately selected individuals. Many of the
folks here have done background in licensing so
naturally we're clear.

This committee is meant to review our
minimum control standards and our technical
standards. We pull them out of these consultations
because they're very technical in nature and are
time consuming. That makes the technical standards
role on another track with this tribal advisory
committee whose objective is to review the regs,
the technical standards, review alternative
standards that were proposed to us by a tribe or a
number of tribes, and give us their recommendations on those documents.

Again, I want to reiterate that this group does not speak for all tribes. We recognize that and we readily acknowledge that. They're just practitioners basically who are on the ground who can tell us from different regions how certain proposals will or won't affect them. And that after the work that these folks will do, at the end of this we will have some draft regs that we can show based on some expertise and then do some consultation so that tribes have a chance to weigh in.

These kind of committees are not unusual in this administration in particular for tribes to do a lot of these. And we're following a different format than has happened in the past with this agency. We will have a facilitator. We will have ground rules that the advisory committee will agree upon as a committee. We'll have some order and people will know what the order is. I'm not going to just be me up here commanding everybody and you don't know what the rules are. That's not fair.

So we're trying to do this differently. We're trying to take a fresh look at how we can do
these and get really honest feedback from the practitioners in Indian country.

I know there are some folks who are disappointed that certain people may not have made it on there. I want to let you know this was really, really difficult. We had so many good nominations and good candidates with good qualifications. And it's very difficult.

We also wanted to keep the committee in a manageable form. I just want to reiterate everybody was a good candidate and they were tough choices. Really what we wanted to do was have diversity and balance, and we believe these individuals bring that to the table.

Dan, did you want to add anything to that?

JERRY DANFORTH: No. Just like the Chair said, we had a very good group of nominees. And we painstakingly reviewed every single application. And we wanted to make sure, and it was very important, that we included folks that had some operational experience because we all know and understand the regulatory side very well and sometimes what the regulations say, how the operators are able to manage an operation under
those, is sometimes difficult. So it's important
to have operators in there at the table being able
to provide this information.

I'm very excited. The chairwoman said
we'll be using a facilitator. That is really going
to be quite a change from the recent past and the
way we've done things. A good level of open
communication that is going to provide a good
result.

One other kind of a housekeeping issue,
as the chairwoman said, we're operating under an
exempt committee. And one of the criteria is that
the nominees must be direct employees of the tribe.
And we did have some very, very skilled nominees
that came through that if they served would be a
huge asset. Unfortunately, they were not a direct
employee of the tribe so they were not able to be
selected. However, I would hope that they still
participate. We're going to make sure that there
will be an opportunity for folks who are attending
to comment. Thank you.

TRACIE STEVENS: So there you go, Jess,
you got your way.

JESS GREEN: I didn't get my way.

TRACIE STEVENS: Are you as excited as we
are? We're giddy today.

        JESS GREEN: No. You got one region --
        Oklahoma only has one representative.

        TRACIE STEVENS: Again, fair balance is
        what we were striving for. Actually, there's two
        regions from Oklahoma. There's three
        representatives from the State of Oklahoma alone.
        And we have three representatives from the Great
        Plains. We were trying to be fair and balanced.

        JESS GREEN: There's two offices in
        Oklahoma.

        TRACIE STEVENS: I know. I'm aware. All
        right. Are there any questions about this? We
        were trying to be as informative as to how we came
        to the decision process. I want to reiterate.
        We're going to be working with the advisory
        committee in the next couple weeks and getting some
        ground rules. It is just necessary so that
        everybody knows what is expected of them, how the
        committee is going to work. And, again, I want to
        reiterate that there will be opportunity and it
        will be based on what the committee together
        decides on what will be the mechanism to bring in
        their experts. Because they'll be bringing people
        in because they're not expected to know absolutely
everything, and then how the public can comment, how we can bring in some experts because there are some very technical aspects. You start talking IT, we do need specialists to be able to come in and be able to speak to that. So we're going to build into the ground rules how that happens and when it happens and that's going to be a committee decision.

If there's no more on this, how does everyone feel about talking about the very last group, 518, self regulation. There is no regulation right now for sole proprietary interest. If everyone is okay, we can step on the gas here. I'll turn it over to Lael.

LAEL ECHO-HAWK: So the last group we have on the agenda is Group 5, self regulation and a potential sole proprietary interest regulation. So starting with the self regulation, Part 518, the notice of inquiry that went out last year asked whether or not we should review this regulation or we should review the process for obtaining a certification for class II for tribes. We received numerous comments. All of them supported taking a look at the process and making it more -- making the burden of the application and
certification process, making the benefits at least equal. Out of the over 200 and some odd gaming tribes that we have, we have two tribes that actually have the self regulations. We do have the Commissioner Little here today. So if you have any questions, he'll be happy to answer them.

So the discussion draft that you have in your handouts, one of the things that we really were trying to do is we began drafting those to shift the focus of the regulation from the operation to the regulation. A lot of the requirements didn't make sense. Why do we care sort of about what goes on operationally when what we're talking about is can the tribe adequately regulate that operation and should the integrity of the gaming operation.

And just kind of a list of these. Section 518.3 contains the submission requirements in the draft. We pulled a bunch out. And you can see on our website, I think our draft is 29 pages. It was very hard to do a red line because we cut so much out, and see sort of clearly what we had left in and what we added. So we have history of gaming operation, employment criteria for regulators, description of the regulatory agency.
We wanted to make sure that this was a body that's going to function. It's going to function well. It's adequately funded. You have people there that are qualified to be regulators.

Descriptions of accounting systems, so we know that there's a system for tracking, internal controls. We've been asked about this. Do you have to send in your entire internal controls. No. We just want a list. We want to know that you actually have controls that apply to tracking gaming revenue and making sure that everything is being tracked appropriately.

Record keeping systems for investigation, enforcement actions, prosecutions. Copy of the facility license, which we also heard is duplicative, which is a good point. We'll take a look at that. Tribal gaming regulations if not already included in the ordinance. I know a lot of tribes have a gaming ordinance and have their gaming regulations. We are going to need a copy of your ordinance. If we don't have a copy of your regulations, that we would request that those come in as well.

So then 518.4 talks about the criteria must be met to receive a certificate of self
regulation. We couldn't play with this language that much. We tried to be descriptive about what it means.

So the access. The tribe conducts gaming -- fiscally, economically sound basis and generally free of criminal or dishonest activity.

And then gaming can be conducted in compliance with the Act, NIGC regulations, and gaming regulations.

So we talked about what kind of things would show that this criteria has been met. And so 518.4 sub B says, A tribe can illustrate by listing these factors. And we tried to be clear that this is just a list that we sort of took from the old reg and we added some things in, but this isn't all-inclusive. Doesn't mean that if you don't meet one of these, this was some things that internally we thought would be very useful to show that the criteria, the dispute resolution processes, effectiveness, regulatory body has a way to monitor compliance, accounting systems. The gaming regulatory agency has the ability to go and review the accounting information from the gaming operation, that they have access to audit and inspect the papers, books and records. Gaming
operation and class II gaming activities. That there's adequate investigating, licensing and monitoring system for employees. License records are kept.

There are standards for vendors. A number of things -- this really go to show that the tribe has established a regulatory system that adequately regulates on its own, not the NIGC, adequately regulates its class II operation. The tribe demonstrates that the operation is financially stable. This is a requirement of the Act. How are we going to do that. I know we've had concern from tribes, what if I default on my loan, what does that mean.

If you have thoughts about it, we'd like to hear it. It is in the Act, but is there a way we can be more clear to tribes about what that means.

So then what's the process? We're looking at this internally now. We want to make sure that the process is clear for how this happens. You send in your petition. Mr. Little is the office of self regulation in this instance. Makes an initial determination. Issues a report. Issues a certificate of self regulation. Provides
a response time so the tribe can say, hey, I did
meet these criteria, here's why. Hearings before
the office of self regulation, and then the office
of self regulation issue a decision which is
appealable to the full Commission. Annual
reporting requirements are now statutory. We were
trying to think of a way that meets the
requirements of the Act, and the Act simply says
that the tribe then as the certificate must send in
an audit, which tribes do anyways, and a complete
resume for all management officials and key
employees hired by the tribe after receiving the
certificate. That has really caused a lot of angst
internally at the tribal level. So we are trying
to define what that means.

Someone suggested -- we've heard
suggestions that that means only -- what we did in
the draft we said for only primary management
positions and key employees. The Act itself says
for all employees. So we're trying to work on the
definition of employee. Our suggestion was that
primary management officials and key employees.
We've heard in consultation that that definition
perhaps should be just for the regulators, which
makes some sense if we are shifting the focus to
the regulatory body and the tribes' regulatory
structure.

So we're still defining that definition. If you have thoughts on that, let us know. It is a
burden. It's a requirement, but it's statutory so there's not a lot of wiggle room there.

Then, again, tribes continue to inform the Commission about circumstances material to the
certification. We added language to the Act that says what investigative enforcement powers of the
Commission are limited. It's statutory, and we just repeated it in the Act because we wanted to be
clear to tribes what it is the NIGC can do and can't do while you have a certificate.

This certification doesn't limit the Commission's authority to conducting investigations
and potential violations and issue enforcement actions if necessary. It's important to reiterate
it's also in the Act, but we wanted to make sure that that is still clear to tribes.

The second has to do with sole proprietary interest. As you know, this is an issue that comes up regularly. I think we've done 92. The NIGC's office issued 92 different opinions Each is extraordinarily fact specific. And as
we've been trying to wrap our brains around how do we address this, should we provide clarity, should a court provide some clarity, and if it's clarity that's needed, what is it.

Comments were all over the board. They continue to be all over the board. And we're -- what the process should be. If a request for an opinion comes in or the contracts to see if they violate the sole proprietary issues, how do you get that. Right now we see a lot of management contracts, but there are other ways that that can happen. So we thought perhaps providing some clarity as to the process might help alleviate some of these concerns.

Sole proprietary is defined as primary beneficiary. So we're still looking and talking about this issue and we'd be happy to hear about them as we process this more.

TRACIE STEVENS: So that was a mouthful. We only have three self-proprietary tribes. The other two have qualified going through the process that is established in the current reg in reports from those tribes every year. I do want to be clear that this is about class II regulation. In previous consultations there was some questions
about can you self reg class III. This is just for class II. And I think both of the tribes that are self reg right now are hybrid, they have class II and class III, both separate facilities. But even so, this is only for class II self reg.

And, again, I want to reiterate what Lael was talking about, that the changes that were made that are in the proposed discussion draft were meant to focus on the ability of the tribal regulatory body to regulate, not about the operations. There was a lot of specificity -- there is a lot of specificity in the current regulation and requirements to maintain that at the same level. We heard that tribes thought this process was cumbersome at best and not worth it to go through that process every year. But with the focus so much on the operations and not so much on the regulatory bodies' ability to regulate in lieu of NIGC doing it, we observed that that may be some of the reason why we're not seeing more tribes do this.

All of our initiatives that the NIGC is taking on right now is reduce redundancies and eliminate duplicative processes, and we saw this in this regulation.
The list of things that we need for application, I wanted to comment on that, how to maintain a certificate once you have it and then some of the things that Lael was pointing out that we really will need some comments on, how do you define financial stability. And also because the Act talks about having a list of employees, that means it could be the guy cleaning the bathroom, when what we may want is the guy running the place or key employees or key manager, primary management officials like cage managers. So your comments on our suggestion on just focusing on key employees and primary management officials are helpful.

And then sole proprietary interest, we don't have a draft on that, but certainly we would welcome your comments. Like Lael said, we get mixed information. We have some tribes saying, hey, we really need you to do this and make clear to in management and in financial transactions, businesses, business transactions that tribes make that the other party is clear about what is and isn't okay. Whereas, other tribes say, if you do that, you're going to cause -- there will be less opportunity if you do that.

So we're still in the
information-gathering phases. And as Lael said, it is very specific. We have seen the most complex and creative documents for any business of tribes than I think I've ever seen. So it is very case specific. But certainly our goal is not -- we're looking to create some guidance to those transactions so that we can prevent problems in the future. How we do that, we need your input on that.

I'll open the floor to comments for anyone who has had the opportunity to read the self reg or has comments on sole proprietary interest. Could also be some food for thought while you get some food for lunch. I hate to stand in everybody's way for lunch. So we'll certainly be back to see who else may be here. We can continue this conversation. If you want to give it some thought. We'll be back at 1:30, I think is what we're scheduled for. Give some thought to these. If you have any questions, please ask. If you need some clarification or have general statements on anything we've covered today, we will look forward to seeing you after lunch. Have a good lunch. We'll be back in an hour and a half.

(Recess from 12:07 p.m. to 1:40 p.m.)
DANIEL LITTLE: We're going to bring this meeting back to order. I would like to thank you for participating. We went through all four groups and kind of an explanation and some comments. I'll open the floor up for anyone that would like to make a comment on any of the groups or any of the specific regulations we talked about earlier.

WALTER HAMILTON: With regard to 514, the fees --

DANIEL LITTLE: Can you speak your name.

WALTER HAMILTON: My name is Walter Hamilton. The 514 on the fees kind of duplicates what the state is doing now, charging us 6 percent. And then with NIGC taking out even more, it is just going to be extremely burdensome for the tribes.

DANIEL LITTLE: These are the fees that are assessed to all tribes that fund the operation of the NIGC. We're not talking about increasing the fees.

WALTER HAMILTON: Are they in place now? They're already being charged?

DANIEL LITTLE: Yes, sir. They're in place now.

WALTER HAMILTON: I didn't understand that. I thought it was something new.
DANIEL LITTLE: The big component in number 514 is to create a process in addressing late fees and trying to take it out of a process that leads to an issue of notice of violation and creating more of a ticketing process, like a fee process, to kind of move along the process. We spend a lot of time and process to issue an NOV. We're not increasing the fee. Setting the fee rate is something the Commission does in -- we do a preliminary fee in January and then we do the final one around July.

WALTER HAMILTON: Moving on to 518, governor prepared a statement and NIGC says she's opposed to CFR 518.3 because information requested violates by requiring to have to submit information. Other request for information such as a list of current employees fund. Organizational charts are not clearly made to NIGC. Now the tribes are required to obtain an annual minimal standards audit, and NIGC should be able to rely solely upon these and review the notice of violation issued by NIGC over the last three years. She goes on to say 518.4B59, and 518.4B7. They require tribal regulatory body to establish standards for licensing of vendors who deal with
the gaming operation. Section 518.4B7 requires
implement with interest policy for the regulatory
body.

The tribes believe these standards and
policies will be valuable (indiscernible) no such
mandate. Tribal support the amendment subsection
518.9, currently 25 CFR subsection 518.9 works to
effectively nullify and lessen oversight. NIGC
interpretation interference (indiscernible) with
self regulatory tribe and preliminary draft changes
518.9. Part 518 may become more important to
Oklahoma gaming tribes as contracts expire if the
state is unwilling to negotiate these contracts.
(Indiscernible) may consider increasing them if the
state does not renegotiate by increasing games
above the level we currently have and seeking
certification under 518 at that time. However, as
518 currently (indiscernible) standards effects
resulting from waiving the fee requirements are
minimal and burdensome and achieving self
regulation is still high. The tribes supporting
NIGC's efforts to increase the financial incentives
and reduce the burden of the application process.
However, preliminary draft changes to other parts
as identified (indiscernible).
(Mr. Hamilton was reading from a
document, a copy of which will be submitted to the
Commission.)

DANIEL LITTLE: Thank you for that
comment. Would it be possible to get a copy of
that so we can have it for the record?

WALTER HAMILTON: Sure. I have it right
here. All three of our commissioners brought
copies.

DANIEL LITTLE: Thank you very much.
Valuable information and we'll take a look at that.

WALTER HAMILTON: That was her answer
September 29th on what the NIGC webpage had.

DANIEL LITTLE: Thank you.

WALTER HAMILTON: There were a lot of
those questions, I mean, a lot of parts of what you
all are amending to the NIGC. And I read through a
lot of those and I didn't find too many favorable.
Are you still going to go ahead even though you're
getting negative responses?

DANIEL LITTLE: 518?

WALTER HAMILTON: On everything that has
been proposed so far on the changes.

DANIEL LITTLE: I'm not sure if I
understand your question.
WALTER HAMILTON: The responses to all of your amendments, or whatever they are, they're all negative that's on the webpage.

DANIEL LITTLE: I think one of the goals of putting discussion drafts up before we start moving forward with promulgating regulation was to hear back from the tribes, get good feedback and comments, and those are reviewed. And as we move to formally move forward with the proposed rule making, we're taking that into account. In many cases we've adjusted the draft regulation, which you'll see in what are being published there are some differences. I would hope maybe you can read when the new proposals come out, you'll see that we've taken into account a lot of the comments that the tribes have made.

WALTER HAMILTON: That's all I've got to say.

DANIEL LITTLE: Yes, sir.

BRAD SIMMONS: In regard to 518.7, you're looking for opinions back on kind of a definition. I kind of went back through it during the lunch. Since you're trying to do this as more of the regulatory side than it is on the management side, I think it would be appropriate when we ask for
resumes at that point from the regulatory authorities, not from the managements, not from the operators. Since this is a self-regulatory certificate, how many government agencies are going to be open -- in this regard I would take that to mean it would be the government wishes those that are on the tribal regulatory agencies.

LAEL ECHO-HAWK: Thank you. That's a recommendation that we heard before. It is going to be -- that's the trick to finding who the employees are. I think the Commission is thinking about that, how we define who the employees are that will require rescinding the resume. We've heard that and that's something we're thinking about.

BRAD SIMMONS: I understand there's a law to that. To what purpose? You get a resume. You've already licensed, you've already hired -- let's say going the operations side. They've already licensed. They've already hired. They've already been approved. What purpose is there to have the resume forum? If there's any chance of changing that section of the law to accommodate -- is the NIGC then at that point going to make an opinion on whether we should invite that person?
Are you going to be asking for the job descriptions of the people?

This is where you, to me -- I understand there's the law behind it, but how far is the NIGC going to plan on going into how the tribe operates its casino?

TRACIE STEVENS: Well, we appreciate your comments on that. And as Lael said, we are soliciting comments on this because this is exactly the language that's in. We have to figure out what they mean when they wrote this because it is cumbersome right now the way that the regs are, the way the current regs are and the way the two tribes that are suffering are handling this, it's all their casino employees. And is that what the authors meant or was it the regulatory body.

I can say that it's not the intent of this Commission to start telling you who you can hire. For this Commission that's not something you're going to see here or in what we're doing. I think it's more about the same type of concerns about -- the same kinds of issues that come up with key employees and primary management officials and then we know who's there. Certainly appreciate your comments.
DANIEL LITTLE: Are there any other comments on 518? Some very good additional information that you're providing. Appreciate that. Any other groups or regulations? If there's no other comment, I think we're going to bring this consultation session to a conclusion. I know on behalf of the Commission, we're very grateful for your participation, coming out here, especially on the last day. I know it has been a long week, not just being in Las Vegas. There has been a lot of good meetings and things going on. We're very grateful that you all dedicated time to come out here today.

And the transcript for this meeting, all the comments, we'll post those on the website NIGC.gov. We urge you, if there is anything additional you think about on your ride home, please submit them. Like we were saying earlier, these discussion drafts have been very, very helpful in order to kind of get the conversation started. As we start moving forward trying to promulgate a rule, there's going to be real involvement here. We hope that we receive the same participation and comments. That's the way this Commission believes, this is a process that we all
have a stake in and we want to make sure that the
final product is the best possible product.

I'll turn it back over to the chairwoman
to close the meeting. Thank you.

TRACIE STEVENS: So thank you all for
returning after lunch. We've gone through all of
the issues that we had planned to today. I
appreciate you especially coming back after lunch.
As Dan said, all of this information can be found
at NIGC.gov under the consultation button under
2011-12, the consultation reg review. If you have
any questions, you can send them to this email.
You can call us. You can send your comments in.

We'll continue to announce when we have
more drafts available, and then certainly as the
Tribal Advisory Committee moves forward on
standards and technical standards, we'll continue
to inform tribes as we move on.

Thank you all for attending today. Wish
you safe travels home. And the next -- also I want
to thank the staff that helped support us here
today. Our next consultation will be at NCAI in
Portland on November 3rd where we'll have a similar
discussion there, but we will have a list of rules
that will be in the federal register at that point
in time that we'll start discussing the next step
in the process of promulgating final rules.
So that consultation will be a little different
than this one. We'll be in a different stage of
the rule making process.

After that it will be South Dakota on
November 14th, and then after that will be Michigan
on December 5th as we progress in each of these
rules. So certainly invite all of you to attend
any of those or go to our website and you can view
transcripts and you certainly are free to submit
written comments as we move on.

So, again, thank you, safe travels, and
good to see all of you come out. Thank you.

(Meeting adjourned at 1:57 p.m.)
CERTIFICATE OF REPORTER

STATE OF NEVADA  )
                     ) SS:
COUNTY OF CLARK  )

I, Kimberly A. Farkas, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I attended the NRRA MEETING, commencing on October 6, 2011 at 9:00 a.m.

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said meeting is a complete, true and accurate transcription of said shorthand notes, to the best of my ability.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 25th day of October, 2011.

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