BEFORE THE NATIONAL INDIAN GAMING COMMISSION

TRIBAL CONSULTATION

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The Hard Rock Hotel and Casino

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Albuquerque, New Mexico

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VICE CHAIR COCHRAN: Good morning. Welcome.

I feel like this table needs to be facing this way. I encourage -- if we have any chairmen, any elected leadership, or we have a chairman of gaming commissioners -- or gaming commissions -- excuse me -- if you'd like to come join us at the table, please do. We welcome you.

We were waiting for a few other people who may not be able to make it this morning, so I'm going to go ahead and get started because I know we are already running a little bit late.

My name is Steffani Cochran. I am the Vice Chairwoman of the National Indian Gaming Commission. And I am a member of the Chickasaw Nation. I was born and raised in Oklahoma, but New Mexico is home. And I spent the last about 20 years of my life in New Mexico. And the three years that I'm spending on the East Coast, while fun and a challenge for me, definitely reminds me how homesick I get. It's the time when I hate to get on the airplane, mostly when I'm leaving Indian county.

So it's always nice to be home. And I look forward to a productive meeting today. We have a few things on the agenda, but it shouldn't be a long meeting. I'm going to turn it over. We've got Eddie Gomez here, who is the Executive Director for the --
Gaming Commission for Isleta. I am going to ask him to open our meeting up this morning and to introduce himself.

If you will, please, stand and --

MR. GOMEZ: Good morning, everyone. Welcome to Isleta and the Hard Rock Hotel and Casino. My name is Eddie Gomez. I'm the Executive Director of the Pueblo of Isleta Gaming and Regulatory Agency.

The governors and the Pueblo are honored to have the Commission and tribal leaders here today, the staff. They have asked me to extend their very best to everyone and to wish everyone well and have many successes during the meeting today.

Again, welcome to Isleta.

VICE CHAIR COCHRAN: I have with me this morning one of the associate commissioners, Dan Little. I will let him introduce himself. And I also have several staff members with me.

So I'm going to ask everyone to introduce themselves, as well, and make introductions. I would like to go around the table and make introductions and then to go out to the audience and make introductions so we all know who is with us this morning as we go through the consultation.

So Commissioner Little, I turn it over to you.
COMMISSIONER LITTLE: One of the associate commissioners? I'm the only associate commissioner.

Good morning, everyone. I'm glad you all came out today to listen to this important information that we're working on here. Regulatory review is one of the major priorities of this Commission. It's something that's long overdue, and something I think will be very beneficial to this industry.

But my name is Dan Little. I'm the Associate Commissioner, here, of the NIGC. I started my term in April of 2010. It's hard to believe I'm coming up, almost, on just one year left on my three-year term. I love what I'm doing here. I love working with tribes.

Prior to coming on the Commission, I spent over ten years with the Mashantucket Pequot Tribe in Foxwoods and providing regulatory assistance on the compliance issues there.

I'm very happy to be here, and I welcome you all. And I look forward to hearing some interesting comments and some helpful information that will help guide us as we move forward with these regulations.

So welcome everybody.

MR. HAY: Good morning. I am Joe Hay. I'm with the Office of the General Counsel. I'm one of the twelve attorneys that support the Commission.
MR. VALLO: I'm Lance Vallo, Acting Regional Director of NIGC, Phoenix.

MR. BACA: Elias de Baca, Pueblo of Tesuque, Gaming Commissioner.

MR. SANCHEZ: Pat Sanchez, Executive Director, Pueblo of Tesuque Gaming Commission.

MR. LUJAN: Good morning, everybody. Gene Lujan, Chairman of the Gaming Commission at Santa Ana Pueblo.

MS. BLUELAKE: Good morning. I'm Lisa Bluelake, a Chairwoman of the Sandia Tribal Gaming Commission.

MS. TORIBIO: Good morning, everybody. I'm Theresa Toribiio, Commissioner and Vice Chair, with the Pueblo of Sandia.

MS. PATTEA: Good morning, everybody. My name is Dorinda Pattea from Arizona. I'm an investigator.

MR. BUSH: Good morning. Tim Bush, Fort McDowell Mohave-Apache Tribal Gaming Office, Executive Director.

MS. CAMACHO: I'm Roberta Comacho. I'm from Arizona, an investigator.

MR. DELORIS: Good morning, everybody. I'm Andrew Deloris, Acting Executive Director, Pueblo of Laguna.
MS. MAESTES: Good morning. I'm Bernadette Maestes, Licensing Director, Pueblo of Laguna.

MS. GONZALEZ: Good morning. I'm Diane Gonzalez, Lead Internal Auditor, Santa Clara.

MR. GOMEZ: Again, Eddie Gomez, Executive Director, Pueblo of Isleta, Gaming Regulatory Agency.

MR. ROME: Good morning. I'm David Rome. I'm the Acting General Counsel of the Mohegan Gaming Advisors, which is a unit of the Mohegan Tribal Gaming Authority. I'm here on behalf of the Mohegan Tribe.

MR. ALBAUGH: Good morning. My name is Guy Albaugh. I'm an internal auditor of Santa Ana.

MR. MONTOYA: Ronny Montoya. I'm the Licensing Manager for the Santa Ana Gaming Commission.

MS. GARCIA: Colleen Garcia with the Santa Ana Gaming Commission, also with the New Mexico Association of Gaming Commissioners.

MR. LUCERO: Good morning, everybody. Jose Lucero. I'm a licensing investigator for the Pueblo of San Felipe Gaming Commission.

MS. ORTIZ: Good morning. I'm Maylene Ortiz from the San Felipe Gaming Commission. I'm a licensing specialist.

MR. GARCIA: Good morning. I'm Robert Garcia from San Felipe. I'm a licensing manager.
MS. SNEED: Hello. I'm Pam Sneed. I'm a special agent with the Cherokee Tribal Gaming Commission.

MS. MARTINEZ: Gaylene Martinez, Taos Gaming Commission.

MS. TRUJILLO: Good morning. I'm Yvonne Trujillo, Executive Director for the Taos Gaming Commission.

MR. LESLIE: Roger Leslie, Executive Director, San Felipe Pueblo, as well as the Chairman of the New Mexico Association of Indian Gaming Commissioners.

MS. HALL: Good morning. I'm Pat Hall from Maynes, Bradford, Shipps & Sheftel, general counsel to the Southern Ute Indian Tribe.

MS. TAYLOR: Good morning. I'm Andrea Taylor, Vice Chair of Commissioners for the Southern Ute Indian Tribe.


MS. VALLIO: Hello. My name is Darla Vallio, Acoma Gaming Commission, Gaming License Commissioner.

VICE CHAIR COCHRAN: Anyone else?

(No audible response.)

VICE CHAIR COCHRAN: Lance, you also have Sally with you?
MR. VALLO: Oh, yes. Sally Virag is out in the lobby, there. She's our admin assistant for the Phoenix region.

VICE CHAIR COCHRAN: She can certainly help you with anything you might need. She's the lady in the know.

Well, welcome again. And I appreciate that this particular group is made up of a lot of regulators. Often, in consultations, in addition to leadership, we will see attorneys. And while I am an attorney, it's nice to hear from people outside of the legal profession as to the regulations that are being proposed and their thoughts on how it will play out in the day-to-day regulatory activities within your own operations.

So I know some of you have traveled a great distance, so I'm glad you're here, and I look forward to the discussion.

I'm going to run quickly -- as I said, this is not a lengthy agenda. What I'm going to do is run quickly through kind of the overview.

If there are any comments that need to be made before we get to a topic, if you need to leave -- if you have some type of a scheduling conflict or you need to leave, but you need to make a comment, please me know.

We are happy to allow that comment to be made into the
record so that you can carry on with your duties, or whatever your needs are.

We are scheduled today to go through groups one, two, four, and five. And in these groups, in particular group one, we're going to go over Part 559 for facility license and notifications, and group two, Part 573, which is revisions to enforcement provisions; Part 502, a definition change; and then, the proposed regulations that have been revised and drafted regarding appeal proceedings before the Commission, which includes Part 519, Part 524, Part 539, Part 577, which has been incorporated into new Part 580. So that will be our morning discussion.

And then after we take a brief break, we'll move to group four, which does include Part 556, the background investigations for primary management officials and key employees, the pilot program; 558, gaming licensing for key employees and primary management officials, again, part of the pilot program; and Part 537, background investigations.

We'll end the morning on group five, which is Part 518, self-regulation, Class II gaming. And this is one of the sessions that I have a real interest in. Self-regulation for Class II is a very important issue for tribes in Oklahoma, in particular. And so it's been
something that I've spent a lot time focussing on. So I am looking forward to that discussion. So that was new.

I'm going to turn it over to John. John is going to run you through the PowerPoint to introduce the topics to you. And then, after we finish with the PowerPoint presentation, then we'll move to each part.

So John --

MR. HAY: Thank you. This is one of a series of consultation meetings that the Commission has been holding. Tribal consultation meetings are between tribal governments and the federal government only, and so we would -- we appreciate having tribes and their designees here, but these meetings are not open to the public.

The Commission has been following Executive Order 13175 that deals with consultation and coordination within Indian tribal governments. And the purpose of 13175 is to encourage federal agencies to reach out to tribes on any of its policymaking, especially when dealing with the establishment of federal standards, such as regulations that we're proposing today. It's also an acknowledgement of the sovereignty of tribes and the government's desire not to infringe upon that sovereignty, if possible.

All of the consultations are to be
transcribed. We have a court reporter, over here, who is taking everything down.

The transcripts of this meeting, as well as any written comments on these regulations, are placed on the NIGC website, www.NIGC.gov. I think we've been doing a fairly good job of getting them up there as soon as they come in our door so you can look at what other tribes are saying about our regulations that might help you in formulating some of your own opinions.

The Commission has made the commitment that every comment they receive will be reviewed and considered. Okay. Any proposed or final rule will include a summary of the comments that we receive. The Commission has wanted a clear and transparent process, and we hope we have achieved that.

Steffani went over, a few minutes ago, our consultation agenda. We'll be going through groups one, two, and four today.

Part 559 are facility license notifications.

Part 573 are enforcement regulations. New subchapter H, which includes Parts 519, 524, 539, and 577, are all regulations dealing with appeals and agency actions.

Group four are the background investigation regulations, gaming license regulations, as well as the definitions section. And finally, we'll end up with
518, which is the self-regulation section.

I want to talk a little about some of the regulations and the timelines that have already -- already passed.

Part 514 are our fee regulations. That was one of the first ones we tackled because NIGC needs fees to operate, so, obviously, that is very important to us. The proposed rule was published in the Federal Register on October 11th, 2011, and the comment period closed on December 12, 2011. The final rule was approved by the Commission at the public meeting on January 25th and published on February 2nd.

The fee rule deals with the submittal fees from tribal gaming operations to the NIGC. Previously, that had been done on a bi-annual basis. The change to the rule returns it to its original -- the original rule, which was submitting fees to us on a quarterly basis. Okay. That rule becomes effective on October 1st of this year; however, you won't start making your fee payments on a quarterly basis until starting January 1st of 2013, so there is some time to prepare for that.

This rule change also instituted a system for late fees. Depending on how late fees are, there will either be a 10 or 15 or 20 percent late fee associated
with the fees.

Part 523 applies to ordinances that were enacted prior to January 22nd of 1993. That provision was there when the Commission first opened up its doors, and it became obsolete. And so it's a matter of housekeeping, the Commission decided to get rid of it, if you will. And so a final rule was published on February 2nd of this year, and it eliminates Part 523 since there aren't any of those ordinances still floating out there.

Part 559 are facility license notifications. That rule was proposed on January 31st of this year. And the comment period was open until April 2nd of this year. So we're going to go into a little about what Part 559 is.

Part 559 was originally enacted back in 2009. And the purpose of it was for the Commission to identify new gaming facilities that were opening up or were closing down. It was important back then because there were a few instances where we didn't realize that new gaming facilities had been opened until after they had been opened. And we couldn't verify, at that time, whether or not those facilities were located on Indian land. And so we wanted to instill some sort of mechanism to give us notice of when this was happening.
so that we could make our internal review of the land
status, so that we could be sure that it was eligible
for gaming. Okay?

This new rule modifies, I think fairly
substantially, a lot of those provisions, because
facility license standards also included provisions
dealing with the environment, health and safety, and
welfare of the facility itself. Okay. And so what the
proposed rule did was that 120 days prior to your
issuance of a license for the facility, you would submit
notification to the NIGC that a new facility would be
opening, along with some basic information so that we
can take a look at it and make sure that it is eligible
for gaming. Okay.

When we first proposed this rule, we received
a number of comments that IGRA doesn't require us to
actually do an Indian land determination. And so the
proposed rule does not require us to actually issue one.
We do it for our internal purposes so that we can
respond with -- with confidence that if anyone calls us
up, whether it be someone from the state or from another
tribe or from another federal agency, an elected member
of Congress, asking us, "Well, is this eligible for
gaming?" we can say with confidence, "Yes, it is."

The comments all said to us, "Hey, you have to
make clear to everyone that it's tribes, not NIGC, that licenses tribal gaming facilities. And our preamble clarified that point. We felt it was an important point because we -- we all get calls in the office saying, "Hey, how come the NIGC licensed this facility?" or "When did it license this facility?" And we're trying to explain to the public that that's not our role, that tribes license these facilities.

A newly-issued or a new-facility license must be sent to NIGC within 30 days of it being issued. We really haven't received many comments on this point at all. It seems pretty reasonable. All you have to do is, you know, stick it in the mail to us. And we also accept electronic submissions.

The second part of this was that tribes send in a tribal attestation that the tribe has determined that the construction and maintenance of the facility and operation is conducted in a manner which adequately protects the environment, public health, and safety. Comments generally accepted this approach.

One thing that we've heard from the beginning, when these regulations were enacted, are that other agencies, federal agencies, and tribal agencies regulate these areas, and that there are other laws out there that cover these areas, and that we strive not to be
redundant or infringe on other areas of jurisdiction.

The proposed rules also require that we're given notice when a facility license is terminated or expired or the facility closes, so 30 days after, we would receive notice of any of those events. It is just good housekeeping for us so that we can keep track of these things. We have our compliance officers who make fairly routine visits out to the facilities. And it's good to know beforehand for them not to go out there if it's closed.

This notice is not required for seasonal closures or temporary closures for less than 180 days. There are some facilities out there that only operate for parts of the year, and -- and so they're not required to -- to send us notice of when they're closing down. We've received generally favorable comments to this approach, although some suggested that there are shorter time periods, less than 180 days, to -- to give us notice.

Another part of this was the definition of "construction and maintenance of the gaming facility."

Originally that was in Part 502.22, and the Commission thought it would be best if we actually moved that definition into the actual regulation that dealt with it. And so that definition has been moved to 559.4.
And it's also the additional 559.6 which allows the Commission to request from a tribe additional information. Typically, that would happen if we receive notice of a new facility, and, for some reason, we can't verify right off the bat where this facility is actually located on a map, or what the boundaries are. We may come back to the tribe and say, "Can you give us a little more information so we can figure out whether or not this is eligible for gaming?"

The comment period on this regulation will close on April 2nd, so you have a bit more time to look it over and revise the comments. And a copy of it, I believe, was in the packet that we handed out today. If it is not in that packet, then it will be up on our website.

VICE CHAIR COCHRAN: Thank you, John.

MR. HAY: Do we have any comments on what I've covered so far?

VICE CHAIR COCHRAN: Let me -- before we get into the comments, I see Governor Romero has come and joined us.

Thank you, Governor, for being here this morning.

For the record, would you please identify yourself for our court reporter, and if you have council
members with you, perhaps they will be willing to also introduce themselves for the record.

GOVERNOR ROMERO: Carlos Romero, Governor for the Pueblo Tesuque.

MR. CROW: Jesse Crow for the Pueblo of Tesuque.

MR. VIGIL: Michael Vigil, Councilman, Pueblo of Tesuque.

MR. MOYA: Bernard Mora, Commissioner, Pueblo of Tesuque.

VICE CHAIR COCHRAN: And is there anyone else that's come in that I didn't see?

Welcome.

MS. SPICER: Valerie Spicer, Executive Director for the Arizona Gaming Commission.

VICE CHAIR COCHRAN: Good morning.

All right. Any other questions or any other comments?

559, this particular rule was important for us to take a look at because it did have extensive requirements in -- in it that we believe exceeded the scope of the authority that the NIGC has under IGRA because we do not license the facilities. It is the tribes. So much of the revisions that you see stem from a desire to bring that regulation more in compliance
with what we believe is the plain language of IGRA.

And we also wanted to make sure that we accommodated certain areas of the country. I don't know so much out here, but in other areas of the country, there are smaller facilities that go through seasonal closures. And it was just a lot of effort and work on their part to constantly be in notification with us for a temporary seasonal closure if it was closed for a month or two. And it is also designed to capture instances where we have a facility that might close down because of a fire or a roof collapse. We had that recently. And so it is designed to make that an easier process.

Our regional offices will be aware, because they should be in contact with the tribe. But as far as going through the process of having to notify us, the attempt is, again, to streamline our efforts, streamline the efforts of the tribe, and to bring it back in line with IGRA and what IGRA requires. So that's a little background on where the changes are coming from.

Are there additional comments?

MS. BLUELAKE: I have a question. The attestation, is it up to the tribe whether that comes from counsel or from the Commission? Is that open, or is there expectation from the Commission that it will
come from the counsel?

VICE CHAIR COCHRAN: Well, yeah. I think the expectation is it will come from the leadership. The leadership is, of course, capable of designating their authority or delegating it to another entity to certify it. But I think the intent, because of the way the statute is written, is that the attestation come from the tribe itself. But we wouldn't, certainly, dictate how that looks.

Any other questions or comments?

MR. HAY: We'll move on to group two.

MR. GARCIA: I have a question on the -- on the -- on the attestation. If you send it in, like the original information to you saying that the building is constructed in a manner that we have outlined here, do we have to send it in, an attestation, every year, along with the renewal license?

You have -- the proposed rule is -- says provide it for the tribe to submit certification attesting that the gaming operation is being conducted in a manner that will adequately protect the environment and public health and safety. So if we send it in, and then, there's no new construction, and so we don't -- do we still need to send that in on an annual basis with a renewal of the facility?
VICE CHAIR COCHRAN: The -- I'm looking at 559.4 and the attestation -- and, again, we took this from IGRA -- does require the tribe make a certification as to, not only just the construction, but the maintenance of the operation. So yes, I believe that if you're doing a renewal of a license, that attestation would have to be as to its maintenance of the operation, not necessarily the construction because -- you know, unless you've had new construction with it.

MR. GARCIA: Okay. Thank you for the clarification.

MR. HAY: And group two -- group two includes Part 573, which is enforcement. And part of that is also part of 502, which includes definitions that are relevant to enforcement. This proposed rule was published on December 27th of last year. And the comment period closes on February 27th, which, I believe, is this coming Monday.

Also under group two are regulations concerning appeals. That's Parts 519, 524, 539, and 577. Those were all published in January of this year, and the comment period will close on April 2nd of this year. I believe all of these are included in your packet. If not, they are on our -- our website.

Okay. Part 573, the changes to Part 573
really reflect the Commission's goal of -- of obtaining voluntary compliance. In fact, there's a statement in 573.1 that that is the Commission's goal.

As part of that goal, the Commission felt it was -- was advisable to -- to lay out a pre-enforcement process. And what I mean by "pre-enforcement" is events that would happen before a notice of violation would be issued to a tribe. Okay?

Our field offices had, for many years, depending on the region, been -- been -- been having different practices as to how they went about the enforcement or notifying the tribe of their concerns. Oftentimes, there were warning letters sent out, or what they call a "PNOV," which is pre-notice of violation, to let tribes know. We thought this was a good practice so tribes could fix any problems on their own. And the Commission sought to actually put this into a regulation.

So what 573 does, now, with the proposed rule, is to provide for either a letter of concern or a warning letter that may be issued to a tribe. A letter of concern provides what facts we have and information about what the violation may be.

An example of this would be if we received a phone call from an anonymous individual saying, "Hey,
the tribe is doing this, and I think it is a violation
of either their tribal gaming ordinance or NIGC
regulations." And we would write to the tribe stating,
"Look. We received this complaint with these facts, and
it could possibly be a violation. We're not sure yet.
Can you give us some more information? Can you look
into it?" And it would, also, probably, include a
deadline for a response to come back to NIGC.

You know, we receive those calls on a fairly
regular basis. I'm sure tribal gaming commissions
receive calls like this fairly regularly, as well. This
is a less formal way of addressing it before an actual
notice of violation.

The next stage would be a warning letter where
we've gone through, and we've assessed the matter and
said, "Hey, you know, we've looked into these facts, and
we think that they're true. And if so, it would be a
violation. And so you need to fix it. And here's how
you fix it." And that would include a deadline to the
tribe to fix it. And all of that would happen before a
notice of violation would be issued.

Now, neither of these letters are final Agency
action or Agency action. The term "Agency action" is
important because when you have an Agency action, that
would trigger some sort of appeal rights, either a
hearing before the Commission, or allow you to sue the
Commission in federal district court. And so we wanted
to have a process so that we never got to that point.
And so these are really notification letters.

As we do in consultations, we've sometimes
heard from tribes, you know, "Out of the blue, we've
received this notice of violation. We had no idea this
was happening. Isn't there any way" -- you know, "If
you had told us earlier, we would have fixed it right
away. Isn't there a way to make sure that that
happens?"

And so the Commission wanted to put it into
the regulations so that we could achieve voluntary
compliance.

Okay. If the recommended corrective action,
either the letter of concern or the warning letter, is
not heeded by the tribe, then the Chairwoman has the
option of instituting an enforcement action. Okay.
Neither of these letters would prevent her from -- from
instituting an enforcement action. I just want to make
that clear. These are just options available out there,
and they would come from the staff, from the region
staff who works with you on a daily basis. And so --
but it wouldn't prevent her -- if she saw a violation,
she could take action.
VICE CHAIR COCHRAN: John was absolutely correct in identifying that the revisions that we undertook in this particular section really are aimed at voluntary compliance. And it's designed to get the Agency and the tribe talking early on about potential issues so that there is no element of surprise down the road, and to give tribes, and the Agency, the best opportunity to resolve the issues to -- to correct factual information so that matters are resolved before the Agency is able to use the few tools that it has in its tool bag as far as enforcement goes. And those are heavy-handed tools, and we know that.

So this is -- this is the result of a lot of discussions with tribes as to ideas, "How can we do that? How can we get the Agency and the tribes talking as early as possible so that it's very clear to both parties where they're at and what the issues are, what can be resolved, and what can't be resolved."

And the -- the other part of that is to -- to also make sure one of the things -- well, I -- I'm a little ahead of my thoughts, here.

One of the things that we walked into, as commissioners, was the Agency's history, recent history in the Agency, of a large number of NOVs being issued for things which were important, but not potentially NOV
material, in our minds, like, maybe, fees is the most obvious example. And so we wanted to make sure that -- that we left, in this rule, a requirement that the tribe wait -- that the Agency wait to use its heaviest hammers, like an NOV, for those matters that really required that type of an action. And the late payment of the fees, for the most part, which would be the majority part of the time, just does not require that kind of heavy-handed behavior. So that's what this is geared at.

Yes, please.

MR. GOMEZ: Eddie Gomez, Pueblo of Isleta.

One of the last statements was regarding the pre-enforcement action process does not limit the -- or constrain the Chair's discretion to issue. Is it possible that a warning and an NOV could be issued concurrently or -- I mean because it sounded like the warning would come from the region office, but that the NOV could come from the Chair. Could those happen concurrently?

VICE CHAIR COCHRAN: Well, I guess, they -- yeah, it is possible. I guess, as a matter of fact, it's possible. It wouldn't be likely, though. And, again, that -- that provision is left in there to give or maintain the Chair's right to act quickly where
circumstances absolutely warrant quick response. So yes, it could happen. It is not likely because it would be a very urgent matter that needed prompt attention, so you wouldn't have the regional offices involved. At that point, it would have been at the headquarters.

MR. GARCIA: For clarification, this enforcement applies to both classes, or Class II gaming, or is it specific to Class III gaming?

VICE CHAIR COCHRAN: It is both. It would be all gaming, yeah, because the inferred authority of the Chair extends to licensing provisions, extends to other things that wouldn't necessarily be game related. You couldn't even, prior to --

MR. GARCIA: The reason I ask is because, you know, the -- it's oversight the NIGC has over the past decade.

VICE CHAIR COCHRAN: Yeah. And that's -- that would be towards MICs. That is why I'm saying it could be other things outside of the MICs. The CRIT decision, as you know, has to do with the Agency's authority over enforcing the MICs. But the Chair's authority in IGRA is much more broad than the MICs. So it has to do with, you know, gaming ordinances and other things that wouldn't necessarily be MIC related, so --

MR. HAY: To give a hypothetical, if there
were a situation where you opened a gaming facility on
lands that weren't eligible for gaming, it doesn't
matter whether it's Class II or Class III. You're
gaming on lands that are ineligible, and so the
Chairwoman could issue a notice of violation for that,
and the classification of the gaming is somewhat
incidental.

Any other comments on this section?

Going hand in hand with this section are some
new definitions, and that's in Part 502.

During the whole consultation process, we
received comments that the term "enforcement action" was
never defined. So when our staff, or the Commission,
was out there and speaking with tribes, and if there was
an enforcement action, people wanted to have that
clarified, what that means. And so that we are adding a
new definition of "enforcement action."

And that is defined as any action taken by the
Chair under 25 U.S.C. 2713, against any person engaged
in gaming for a violation of any provision of IGRA, the
regulations of this chapter, or tribal regulations,
ordinances, or resolutions approved under 25 U.S.C. 2710
or 2712 of IGRA, including, but not limited to the
following: a notice of violation, civil fine
assessment, or order of temporary closure.
Those three are the kind of big ones that everyone, at least everyone from the Agency, views as an enforcement action, you know, issuing fines, closing down, or simply issuing a notice of violation.

The comment period, as I said, closes on February 27th, which is this Monday.

Do you have any comments or questions on the definition change?

MS. SPICER: I have a question. It seems odd that it says "a person engaged in gaming."

MR. HAY: "Person" is defined in IGRA, and the definition of that would include a tribe or a tribal operator, so that if you have nontribal-owned gaming on your facility, or you have a management contractor, our enforcement action would be directed to either the tribe, management contractor, or the nontribal operator.

VICE CHAIR COCHRAN: When we first looked at this, I was working as a lawyer, and I thought the same thing. And it is an odd choice of wording. But it's --

Any other comments?

The comment period for this to close is coming up, so I encourage you -- if you have any comments, whether just a brief, "We have no issues with this," I encourage you to submit them so that we get them in and put them up on the website and make sure that everyone's
voice is heard the best we can make it heard.

MR. HAY: The next area deals with proceedings
before the Commission. These are our appeals regs.
Currently, our appeals regs are spread out in
three different parts of our regulations, so,
oftentimes, people thought this was kind of confusing.
They didn't know where to look. And when I say
"people," that doesn't include just people outside of
the Agency. It includes us within the Agency.

I have been practicing at the Agency for over
nine years now, and it wasn't easy going through our
regulations to find out what appeals process we should
follow. And so what the Commission is doing here is
taking all of the appeals provisions and putting them in
a new subchapter H, so that you will have one place to
go to to look to see what your appeal rights are and how
you would handle an appeal.

The notice of proposed rulemaking, the NPRM,
was published by January 31st of this year, and the
comment period goes until April 2nd of this year. Okay?

So what this part does, it repeals all of the
old sections that deal with appeals. That would be Part
519, 524, 539, and Part 577, and moves them up to
subchapter H. Okay?

Subchapter H would include Part 580, which are
rules of general application. So these rules would
apply to any type of appeal that you are bringing,
whether it's an appeal of an ordinance disapproval, a
management contract disapproval, or an enforcement
action. Okay?

581 deals with motions proceedings before the
Commission. Okay.

582 deals specifically with gaming ordinances
and resolutions, so that if you had submitted an
ordinance to us for approval, and it was disapproved,
and you wanted to appeal that disapproval, you would
look to 582 for how to do that.

583 deals with the management contracts and
amendments to management contracts. In the end, if the
management contract was disapproved or even in some rare
instances that it was approved, and you want to appeal
that, you would go through 583 for your -- your appeal
procedures.

584 deals with appeals of enforcement actions,
notices of violations, civil fine assessments, orders of
temporary closures, the Chairman's decision to void or
modify a management contract, a removal of a certificate
of self-regulation, or notices of late fees or late fee
assessments. So all of those are in 584.

And, finally, 585 deals with appeals to the
Commission on written submissions of those same types of actions. As it stands now, you have the option, when you appeal, of going before a presiding official and having a hearing take place, or you can just say, "We don't want to go before an official. That takes too much time. We want to speed the process up, and we just want to submit briefs, if you will, to the Commission."

There's a process for doing that.

Part 518, these are the general rules. Okay. So they include definitions. They include suspension, revocation, amendment, or waiver of rules. They tell you who may appear before the Commission. They tell you how you must effect service on the Commission. They tell you what the burden of proof and the standard of review for any appeal is. They explain to you what the final decision will contain. They give you, you know, the effective date of final decisions, what happens if there isn't a majority of the Commission, and what is the effect of an appeal on the Chairman's decision.

For instance, what happens if you are issued a closure order, or a temporary closure order, and you appeal it? Does that mean that order is stayed, or do you have to close down? In this case, you would have to follow the Chair's order that the facility be closed until the appeal had run its course.
We received some good comments on this section. You know, one of the comments was individuals who are appearing before the Commission, it was too restrictive as to who we were allowing. And so the Commission decided to broaden that standard as to who would have an interest in the outcome of our decision, so that it would bring in more people.

There were also concerns expressed about ex parte communications. One of the rules was that if there was an appeal going on, you couldn't have contact with the commissioners about that appeal, and/or -- or any contact at all. And a lot of the people expressed concern over that, and that that would stifle actual comments on any issues, and that it would come in the way of our consultation policies out there. And so we -- it's something we have been kind of struggling with. How do we -- we protect the process while still allowing tribes to have access to the Commission?

So that's one thing we're really asking for people's help with is, "How can we kind of walk that fine line and balance the interests here?" And so we're really hoping to get some ideas on that. There was nothing, I think, proposed in our regulations. We simply said, "We want to hear what you think about this."
We received a lot of comments that if an appeal is filed that it stay the Chairman's decision. The proposed rule did not accept this. If the Chair has found a violation, that violation is in place, and that order is in place until proven otherwise or another decision is made.

We also received the suggestion that we add provisions that ensure that parties have access to all of the record that we have before the appellate proceedings, and so we have put in those provisions in other parts that allow for access to the record, so that before you file any of your motions or briefs, you can see what our decision was based upon.

Part 581 deals with the motion practice before the Commission. And these include, you know, motions for limited participation in ordinance appeals, motions to intervene, motions before the presiding official, motions to supplement the record, and motions for reconsideration.

One comment on the presiding official, that's the term that is used in the Act, in our regulations. Oftentimes, that will be an administrative law judge, but it doesn't have to be. The Commission can designate anyone that they want to be a presiding official. They could make a staff member a presiding official.
Typically, what we have done in the past is --
we don't get many appeals. And so we found it's easier
just to use the Department of Interior's administrative
law judges. And so if an appeal is filed with us, and
you request a hearing, we'll take it right over to the
Department of Interior's appeals division and say, "Hey,
can you name a presiding official for this action?" And
they will be the person who looks over all of the
materials that are submitted.

For Part 581, we received comments that the
ten-day period for opposition position briefs was too
short. And so the Commission has adjusted that to
exclude holidays and weekends, if that time period is
less than 11 days, so that way, you can get, you know,
your full ten business days to file any opposition.

The comments we got also said that our
preliminary drafts or reply briefs were too restrictive.
And so there are changes for motions and motions for
reconsideration in there that make them a little less
restrictive.

Part 582 deals with appeals of disapprovals of
gaming ordinance resolutions or amendments. And, again,
this mirrors the previous chapter on who may appeal this
approval of gaming ordinance, how to appeal it, motions,
motions for limited participation, copies of the record,
and when a decision will be issued. And when I say it
mirrors the previous part, I don't mean that the
substance of it is the same, but the issues that are
dealt with are -- are similar.

We didn't receive a whole lot of comments on
this part. A lot of commenters said, "You should make
it a little more clear as to who may participate in
these types of appeals, and you should provide clarity
on whether the Commission can refuse to grant an
appeal." We haven't done that in the actual regulation,
itself, but in the preamble to the regulation, it
clarifies that the Commission cannot refuse to hear an
appeal.

Part 583 is for appeals from approvals or
disapprovals of management contracts or amendments to
management contracts. And, again, we see this kind of
same layout of who may appeal the approval or
disapproval, how to file the appeal, what types of
motions are to be allowed, how you will get a copy of
the record, and the timing of the decision.

Again, we didn't receive a lot of comments on
583. Just, again, suggesting that we provide more
clarity on who may appeal the approval of a management
contract, and we would address that in the preamble, and
what type of motions will be allowed. And so the
proposed rule clarifies which motions are allowed.

Part 584 deals with appeals before a presiding official. These are somewhat of your more formal hearings where testimony is provided, and the presiding official decides motions, and what evidence is allowed in. And they basically, up until now, can set their own rules. And most of them usually follow the Federal Rules of Evidence, but this kind of lays out a little more guidelines for what they can and can't do so that the parties know beforehand what all of their options are. So again, we have who may appeal before a presiding official, how to make such an appeal, what types of motions are allowed, when the hearing will be held and timing of the hearings. It's very important, especially in instances where a closure order has been issued, that these hearings are done quickly so the tribe can resume gaming. What the process of the hearing is, how we handle confidential information -- oftentimes, a lot of the information presented before a presiding official could be business information that you don't want the general public to know about.

There is a process for settlement and consent decrees, and how to handle objections to the recommended decision from the presiding official. During an appeal, the presiding official's decision isn't actually the
final decision. The presiding official, at the end of the hearing, makes what is called a "recommended decision." That recommended decision then goes back to the full Commission, who reviews it and decides, "Yes, we agree with it," "No, we don't agree with it," or "We agree with parts of it, but not all of it." And then that comes out with the final decision, and, finally, when the Commission will issue its final decision. All of those are in 584.

Yes, sir.

MR. GOMEZ: Do these recommendations or findings -- are there findings of fact and conclusions that are included, or is it just --

MR. HAY: It is both the findings of fact and conclusions of law. Thank you.

The comments that we received requested clarification on what the role of the presiding official is, and so the Commission has concluded that clarification in the proposed rule.

Comments were directed at what happens if you're denied limited intervention. Can you still be allowed to submit an amicus brief? For those of you who don't know, "amicus" means "friend." And it's usually someone on the outside who may not have a stake, a direct stake, in what's happening, but has information
which is useful, and they want to provide that, either to the presiding official or to the Commission. And so it allows those individuals to -- to file this information with the presiding official or with the Commission.

We also received comments that closure orders should be -- decisions on closure orders should be made within 30 days on whether or not to make them permanent.

The proposed rule provides for a hearing within 30 days, unless that's waived by the appellant, and a decision within 30 days of receiving the recommended decision.

We have looked at this, and we think that that was kind of a reasonable time period for us to actually do the work that goes into this process, so we have put this out there to comment as to whether you think that's a reasonable time period.

Again, we received comments on how we were going to handle confidential information, so we have included provisions for how a presiding official of the Commission handles confidential information.

Yes, sir.

MR. LESLIE: Is there any language or provisions put in regarding subpoenas?

MR. HAY: Subpoenas by the parties to it or subpoenas by the Commission?
MR. LESLIE: Subpoenas by the parties to it.

MR. HAY: By the parties.

That would be handled under the general motions practice so that, if you needed information, you would make that motion to the presiding official to try to get that information. We would hope that all of the information that you would need would be included in the actual record on -- on which the Commission made its decision, but if, for some reason, there's something you can't get to, you could make that motion to the presiding official to try to get that.

Part 585 deals with appeals to the Commission on written submissions.

Oftentimes, parties don't want to go through the whole process of having a formal hearing. It can be expensive because you have to bring witnesses, and it takes a long time. And there are just a whole lot of other expenses that go along with it. Plus, it takes time because you have to prepare for the hearing. Then the presiding official has to consider all of the evidence at the hearing, write up their decision, and then issue that decision. And then there's a time period for objections to the recommended decision. And so oftentimes, parties come to us and say, "We want to speed this up. We just want to do it on written briefs."
We think the issues are very clear here."

In many instances it might just be a question of what the law actually is, rather than a factual issue. And so 585 allows you to file an appeal just on written submissions, and to do away with the hearing. And again, it is who may do this, how to do this, what motions are allowed when you're doing this, and can other parties intervene when you're doing this, how you will get copies of the record, and, also, the timing of the record.

I have received a few comments on this one asking for clarification. If one party requests a hearing and one party requests it be decided on the papers, what happens? So the proposed rule addresses this issue.

We've also received a comment that a closure order decision should be made within 30 days, whether or not to make it permanent. And the proposed rule provides for a decision within 60 days.

We've also received a comment that the draft was too restrictive on who may appeal, and tribes should be able to designate who may appeal. And so the proposed rule provides for the tribe to designate a representative.

Do we have any comments on that section?
(No audible response.)

VICE CHAIR COCHRAN: This is the -- this is the set of regs where it would generally be referred to the lawyers to talk about because it's a very dry area. But it's a very important one. It was something that John pointed out. When I came onto the Commission, I was looking at this because we had an appeal pending before us. And I kept trying to go through our regs to tell me what to expect as a decisionmaker, and there was nothing there.

And it turned out a lot of what we were doing was just practice, what -- what you had done historically. But none of it was out there in regulation format to advise tribes that that's the process.

And as coming from being a general counsel for the pueblos, you know, we're not all blessed, in Indian country, to have the ability to hire gaming attorneys who are experts in this field. We have to rely on general counsels, who are jacks of all trades, and must be responsible for many things for the tribe. So it's really important to me to engage our lawyers in the drafting process, to put the process out there so that a tribe, no matter who is representing them, whether it's a seasoned gaming attorney or an advocate, can go to the
rules, can read, and know exactly what to do when you need to make an appeal of the Agency's decision.

So the -- the lawyers tolerated my incessant poking at them, but they did take the -- the issue on directly and drafted some rules which I think, while dry and cumbersome, nonetheless, do set out a much better process for the tribes to follow in challenging or questioning or disagreeing with a decision of the Agency.

So this is kind of a little bit of the background. And one of the things, also, that I think is really important, here, and that the Commission felt we needed to make sure was clear, is that the tribes do get to decide who is going to represent them and who is going to make appeals on their behalf so that they make those decisions and -- and they control how they're going to go through the appellate process.

So -- so it's a lot of material. But, you know, if there's questions and there's comments, or there's something in here that we can do differently -- the ex parte communication we did take out. We did put it out, initially, in a draft form for discussion, but it just -- we couldn't get something that made sense for us. So we've taken it out of this particular revision, but it doesn't mean the issue isn't on the table for
continued discussions. You know, how -- how do we engage in those discussions on ex parte outside of an appeal.

Yes.

MR. GARCIA: I have a question.

Is there any language that allows the parties, or the entity that is making the appeal, to have any say so on recommendations or objections to the ruling of who the presiding official would be?

MR. HAY: You know, I don't think that that's an issue that has ever been raised before. And in my time on the Commission, we've never had anyone raise that issue about who the presiding official is. So that's an interesting point, so we appreciate comments on that point. But it's simply not addressed in the regulations right now.

MR. GARCIA: It is just that Commissioner Cochran said that there's people out there that have limited gaming, and that the -- if the enemy finds out that that person that is presiding does not have an extensive gaming knowledge, so that the parties that are in the appeal should be given an opportunity to make recommendations as to who should hear the appeal.

VICE CHAIR COCHRAN: Thank you for your comments. That's not something that -- that has been
brought up. We definitely will include it as something we take back and talk about. It's an excellent point.

    MR. HAY: Any other comments? Questions?

Okay. I think we're going to take a short 15-minute break, and come back here and jump into group four.

    (Recess from 9:50 a.m. to 10:12 a.m.)

    VICE CHAIR COCHRAN: I think everybody is back, so we'll pick up with the second half of the agenda, which includes group four and group five.

    Are there any comments that need to be made or questions that you want to ask about group one and group two that we talked about earlier?

    (No audible response.)

    VICE CHAIR COCHRAN: All right. Well, I'm going to turn it back over to John, and then we'll pick up and go through group four.

    MR. HAY: All right. Included in group four were rules for Part 556, for background investigations for primary management officials and key employees; 558, again, gaming licenses for key employees and primary management officials; and 537, which were background investigations for persons or entities with a financial interest in, or having management responsibilities for a management contract.
Those were published as proposed rules in the Federal Register on September 22nd of last year. And the comment period, actually, closed yesterday. So, hopefully, everyone got their comments in.

I want to just touch briefly on what these -- these were before moving on.

The changes to Part 556 were what -- what a lot of you -- what was known to a lot of you as the "pilot program," which was a streamlined program that tribes had entered into for their background and licensing. And typically, tribes would have an MOU with the NIGC whereby they wouldn't have to send us a full packet of information. They would just have to send us the results of their investigation.

And so this was such a successful program. Tribes really liked it. It was easier for us. And the Commission decided, "Well, let's formalize this and actually put this into the regulations."

And so, Part 556 included all of the procedures before a gaming license was issued, and 5-- Part 558 are all procedures after a gaming license was issued. Okay. And so this is your -- typically, your notice of results, your timelines for notifying NIGC of when a license is issued, and NIGC's timeline for requesting more information from a tribe without a
licensee.

So all of these were in the -- the proposed rule. And, again, that comment period closed yesterday. And so that will be, now, before the Commission to make a decision on that.

537, again, the comment period closed yesterday. And what 537 was doing was it was reducing the scope of the background investigations and information for tribally-owned entities, national banks, or institutional investors that are federally regulated or required to undergo a background investigation and licensure by state pursuant to compact.

The reason for this change was simply to cut down on redundancies. If there was already somebody out there doing background investigation or requiring information, we didn't think we needed to do it twice. And so that was out there for comment. And the comment period closed yesterday. And so some time in the future, you will hear what the Commission decides on this.

MR. ROME: If I may comment? David Rome on behalf of the Mohecan Tribe of Connecticut. And I know this is just one slide there on the PowerPoint, but 537 is something that is important to the Mohecan Tribe. And I just wanted to acknowledge our support. We also
have, in the past, commented in support of extension of
the pilot program, especially the idea of being able to
exchange investigative reports between tribal gaming
agencies or state agencies, you know, as necessary.

But just on 537, we provided some comments,
but I don't think, when IGRA was passed in 1988, they
anticipated that the tribes would want to work together
with -- with other tribes and, you know, actually
management contractors. So I guess this is a great
change and -- to have that discretion.

They also didn't have things like limited
liability companies. And I looked it up, and it was
actually 1988 when -- when IGRA was passed. The IRS
first issued a letter saying LLCs could be treated as --
you know, as partnerships for tax purposes, and that
opened up a whole area.

So IGRA talks about corporations and directors
and stockholders. And you have tribes, and you have
LLCs, often, under tribal law. And I think the
Commission has been very good at adapting to those
developments. And this additional change gives that
same type of discretion.

Thank you.

MR. HAY: That actually reminds me, for those
of you who may have commented on this regulation
yesterday, the individual in our office who is receiving
these comments is out on vacation, so you would have
received a return e-mail saying they are out of the
office. But we did, in fact, receive your comments, and
they will be reviewed with the rest of them.

We're going to move on to the final section,
here, which is Part 518, which is self-regulation of
Class II gaming. These were regs that were in desperate
need of some attention.

As of today, there are, actually, only two
tribes out there that are self-regulated and have
certificates of self-regulation. And we received a lot
of comments from them over the past year about the
process that was involved, as well as the benefits
received from the process, and ways in which we could
improve the process. And -- and, most importantly, why
they thought more tribes weren't availing themselves of
self-regulation.

And we received a lot of comments that the --
the regulations were unclear, that the requirements were
burdensome, and that all of these burdens involved
really outweighed the benefits. And so the Commission
wanted to take a hard look at these to encourage more
participation by tribes in this important program. And
so the proposed rule shifts the focus from the gaming
operations to the tribal gaming regulatory agency.

Since this rule is about tribes regulating themselves, we thought it was important that, you know, we look at the structures that are involved in regulation, rather than on the operations side.

The proposed rule also reduces information, submission of information that would be duplicative. So if we already have it, you don't have to send it to us twice. For instance, you are required to send us your ordinances for approval. If we have that on file in our office, you don't need to send that again.

The hope is that we'll make certification more accessible to tribes, while still maintaining a high standard.

Some of the comments received from the tribes that are self-regulated indicated, you know, that they considered this to be a badge of honor, and they didn't want to water down these regulations; that it should be something that everyone strives for.

So the notice of proposed rulemaking was published on January 31st of this year, and the comment period closes on April 2nd, 2012.

The rules are broken down into four distinct sections. There are submission requirements, the criteria by which the Commission is going to judge the
submissions, the overall review process, and what requirements still exist after the certificate has been issued.

So first, I'm going to start off with the submission requirements. Okay? We will be looking for a history of the gaming operation. We want to know what operations. We want to know how long they have been in existence, and -- and what types of facilities they are, how big they are, that type of information, kind of general information. We would like an organizational chart of the TGRA. You know, whatever name you have as your regulatory body, we want the organizational chart to see how it is structured.

We also want to look at criteria for your regulator. What type of experiences do you want for your regulators? Is there any kind of educational background requirements?

We also want to look at the funding of the organization. Is it funded sufficiently to regulate a facility of the size which the tribe has? We would like a list of the current regulators, and we'd like a description of the accounting systems that they're using. We would also like to have a list of internal controls. We want to have a description of what type of recordkeeping system for investigation and enforcement
and prosecutions that the tribal gaming commission uses.

We would like a copy of your gaming regulations. Of course, if you've already provided them to us, you don't have to provide them to us a second time because we received a lot of comments that, you know, a lot of the materials that are required by the regulations now have already been submitted either to NIGC or to BIA, and we got rid of that requirement so it would just be less paper that would have to be submitted to us.

The second section would be the criteria the Commission is looking at when it's deciding whether or not a certificate of self-regulation should be issued. The Commission wants to see that the tribe is maintaining effective and honest accounting revenues, that it has a reputation for safe, fair, and honest operation, that it's run on a physically- and economically-sound basis, and that the operation is generally free of criminal or dishonest activity.

They are also looking at whether or not your Class II gaming has been conducted in compliance with federal tribal regulations. Obviously, we're going to look at kind of your overall compliance history.

We want to make sure that the tribe has an adequate system for accounting of revenues. We want to
make sure that there's processes involved for investigation, licensing, and monitoring of your gaming employees. We want to, also, look at the processes for investigating and enforcement and prosecution of violations.

The proposed rule includes some examples to demonstrate what we're looking for in this criteria, or how you can demonstrate that the criteria has been met. And so, you know, we want to look at the tribal gaming regs or bodies that are monitoring compliance with applicable laws and regulations, including MICs, monitor the effectiveness of the revenue accounting system, whether or not they are auditing their Class II gaming activities, and whether or not they are reviewing accounting information from its operation.

A lot of these things that we are looking at sometimes can't be determined by written submissions, and so the thought process is that once we get, you know, your submissions, your documentation, our field staff will go out and verify a lot of the information and see what's happening on the ground, so to speak.

The proposed rule also sets out the process of reviewing the petitions. Within the Agency, there will be an office of self-regulation who will be responsible for reviewing the petitions. All right. They review
the petition within 30 days, and they will notify the
tribe if the petition is incomplete or if it's complete.
If it's incomplete, you have another 30 days to submit
additional information.

Within 120 days of that application, the
Office of Self-Regulation will provide a recommendation
or report to the Commission, and, also, to the tribe.
Okay. It goes to the tribe so that they can see if
there are any deficiencies or any problem areas. They
have a time period of 30 days in which they can -- they
can provide new information or additional information or
clarify information to the Commission. Okay?

The Commission will then issue preliminary
findings. Basically, it is their assessment saying,
"Hey, we looked at this, and everything looks good," or
"We see some problem areas that might prevent the
issuing of the certificate."

After that happens, the tribe has the
opportunity to request a hearing on that -- to that
preliminary report. And they can say, "Look,
Commission, your facts are wrong here," or "The facts
are right, but we think you've interpreted them
wrongly," or whatever other information that they think
is important in moving their position forward, they can
present to the Commission. Okay?
After the preliminary findings or the hearing, whichever is later, the Commission then has 30 days to issue a final decision. Okay? And, obviously, the tribe may withdraw the petition at any time prior to that. If -- if there are problems with the preliminary finding, the tribe may decide, "Hey, we might want to fix these things and then move forward at a later time," or they've looked at the process and they just don't see value in going forward at that time. So they can withdraw that petition and the final decision won't be issued.

We have received a lot of comments on this throughout the process. We've heard that the certification process needs to be clarified. And so, hopefully, the proposed rule gives greater clarity. Hopefully, it's laid out in a more streamlined fashion so that it's easier for the tribes to understand what's expected.

We've also received the comments that the Commission, itself, should consider the petition. Previously, one commissioner was designated as the head of the Office of Self-Regulation, and they were responsible for a lot of the reviews involved. And for something that's as important as this, the Commission felt, "Hey, it should be the whole Commission that is
looking at this information, and not just one individual." So that -- that commissioner who was assigned to self-regulation will still have a role. They will, somewhat, be directing the review process. But the full -- the full commission will be looking at all of the materials throughout the process.

We received the comment that the process should facilitate collaboration with NIGC to meet the approval criteria. We think that the process, as we've laid it out, does that. It provides opportunities for the tribe to interact with agency staff and to address problems early on, deficiencies early on, or -- or other omissions early on, and so that it doesn't get to the end of the process and, all of a sudden, "No, it looks like this isn't going to go forward." So there is that time built in for our staff and the tribe to work together, to work through a lot of these issues.

Finally, there are annual reporting requirements after a self-regulation is issued.

The -- the first one is independent audit. Every tribe is required to submit that, and that doesn't change for self-regulated tribes, and, also, a complete resume for all employees on the tribal regulatory body hired and licensed by the tribe after receiving a certificate of self-regulation. Okay.
The -- the tribe is also under duty to inform
the Commission of any change in circumstances. A change
in circumstances could be if you bring in a new
management company, which we probably already know
about, or if you had found some -- some large problem
with the regulation of your gaming. There's a whole,
probably, list of things you could rattle off of what
would be a change of circumstances, but anything that
has changed from the original report that you sent to
us.

For instance, if your -- your regulations
budget was $20,000,000, and then, it suddenly dropped
down to $500, that would be kind of a big deal. And we
would want to know about it.

The Commission -- the comments also suggested
that the Commission define "tribal regulator." In the
proposed rule, the Commission declined to do that
because there's a pretty wide range of diversity between
tribes as to who the regulators are and who is doing the
regulation, so we didn't want to kind of stamp that
label unnecessarily.

Section 518.12 references the provisions of
IGRA that are limited once you receive a certificate of
self-regulation. This is kind of a section of why
people get involved in self-regulation. One of the
benefits of it is decreased oversight from the NIGC. So 518.12 lays out what parts of IGRA are inapplicable once you have your certificate.

We received a lot of comments, throughout the process, that a lot of the things we were asking for were overbroad, we didn't need them, they had nothing to do with self-regulation. And so we really tried to eliminate a lot of those provisions where we could. And a lot of the comments, also, said that we should remove areas in which we were simply restating, which was -- things that were in the Act. We've done that in some areas, and I think in other areas we have left that just to clarify the regulations.

So that's the entire slide show on 518. There is a lot in 518, and so I encourage you to look at it. It is a long process. It took us a long time to review it and to go through these changes. And, hopefully, we've streamlined it.

When the regulation was originally enacted, it was before a lot of the other regulations were put into place, like MICs and things like that. And so there were a lot of redundant requirements within that. And, hopefully, we've eliminated that.

VICE CHAIR COCHRAN: Yes.

MR. GARCIA: Just a question here. I don't --
I didn't see any language in the -- in this section where it references the region office. Here in New Mexico, the region office is with the Phoenix area. And then, the agent comes onto our property every quarter to monitor, or to look at our records, you know, what have you.

I would recommend that, maybe, based on their determination that they write -- also give recommendations for the tribe to become self-regulated because they do observe and they do have information that we share with them as to how we conduct our regulatory process.

So I recommend we have the region office have that opportunity to, also, maybe, write a letter of recommendation for those tribes requesting to -- to -- get that certification.

VICE CHAIR COCHRAN: That's interesting. We would have, of course, access to anything that the region has of documentation. But it's an interesting comment and thought that hasn't been brought up about whether or not it ought to be a formal part of the process that D.C. consults, if you will, with the regional office about a tribe's application and their experience with the tribe and the region.

So it's an interesting thought. Thank you.
MR. GARCIA: I would suggest that, maybe, you
explore that. And I would like to say that Lance would
give us a recommendation.

MR. VALLO: Take it easy, Robert.

COMMISSIONER LITTLE: We talked with our staff
extensively on these types of issues, and, you know,
they know their regions. And, you know, I think,
hopefully, both the Vice Chairman and myself would
consistently be saying that it's -- one of the biggest
assets of this agency are the staff. They are our eyes
and ears in the region. And we don't do -- we can't do
this job alone. We need them. And they do a very good
job at that.

So any of these types of issues, whether it be
an NOV, or something as important as this, we will be
speaking with our staff. And they will have an
opportunity to -- to, you know, explain what's going on.

And so good point. I appreciate you raising
that. Thank you.

MR. LESLIE: I noticed there were some written
comments on this one about the three-year requirement
that you had been engaged in in the last two or three
years. Is that what you are looking at or considering
or --

VICE CHAIR COCHRAN: It has, actually, been
quite a lengthy discussion because the Act, itself, has a requirement. And, you know, actually, the debate -- not the debate -- the discussion kind of centered around "What does that mean? Does that mean three years continuous requirement, which is the way the Agency has historically looked at that? Does it mean three years Class II only? Does it mean" -- so it's kind of -- we really can't get away from what the Act requires.

Obviously, it is just more a matter of, "What does that look like?" because we could have -- one of the scenarios, of course, that has been brought out, we could have a tribe that has extensive experience in Class III, who does very well, expands to a Class II property or activities, and after a year or two, uses the same resources that apply to a different class, wants to petition for self-regulation. So it's been -- yes, it's been debated. There are thoughts. And we absolutely welcome, you know, input from the tribes on how we might look at this. But it makes sense.

COMMISSIONER LITTLE: There are some tribes in California that operate hybrid floors for Class II and Class III machines and felt that maybe -- maybe if you had all Class II machines and maybe you had both -- if you had all Class II machines that continually operated for three years, that the current regulation would
preclude them from doing that after the three years. So this kind of changes that.

MS. HALL: With regard to 518.5, one of the factors that will be considered is whether the tribe has adopted and is implementing a conflict-of-interest policy with tribal regulators. I'm interested in an example of that, other than the real obvious ones, that you might look at in terms of what would constitute a conflict of interest between regulatory bodies or a staff in the operation.

VICE CHAIR COCHRAN: In terms of like a bulletin or some type of advice guidance from the Agency?

MS. HALL: Or just examples you might have looked at in your role of looking at those factors of conflict of interest in general.

VICE CHAIR COCHRAN: Well, we -- since we only have two self-regulating tribes, we haven't had an opportunity. But it's something I think we can think about and work with -- with the lawyers to ask them to keep in the back of their minds as we go into the new regs.

MR. HAY: You know, that issue often comes up in terms of ethics issues. And we, as federal government employees, we have a set of rules that --
that govern how we interact with people. Oftentimes, those rules don't work at the tribal level.

And so I think what this requirement is simply looking for is what your rules are. At the Commission, I don't think we necessarily want to dictate what your rules are, but we want to see if you have them in place. And -- and it is more to provoke thought, than anything else, that maybe this is something that we should address.

But across the board, for tribes, the rules are substantially different. Some of them just don't work. Especially if you have a smaller tribe, the rules dealing with family members working in the operation or on the regulatory body, there's always going to be conflicts because you're related. There are only so many people. If you want to have tribal individuals involved in the regulation of the operation, they're going to come up. So it is interesting for us to look at how tribes are addressing those situations.

Any other comments on this section, or any other sections that we discussed?

Yes, ma'am.

MS. BAKER: So you're asking one if -- or just stating how the tribes look at that? You're not -- for example -- you want examples? You want to know how a
tribe deals with it, or --

MR. HAY: No. No, I don't think --

VICE CHAIR COCHRAN: The requirements under this section that are set forth are the indicia that will show how a tribe is conducting its regulatory oversight. And so John is correct. We're looking for things which collectively, you know, indicate, show that the tribe is conducting itself in a manner which supports the criteria that IGRA says. I mean 2710(c) says very clearly what criteria must be met.

MS. BAKER: I'm just asking -- I want to make sure there is something there. But you don't have an example of one?

VICE CHAIR COCHRAN: Right.

MS. BAKER: Okay.

VICE CHAIR COCHRAN: And there's going to be -- and our hope is, of course, that more tribes will take advantage of the self-regulation provisions. It's been in IGRA. And to have two, only, 20 years later, tells us a lot about it, that there was no real inherent benefit to it. And I think, here in New Mexico, that's even true. In Oklahoma, of course, they have a lot more Class II activities and Class II facilities.

But here in New Mexico, I know, and we -- there are tribes that have large portions of activities
in the class tier arena that could still benefit from a certificate on those activities, including, like John's slide show pointed out, the criteria that are no longer applicable as far as enforcement activities go. But, also, it impacts your fees. So there's a lot of different things that could benefit from it.

All right. Well, that is what we asked you to come to the table this morning about. Yes, I want to make sure that you are given an opportunity for additional comments, and we have several regs that are out there. If there are additional comments that you want to make, then, please.

MR. ROME: My question is a general question regarding the Commissioners' terms, being that the -- this process has been going on for some time, now. What kind of effect would possibly impact these new regs from becoming official, and efforts being made to replace Commissioners, or is there going to be a continuation of the current Commissioner?

VICE CHAIR COCHRAN: The NIGC Commissioners?

MR. ROME: Yeah.

VICE CHAIR COCHRAN: Well, the -- Commissioners, each board comes for three years. And we are all staggered. I came in January 4th with -- 2010, so my term is coming to an end shortly. Commissioner
Little was April, following, and the Chairwoman in August. Commissioner Little and myself are appointees of Secretary Salazar. And, of course, we serve at the pleasure of the administration.

This is an election year, and so it's, of course, not something that we can control or have any direct input in as far as whether or not our term will be expanded. If the administration were to ask, and we were to accept, then, that would be it. But a change in administration, of course, they have the right to take us out and put in their own people.

So in relationship with the MICs, one of the things that we've done, and with the technical standards, is we pulled them out of this process, as you know, and put them into a TAC process to keep them moving along because there's a lot going on.

We're very much aware of our time limits and time constraints. And we're trying to keep it going so that we can get things done before our time is expired, at least on paper, given that we won't control that.

So I don't know what it will look like next year, to be honest with you.

Yeah. Go ahead.

COMMISSIONER LITTLE: The Commission will continue -- will continue this process. There are
procedures in place with agencies, and we can't
promulgate regulations without a full commission.

With these, I anticipate we will be well on
that path before any of our terms expire, so we're --
you know, as commissioners, we're working on the fact
that the reality of it is that we are in an election
year. And while, you know, we're not talking political
influence, but we're talking about timeframes and how
the government works during an election year. The
regulatory process can slow down because of that. So we
want to make sure that any of the work that we've done,
that, you know, we've gotten these things in place prior
to, you know, anything that could be affected by an
election taking place.

And that's one of the reasons why we started
this early, when this new Commission was seated. And we
should be, you know, pretty much concluded by the
summertime. So I think we are in very good shape.

VICE CHAIR COCHRAN: Let me -- yes, please.

MR. ROME: I have a question on this.

With this TAC past work, it has come to our
understanding that they were cut short on the process.
And the reasons why I'm asking you is the Commission,
before the tribal gaming agencies here in New Mexico
reported that -- they're saying there's some budgetary
cutbacks.

COMMISSIONER LITTLE: No, that's not -- I was
the -- I'm the commissioner that has been assigned to
work with the tribal advisory committee. And we had
originally set forth six meeting dates, a six-month
period, to complete the work of review to the Part 547
technical standards, and Part 543, the Class II MICs.
Past TACS, I think they only had four. We, actually,
extended it a bit longer to six. We got through the
Part 547 rather quickly, and we completed the 543, the
Class II MICs in December. It was just a matter of
getting the final recommendation to the Commission in
January.

You know, these do cost a lot of money for
the -- both for the Commission and for the tribes that
are sending the representatives, that the majority of
them were funded exclusively by their tribes. And the
Commission felt that we had all the information we
basically needed, and that any final follow-up questions
could be done through electronic means, keeping in mind
that we want to get this done as -- as -- quickly, but
we want to make sure that we do -- our review is done as
thoroughly as possible. So it was a number of areas.

We did hear, in fact, from the TAC members
that, you know, their time is very valuable. We have
got new operations that are opening of dedicated TAC members, in addition to providing us this good information in TAC, the entire agency that was running back home at their facilities. We actually had a facility that was opening right in the middle of our TAC meeting. So it was -- it was a matter of taking all of these things into account, knowing that the TAC had completed their work, that we felt that we could actually speed up the process and move it forward. And we did, actually. In fact, we received the final recommendation on the Part 543 earlier this month.

So I think we're in really good shape, and we're reviewing information right now. And, hopefully, we'll have some discussion drafts out for folks to look at in the -- in the short term, so --

VICE CHAIR COCHRAN: I just wanted to summarize because we're talking about dates, and we're talking about deadlines.

There are three parts that have April 2nd deadlines for your comments, and that's 559, the appeals, the 580, the 585, and 518. Those are April 2nd deadlines. So if you have comments, I'm hoping you will submit them before then so that we get those incorporated and get out a notice of final rulemaking in short order.
Then, we also have Part 573 and Part 502 that have comment deadlines of February 27th. So that's right around the corner, if you have comments, as well, so that, again, we can get them in.

We are very much aware of our timeframes. We are very much aware of the potential changes that could happen that could disrupt what we've got in the process, so we're very cognizant of keeping things moving.

Any other questions?

MS. SPICER: Yeah. Just a general comment. Have you received, or is there any further or new inquiry from the Internet gaming standpoint?

VICE CHAIR COCHRAN: No. We still have not received any request to participate in the legislative process. We have not seen legislation that it -- that it's been. We watch it on our computers, the hearings and stuff, as well, so -- and, of course, we monitor what's happening. But there is no change in our status.

COMMISSIONER LITTLE: We want to take credit for this new-found cooperation and relationship that the NIGC has with tribes. It's interesting that, in the most recent testimony, I think before Congress, some of the tribal community was out advocating for the NIGC to possibly regulate this particular aspect of it. So we're really happy with this new kind of cooperation
with the tribes.

And like the Vice Chairwoman said, any of the current bills that are in, we don't have a -- they don't have -- we're not in it. There is no position for us, so there's no regulatory role for us to play. But we are monitoring it very, very carefully, just as the tribes are doing their due diligence. And, you know, we will be ready if Congress does so request our comments, so -- all right.

VICE CHAIR COCHRAN: All right. Any other questions?

All right. We did good.

If that's it, we have up here, of course, the phone number and the main website where you can send your comments in electronically. These comments and the transcript that will come out will be up on the website, as well, so you can look at the comments that were given today and the comments from other tribes as we go throughout the region, again, consulting.

And we try to put as much information out there as we possibly can. And so I encourage you to keep that handy.

And I encourage you to submit written comments, even if it's, again, "We have nothing to say. We think this is fine." Your voice really is important.
It is important to me, in particular, because this is home. And -- and I know that there's some great things happening in this area of the country. And I would like to hear from you on these important things, for Indian country to be heard as well.

So thank you for being with us today. Thank you for traveling out. I wish you safe travels back to your home. And I look forward to seeing you again soon.

COMMISSIONER LITTLE: If I could also -- I want to thank everybody for attending today. I know -- this is probably something that both Steffani and I would like to pass along is a "hello" from the Chairwoman.

We've basically sort of tried to divide up these consultations. We all have families and young children at home, and so we're trying to limit our costs. And she was just recently up in the Northwest, so I -- I assume, before long, she'll be back in the region. I'm sure she will be out here. But I pass on a "hello" from her, and I thank you all.

And like Steffani said, I hope you have a safe journey home.

(Whereupon, the proceedings were adjourned for the day at 10:59 a.m.)
REPORTER CERTIFICATE

I, Karen Lee Clark, RPR, CCR No. 277, Certified Court Reporter in the State of New Mexico, do hereby certify that the foregoing pages constitute a true transcript of the proceedings by National Indian Gaming Commission, held in New Mexico, in the matter therein stated.

In testimony whereof, I have hereunto set my hand on March 7, 2011.

KAREN LEE CLARK, RPR, CCR No. 277
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