

NATIONAL INDIAN GAMING COMMISSION MEETING
TAKEN ON SEPTEMBER 8, 2011
IN BISMARCK, NORTH DAKOTA

APPEARANCES

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1 (Whereupon, Chairwoman Stevens opened
2 the meeting.)

3 MS. STEVENS: Good morning. We still
4 have some people here from yesterday, one new
5 person. What we'll do is stick to our agenda for
6 today on day two where we'll talk about
7 self-regulation for Class II and also sole
8 proprietary interest again. And then, for the
9 benefit of anyone who's new to the meeting today,
10 we can backtrack later this morning about some of
11 the issues we talked about yesterday in Groups 1,
12 2, and 4.

13 So let's go ahead and start on day
14 two's agenda. I'll go ahead and turn the
15 microphone over to Larry and we can talk about
16 where we're at with Part 518, which is this
17 loose-leaf handout that was given to you, the
18 redline. There's actually two of the same
19 document in here. After the first 12 pages,
20 there's another 12, well, might be more pages or
21 less, 17 pages. It's just different formatting to
22 indicate the changes. One shows the deletion in
23 bubbles. That's the first 12 pages. The next 17
24 pages show the deletions and strikeouts, so your
25 reading preference. It's the same document,

1 different redline format. So that's what we'll be
2 talking about first. And we don't have any
3 handouts on sole proprietary interest at this
4 time, but we'll go ahead and talk about those two
5 things.

6 One thing to note is our original
7 Group 5 was going to address Class III minimum
8 internal control standards, and how we were
9 intending to address them based on input that we
10 received from tribes. We've now taken that off
11 our agenda. We'll be addressing that through the
12 Tribal Advisory Committee, which we can talk about
13 more later, but we won't be talking about that
14 today as we originally planned back in I want to
15 say April. So with that let's go ahead and start
16 talking about Group 5, Larry.

17 MR. ROBERTS: Good morning, everyone.
18 Please feel free to interrupt me if you have any
19 questions. As the chairwoman mentioned we covered
20 some of this material yesterday, and I'm happy to
21 entertain questions as we're going through the
22 PowerPoint.

23 As I mentioned yesterday my name is
24 Larry Roberts. I'm the general counsel of the
25 National Indian Gaming Commission. I'm a member

1 of the Oneida Nation of Wisconsin, and I started
2 with the Commission about a year ago.

3 So when Commission issued a notice of
4 inquiry, they asked the public and tribes whether
5 they should review the process for obtaining a
6 Class II self-regulation certification and we
7 received a number of comments from the public in
8 response to that NOI. Basically there are only
9 two tribes out of the 200 plus gaming tribes
10 across the country that have a certificate of
11 Class II self-regulation, and some tribes
12 commented basically saying that the administrative
13 burden of completing the process outweighed the
14 benefits of doing so, that a lot of the
15 requirements of submissions were duplicative and
16 that it could be streamlined, that the annual
17 reporting requirements were so voluminous that it
18 undermined the whole purpose of certification
19 itself.

20 But the tribes also and the public
21 also commented that while the process could be
22 more efficient obviously the high standards of the
23 process should be maintained. And tribes
24 commented basically saying that self-regulation
25 certification's a hallmark of tribal sovereignty.

1 Self-regulation certification is important and
2 encouraged the Commission to take up this partner
3 in its regulatory review process.

4 So the discussion draft that the
5 chairwoman mentioned attempts to do a handful of
6 things. First of all, it intends to make the
7 certification process more efficient and
8 streamline while maintaining high standards so
9 that all tribes can make use of this process, that
10 it's intended to reduce some of the submission
11 requirements of duplicative information, and its
12 focus is more toward the regulatory side as
13 opposed to the operation side of tribal gaming.

14 So I'm gonna walk through the
15 submission requirements in the redline draft here,
16 some of the changes. And they start with 518.3,
17 the requirement for tribes in terms of seeking a
18 Class II self-regulation certification. The tribe
19 needs to provide information about a brief history
20 over the last three years of the tribe's gaming
21 operations, the tribe's regulatory organizational
22 chart, the employment criteria for tribal gaming
23 regulators, a description of the tribal gaming
24 authorities funding, current list of those
25 regulators, and a description of the gaming

1 operation accounting system.

2 MS. SIERS: I have a question.

3 MR. ROBERTS: Sure.

4 MS. SIERS: When you say -- well, I
5 know we did this -- when you say employment
6 criteria --

7 MR. ROBERTS: Yeah. Let me just back
8 up for a second and let you know that everything
9 on the -- in the consultation's being transcribed,
10 and so we have to my left here Stephanie is
11 transcribing everyone. So what we'd like to do
12 --and the reason that we're having these
13 consultations transcribed is that obviously not
14 all tribes can attend every consultation, but
15 we're putting these transcripts up on the website
16 so they're made available so you can -- everyone
17 can see what other tribes are -- their comments
18 are during the consultation period. Because what
19 we're learning through the consultation is that a
20 number of tribes share similar issues and can
21 share solutions as well.

22 So what we ask in terms of the
23 consultation is that if you have questions or
24 comments that you introduce yourself, that you
25 state your name, which tribe you're speaking on

1 behalf of, then your comment.

2 MS. SIERS: Okay. My name is Kim
3 Siers. I'm a tribal gaming commissioner from
4 Rosebud Sioux tribe, Rosebud, South Dakota. And
5 my question was -- well, I'm just curious on the
6 employment criteria for the regulators. Why is
7 that an issue?

8 MR. ROBERTS: This is for -- this is
9 for certification for Class II self-regulation,
10 and so under that process what we're asking for is
11 the criteria for the regulators so that we have
12 that information. Because under IGRA the
13 Commission has to make certain determinations
14 before issuing a certificate of self-regulation,
15 and so one of those is just having that
16 information in terms of what criteria does the
17 tribe use in appointing regulators. It's not
18 necessarily an approval process. It's just
19 informational.

20 MS. SIERS: Okay.

21 MR. ROBERTS: So it's a current list
22 of the regulator -- tribal gaming regulators.
23 It's a description of the operations accounting
24 system. It's a list of the gaming operation's
25 internal controls, description of the

1 recordkeeping system for the TGRA for
2 investigations, enforcement actions, any
3 prosecutions of the gaming ordinance or the
4 tribe's regulations, a copy of the facility
5 license for the Class II facility, and any tribal
6 gaming regulations, if they're not already
7 included in an approved tribal gaming ordinance.

8 We also ask tribes to submit a
9 description of the recordkeeping system that the
10 TGRA utilizes for tracking investigations,
11 enforcement actions.

12 And then 518.4(a) in that section we
13 -- the regs talk about the criteria that must be
14 met to receive a certificate of self-regulation.
15 So we use the information that was required to be
16 submitted to make determinations in terms of the
17 tribe conducting the gaming in an effective and
18 honest accounting of all revenues; reputation for
19 a safe, fair, and honest operation. These
20 criteria are right from IGRA. On a fiscally and
21 economically sound basis, and generally free of
22 criminal or dishonest activity.

23 And also in order to receive a
24 certificate of self-regulation we have to
25 determine that the gaming activity has been

1 conducted in compliance with IGRA, NIGC
2 regulations, and the tribe's gaming ordinance and
3 tribal gaming regulations.

4 In terms of criteria that must be met
5 to receive a certificate, we look at whether the
6 tribe has adequate systems for accounting of all
7 revenues; adequate systems for investigation,
8 licensing and monitoring of gaming of all
9 employees; investigation, enforcement and
10 prosecution of violations of its gaming ordinance
11 and regulations.

12 And in 518.4(b) the tribe may
13 illustrate that it's met this criteria by
14 addressing factors, and this is not an exclusive
15 list of factors, but it's suggestions, you know,
16 the tribe can show that it has met the criteria by
17 showing that it has adopted and implemented MICS
18 at least as stringent as NIGC MICS; that the tribe
19 utilizes an adequate system for accounting of all
20 gaming revenues; that has adequate dispute
21 resolution processes in place for not only the
22 tribal gaming operation employees but also
23 customers and has taken steps to ensure that that
24 process is implemented; that the regulatory body
25 monitors compliance with all applicable laws and

1 regulations; and it monitors effectiveness of
2 gaming revenues accounting system; that it audits
3 the Class II gaming activities; and that it
4 routinely receives and reviews the gaming revenue
5 accounting information from the gaming operation
6 itself.

7 Also the tribe can illustrate that
8 it's met the criteria by describing that the
9 gaming regulatory body has inspection and audit
10 access to all papers, books, and records of the
11 operation; that it's adopted and implemented an
12 adequate investigation, licensing and monitoring
13 system of all gaming employees; adequate licensing
14 records system; and established standards for
15 vendors.

16 Also that it establishes and posts
17 Class II game rules; adequate system for gaming
18 ordinance and regulation violation investigations;
19 that it takes enforcement action; and that it
20 takes testimony and conducts hearing on regulatory
21 matters. And also it should show that the tribe
22 adequately funds the tribal regulatory body.

23 The tribe can also satisfy the
24 criteria by addressing factors demonstrating that
25 the operation is financially stable; that it has

1 adopted a system for adequate prosecution of the
2 ordinance and regulations of the tribe; that the
3 operation itself is being conducted in the matter
4 that adequately protects the environment, public
5 health and safety.

6 So this is all in the petitioning
7 process, and once the petition is received by the
8 Commission within 120 days of receipt of that
9 petition then the Office of Self Regulation makes
10 an initial determination. And that Office of Self
11 Regulation is one of the commissioners on the
12 Commission. And if it's a complete petition, that
13 Office of Self Regulation will issue a report of
14 its finding and it will issue a certificate of
15 self-regulation or advise the tribe that it has
16 not met the criteria for self-regulation.

17 And if the Office of Self Regulation
18 finds that a tribe doesn't meet one of the
19 criteria, the tribe can respond to the report and
20 include the additional information; it can request
21 a hearing; and after the hearing, the
22 commissioner, the Office of Self Regulation, will
23 issue a decision on the petition; and if that
24 decision is to deny the certificate of
25 self-regulation, then that is appealable to the

1 full Commission.

2 In terms of once the tribe receives a
3 certificate of self-regulation, there are annual
4 reporting requirements, and these come basically
5 right from the text of IGRA itself. And one is an
6 independent audit and the other is a complete
7 resume of all primary management officials and key
8 employees hired and licensed by the tribe after
9 receiving that certificate.

10 And then 518.8 provides for the tribe
11 to have a continuing duty to provide information
12 to the Commission. If there's any material change
13 in circumstance involving the approval criteria
14 set out under Part 518.

15 So following -- and this 518.9 is not
16 a substantive change. It's a clarifying change
17 sort of right from the text of IGRA itself. So
18 once a tribe receives a certificate of
19 self-regulation, the Commission doesn't -- there
20 are -- there are certain responsibilities of the
21 Commission that are taken on by the tribe and that
22 is power to monitor Class II gaming; inspect and
23 examine all premises where solely Class II gaming
24 activities are conducted; the power to conduct
25 background investigations; and the power to demand

1 access and to inspect all books, records
2 respecting Class II gross gaming revenues.

3 So that list of powers is basically
4 removed from the Commission. That doesn't mean
5 that the Commission loses all -- the Commission
6 retains all other investigative and enforcement
7 powers under IGRA and retains the powers to
8 investigate and bring enforcement actions for
9 other violations of IGRA.

10 This discussion draft, which
11 chairwoman mentioned was circulated, is just a
12 preliminary discussion draft, and so the process
13 on these preliminary discussion drafts we're
14 asking for written comments by September 17. At
15 that point what the Commission will do is they'll
16 look at the comments, they'll look at the
17 discussion draft, they'll consider whether to move
18 forward with whether to propose any changes to the
19 existing regulations.

20 And if the Commission decides to do
21 that, what they'll do is they'll issue a notice of
22 proposed rule making. At that point what happens
23 is it will be published in a Federal Register.
24 The tribes and the public will have an additional
25 opportunity to comment on that proposed rule

1 making. The one -- and typically it will be a
2 60-day comment period on that proposed rule. And
3 after that comment period closes, the Commission
4 will then consider those comments on the proposed
5 rule and decide whether to move forward with the
6 final rule. And after the final rule is issued,
7 there will be a comment period typically I believe
8 it's 30 to 45 days. Does anyone have any
9 questions at this point?

10 MS DAVIS: My name is Marty Davis and
11 I work for the Turtle Mountain tribe in Belcourt.
12 One of the questions I have in far -- as far as
13 self-regulation is that we addressed the needs of
14 the employment criteria of the regulators;
15 however, one of the things that isn't addressed is
16 there is no requirement for a regulator to be
17 licensed either under the facility, under the
18 Commission, or under NIGC. And I believe that
19 this may be something that should be looked at is
20 the licensing of the regulators.

21 Also another issue that isn't
22 addressed is as regulators it is our duty to
23 uphold the enforcement powers or the regulations
24 that NIGC puts out. It's also our duties to
25 protect the assets of the tribe, but there is no

1 where in any regulation that protects the
2 regulator from any tribal, and we all deal with
3 it, tribal retaliation for us to protect the
4 regulations of IGRA. We've all dealt with it, but
5 we don't have any due process other than going
6 through our tribal grievance policies or
7 procedures. So these are issues that I think
8 regulators should be protected somewhere, somehow.
9 Thank you.

10 MR. ROBERTS: Thank you for your
11 comment.

12 MS. STEVENS: I appreciate you
13 bringing that to our attention. I certainly know
14 what you're referencing. We'll certainly take
15 your comments into consideration and examine, you
16 know, what our authorities are under the Act and,
17 you know, certainly give some thought to your
18 comments and this particular draft or anything
19 that we're looking at.

20 So are there any other questions about
21 self reg? I just wanna make clear that the
22 self-regulation is for Class II and Class II only.
23 As Larry did mention I was looking back in the
24 PowerPoint, when we initially started talking
25 about self-regulation, which we started last --

1 last year sometime during the notice of inquiry
2 phase, there was a lot of interest from tribes who
3 look at this, but really the comments as we
4 pointed out in the PowerPoint were sort of general
5 comments about, you know, the burdensome nature of
6 the regulation, the cost benefit ratio in
7 complying with the regulation, you know, what was
8 the benefit to the tribe when they become
9 self-regulation.

10 We only have two. We only have two
11 tribes that are certified as self-regulated tribes
12 for Class II, and that's Menominee and Grand
13 Ronde, and they follow the process every year in
14 turning the compete information that is in the
15 current regulation, which was established I think
16 in 1998. So not only is it a good time for us to
17 reexamine that and see how it's working, but also
18 get feedback from tribes. Because the nature of
19 some of the comments we received were general,
20 with this discussion draft now out, we really look
21 forward to more specific comments regarding what's
22 been put out in draft discussion draft form.

23 We really tried to stay within our
24 authorities and of IGRA and what IGRA specifies
25 with regard to self-regulation. What we believe

1 would be helpful to us to assure that the
2 regulatory body is stable enough and
3 well-established enough and has adequate controls
4 in place to regulate themselves. So we certainly
5 look for your comments, and we know this just came
6 out recently and the comment period closes on
7 September 17. So we look forward to your
8 comments. Are there any other questions regarding
9 self-regulation? Any clarification.

10 Again, I just wanna make clear that
11 it's only for Class II. We had had some tribes
12 ask about Class III, which is not something that
13 we're able under our authority to do for Class
14 III, but for Class II. And, you know, certainly
15 want to make sure that that's understood when
16 looking at this that it is only for Class II. Any
17 other comments? Otherwise we can move on to sole
18 proprietary interest, which is the next part of
19 our discussion.

20 MR. ROBERTS: So I'll run through the
21 discussion on sole proprietary interest. In the
22 notice of inquiry that was issued by the
23 Commission sometime ago the Commission asked
24 whether they should consider issuing a regulation
25 that would define sole proprietary interest and

1 whether a regulation should provide a process for
2 under which a tribe could request review of
3 whether particular contracts violate IGRA's
4 requirement that the tribe maintain the sole
5 proprietary interest in the gaming facility.

6 And so there was a mix of comments
7 received in response to the notice of inquiry.
8 One -- and some comments suggested that the
9 Commission should promulgate a regulation and that
10 it should limit the request for review only to
11 tribes that if a tribe had contracts with a third
12 party, that the Commission should not provide a
13 process where third parties could request that
14 review. It would be at the discretion of the
15 tribe.

16 Some comments suggested that while
17 IGRA doesn't define sole proprietary interests
18 other provisions in IGRA might help to inform what
19 constitutes a sole proprietary interest and
20 specifically the percentages that a management
21 contractor can receive under a management contract
22 and also percentages that must be provided to a
23 tribe for independent gaming operations licensed
24 by the tribe.

25 Some comments suggested that if the

1 Commission were going to define the sole
2 proprietary interest requirement through
3 regulation then it should also define what primary
4 beneficiary means in the purposes of the Act;
5 that a clear -- because sole proprietary interest
6 has not been clearly defined by a regulation, that
7 such a regulation may provide stability and access
8 to financing for tribes. Other comments suggested
9 the opposite. That by clearly defining it, it
10 might actually limit tribal access to capital.

11 Because it may be too restrictive in
12 the definition, it's hard to, because some of
13 these determinations are so fact specific is it
14 possible to define it through regulation. And
15 some comments suggested that the Commission should
16 not define it through regulation. That this
17 should be left for the courts to decide.

18 So as the Chair mentioned we have not
19 put forward a preliminary draft discussion on sole
20 proprietary interest. In the past the Commission
21 has addressed sole proprietary interest through
22 early on in guidance, through a handful of notices
23 of violation issued by the Chair, and through
24 opinions from the office of general counsel, legal
25 opinions.

1 And so in this consultation we would
2 like to know or we'd like to hear from tribes as
3 to whether they have any comments on whether the
4 Commission should take on a regulation and, if so,
5 what would that regulation look like? Are there
6 suggestions in terms of how to define sole
7 proprietary interest? And are there additional
8 considerations that the Commission should take on
9 or take on in their deliberations of whether to
10 move forward with such a vague definition?

11 MS. STEVENS: This generally is
12 something that will come up with -- I mean, it's
13 -- it comes through our management contracts
14 sometimes it comes through our financial -- some
15 financial collateral documents that come through.
16 And generally, you know, looking at the audience
17 here, you know, usually the folks that are
18 interested in that are the attorneys that
19 represent the tribes and the tribal leaders
20 themselves.

21 And we have received some comments
22 back as Larry had mentioned. And, you know,
23 certainly would hope that folks -- for those of
24 you who are sitting and listening, will be
25 bringing information back to your tribe. You can

1 always go to our website. Because we don't have a
2 draft, go to our website NIGC dot gov under the
3 tribal consultations, the comment section, and all
4 the transcripts are there so you can look back and
5 see what tribes have -- and their representatives
6 have sent in and conveyed to us about sole
7 proprietary interest.

8 So with that if we don't have any
9 comments or any other questions about sole
10 proprietary interest, then we can for the benefit
11 of folks that were not able to be here in
12 afternoon session yesterday and in the morning
13 we're just gonna briefly run back over some of the
14 issues that we talked about.

15 And yesterday if you look at your
16 agenda in Group 1, 2, and 4, again, want to note
17 that Group 3 involved Class II minimal internal
18 control standards and Part 547 machine gaming
19 technical standards for machine gaming play for
20 Class II bingo play, those again were taken off
21 the agenda, and we're moving that Class III MICS,
22 Class II MICS, and then Class II technical
23 standards into a Tribal Advisory Committee that we
24 are now in the process of soliciting nominations
25 for that committee.

1 So that's why you don't see Group 3 on
2 here. We didn't miss a group, but we now moved it
3 to a parallel track. So why don't we go back over
4 Group 1. Again, all of these draft discussion
5 drafts are in your packet here, and they're noted
6 on the tabs which section of the regs they are.
7 So for fees, and this is fees that NIGC charges to
8 tribes for our regulation of their facilities. No
9 other fees outside of that, just concerning our
10 fees. Part 514 for fees.

11 We'll go over 523, which is just
12 really a repeal question for existing ordinances
13 prior to 1993. It's our understanding we don't
14 have any other -- there are no existing ordinances
15 that were approved prior to 1993. So that's just
16 a repeal question.

17 And Part 559 is facility licensing.
18 And some changes that we've made there and
19 requirements that we're asking tribes. There's
20 some open questions that we have.

21 And then, we'll also talk about Buy
22 Indian for the NIGC, not for tribes, but for the
23 NIGC as an agency when contracting services and
24 supplies for the agency.

25 (Discussion off the record.)

1 MS. STEVENS: We'll, you know, for the
2 sake of time just highlight the general changes in
3 these regulations for 514. To note, again, those
4 copies are in your handouts. Okay. We'll just
5 quickly go over the highlights of what has been
6 changed in each of these regulations.

7 MR. ROBERTS: Okay. I'll quickly go
8 over Part 514, and I guess if there are other
9 parts or groups listed in the agenda that are of
10 particular interest I think we're a small enough
11 group that if after we run through some of the
12 fees and facility licensing if there are other
13 parts you would like to focus on, we'd be happy to
14 do that as well.

15 So on Part 514 fees, one of the
16 changes, proposed changes, in the preliminary
17 draft is to change the fee calculation from --
18 right now it's based on a calendar year. What
19 we're proposing is to change it to each individual
20 gaming operation's fiscal year. And the reason
21 for this proposed change is to hopefully make it
22 more efficient for tribal operations to calculate
23 their fees since they'll be based on the fiscal
24 year of the tribe's choosing rather than a
25 calendar year, and hopefully this will cut back in

1 the number of fee audits that are necessary and
2 hopefully it streamlines it and makes it a more
3 efficient approach.

4 We've also proposed changing the fee
5 rate to be published on March 1 so that it's a
6 more accurate preliminary fee rate. We've also
7 proposed changing it back to quarterly payments as
8 opposed to biannual payments. We've heard from a
9 number of tribes and the public through the
10 consultations that quarterly payments actually
11 worked better for tribes, and in talking with our
12 staff internally, the quarterly payments make it
13 also easier on the Commission in that there's not
14 as much of an overlap that we have to have because
15 we're receiving payments quarterly as opposed to
16 biannually.

17 Because the proposal is to change the
18 calculation to a particular tribe's fiscal year,
19 we're gonna have a notification period in there so
20 that the tribe does for whatever reason in the
21 future change its fiscal year provides notice to
22 us that we're aware of that change.

23 And then I would say another new major
24 component in this preliminary discussion draft is
25 the idea of a late payment. We've heard from a

1 number of tribes and the public that in the past
2 the number of NOV's were issued simply because the
3 tribe paid its fee 10 days late, 15 days late, 30
4 days late. What this preliminary discussion draft
5 attempts to set out is a situation where that if a
6 tribe pays its fee anywhere between one and 90
7 days late, that it's assessed just a fee.

8 And we've left that open right now and
9 asked for comment on whether that should be just a
10 set dollar amount or a percentage of the fees to
11 be paid to NIGC. We've heard through the
12 consultations that a number of tribes have
13 expressed a preference for a percentage of fees so
14 that a operation with smaller gaming revenues if
15 it's just a flat amount that may be more
16 detrimental to that operation as opposed to a
17 percentage of the fee owed itself.

18 And then if a late payment is -- or if
19 a payment of fees does not occur within 91 days,
20 then that late payment turns into a failure to pay
21 the annual fee, which could then result in a
22 notice of violation, and so it would -- this
23 proposed process is to make clear to tribes that
24 there's this period and here are the percentages,
25 sort of like what happens with your credit card

1 payments basically or any other bill there's 30,
2 60, 90 day late here are the assessments.

3 As most of you know that the
4 Commission has been collecting fingerprint
5 processing fees for quite some time, but we have
6 not clarified that through regulation. And so if
7 a tribe asked NIGC to process fingerprints, what
8 we've done is we've laid out the assessment in
9 these regulations so that it's clear, and it
10 clarifies that we're gonna -- that these are
11 collection of fees and that we will publish the
12 fee amount, which is based on -- the fee amount is
13 based on the cost that FBI charges us and our
14 overhead. It's not -- it's not a revenue. It's a
15 revenue controlled function for the Commission.
16 And we suggested publishing this fee amount
17 biannually.

18 We'd like comments from tribe. We --
19 some of the comments we've already received from
20 tribes is that that publishing the fee amount
21 biannually is actually too often, that it should
22 be annually, that there's not really that much of
23 a change in the fee amount, and that tribes
24 generally budget this amount annually, and so
25 changing it biannually could have unintended

1 consequences. So those are the primary changes in
2 this Part 514.

3 The written comment period on the
4 discussion draft closed May 31, so we've been
5 looking at all those comments and briefing the
6 Commission on that and whether the Commission is
7 now deciding whether to move forward with the
8 notice of proposed rule making as I explained
9 earlier. If the Commission does issue a notice of
10 proposed rule making, then we will continue to
11 consult with tribes. We will also -- they'll be
12 probably be succeeding comment period on that
13 proposed rule itself. Are there any questions?

14 Okay. Very quickly Part 523 the
15 Commission has been consulting with tribes asking
16 if this Part 523 should be repealed. As far as
17 we're aware this doesn't impact any tribes. We
18 think it's obsolete. It was a part that was put
19 in when IGRA -- shortly after IGRA was passed.
20 It's a provision to IGRA that basically says for
21 those ordinances that were inactive prior to IGRA,
22 they need to be submitted to the Chair for
23 approval.

24 NIGC issued a regulation that
25 basically said any tribal ordinances enacted

1 before 1993 and have not been submitted for
2 approval, this is the part that applies to those
3 ordinances. So the Commission is considering
4 repealing this part because we don't believe there
5 are any tribal ordinances in effect that have been
6 passed before 1993 that have not yet been
7 submitted for approval. If this is not the case
8 for your tribe, we would like to know that.

9 Part 559, facility licensing
10 notifications, renewals, and submissions. This is
11 something that the Commission has heard from the
12 public and tribes about tribes have expressed
13 concerns about how this part -- the process on how
14 this part was adopted. Specifically that there
15 are concerns about whether there was enough tribal
16 input as this rule was being promulgated. There
17 were concerns about whether this extended --
18 overextended NIGC's authority over environmental,
19 public health and safety issues.

20 What we've done -- the high points for
21 this discussion draft that's in your materials is
22 from time to time we'll have tribes that are
23 opening up their gaming facility. They're
24 considering issuing a license. They've provided
25 materials, and they say, okay, we know the

1 Commission has a period of review for this
2 license. Have we submitted all our materials?
3 Have you -- do you mind if you send us a letter
4 letting us know that everything that we've
5 provided is sufficient? And in certain
6 circumstances the Commission has done that. So
7 what this discussion draft does is it basically
8 provides for a process getting back to tribes
9 quickly in those situations where it's
10 appropriate.

11 Let's see. I guess the other -- one
12 of the other primary changes in the discussion
13 draft is that the current regulation provides for
14 tribes to submit a list of all of the tribal laws,
15 ordinances, compacts, what have you, showing that
16 the facilities constructed and maintained and
17 operated in a matter that adequately protects the
18 environment, public health and safety.

19 We've heard from tribes that preparing
20 this list and providing these materials is
21 duplicative and exhaust -- basically duplicative
22 and unnecessary; that a number of these
23 environmental, public health and safety issues are
24 either covered by the compacts, they're covered by
25 tribal law, they're covered by EPA, or the tribe's

1 environmental program itself. And so what this
2 section does is it provides for the tribe to
3 basically just provide an attestation to NIGC that
4 the tribal government has determined that the
5 maintenance and operation of the facility is
6 conducted in a manner that adequately protects the
7 environment.

8 The other issue is in the existing
9 regulations tribes are required to provide us
10 notices of their licenses every three years. This
11 draft provides for notice to be given to NIGC
12 within 30 days when a license for a particular
13 facility is terminated or expires or a facility
14 closes or reopens. And also we've heard from
15 tribes some tribes have seasonal closures for
16 their facilities. That would impact this.

17 There's a provision in I think it's
18 559.5 that basically provides that notices not
19 have to be sent to us for seasonal closures or for
20 temporary closures. And we've left that period of
21 temporary closures open. We haven't set a
22 specific date or time period on what constitutes a
23 temporary closure. We've been consulting with
24 tribes on that. You know, temporary closures
25 could range from anything from repairs or

1 refurbishing casino operation to issues such as
2 flooding and other things that would cause a
3 temporary closure itself.

4 559.6 does provide that if --
5 continues to provide that if the Chair needs
6 additional information with regard to license and
7 notification, that the Chair can request that
8 information. And as we discussed yesterday this
9 comment period closed on June 17. And again, this
10 was just a preliminary discussion draft to get
11 comments from the public and from tribes. And the
12 Commission is concerning whether to move forward
13 with a notice of proposed rule making on this
14 part.

15 As the chairwoman mentioned very
16 briefly, we're seeking input from tribes as to
17 whether the Commission should adopt a Buy Indian
18 regulation. We've heard a number of supportive
19 comments from tribes on this. This would
20 obviously only apply to NIGC and whether they
21 should buy from Indian entities when purchasing
22 goods, services, and property.

23 Some comments have questioned whether
24 we should do this through regulation, whether we
25 should do it through a policy or internal

1 guidance. And so we would like comment from
2 tribes in terms of whether it should -- how to --
3 A, should the Commission Buy Indian regulation
4 and, B, or Buy Indian preference and, if so, how
5 should they do that.

6 And so I think some of the
7 ramifications obviously a regulation is more
8 permanent. You know, obviously it can be changed
9 in the future, but there's notice in common while
10 making processes that go through with that, and
11 internal guidance is more easily changed in the
12 future. And so we would like comment from tribes
13 on that. Are there any questions or comments on
14 facility licensing or the Buy Indian regulation?

15 Are there any other particular parts
16 that folks in the audience would like to discuss
17 that we covered yesterday? Perhaps the background
18 investigations for primary management officials
19 and key employees, the pilot program. We also
20 have the enforcement section. We have the
21 proceedings before the Commission, which is
22 basically procedural parts in terms of how appeals
23 before the Commission will be handled. Is there
24 any?

25 MS. SIERS: I would like to go over

1 the background for PMO's.

2 MR. ROBERTS: Okay. Just one second.
3 Okay. So this is Part 556 and Part 558 for
4 background investigations for primary management
5 officials and key employees. And then Part 558
6 covers when those gaming licenses are already
7 issued for key employees and primary management
8 officials. And so as many of you know the
9 Commission sometime ago incorporated a pilot
10 program, which basically provided for tribes to
11 submit a notice of results to NIGC in -- for the
12 background investigations and to maintain those
13 applications and investigative reports at the
14 tribe.

15 And so all comments that we received
16 said this pilot program is working well and that
17 it should be formalized through regulation. Most
18 tribes already participate in the pilot program.
19 And so this -- these drafts, these preliminary
20 drafts, intend to basically encapsule the pilot
21 program as it's working. One of the things we
22 found is each region may incorporate the pilot
23 program a little bit differently, but we've tried
24 to make the changes in 556 cover substantively the
25 pilot program as it's been incorporated for all

1 regions.

2 So basically 556 -- what we've also
3 done for 556 and 558 -- what we found in looking
4 at the rules is that they sometimes overlap into
5 sections of what was occurring before a gaming
6 license was issued and after. And so what we've
7 tried to do is make the parts more clear, to make
8 clear that 556 applies to those procedures before
9 the gaming license is actually issued, and 558
10 applying to after the license is issued.

11 And so couple of the changes is
12 basically tribes seeking to license a key employee
13 or primary management official have to notify NIGC
14 of the results of the background investigation no
15 later than 60 days after that applicant begins
16 work. This isn't -- this isn't a substantive
17 change from the pilot program. It's actually
18 incorporated into the pilot program. And also
19 provides for a tribe with access to prior
20 investigative materials from another tribe is
21 simply update those materials that that other
22 tribe prepared.

23 One of the questions that we had was
24 in 558 we have the procedures for after a gaming
25 license is actually issued. After providing the

1 notice of results, the tribe may issue that
2 license. They have to notify the Commission
3 within 30 days of issuing that license. And
4 within that 30 days of receipt of the notice of
5 results, NIGC has 30 days to request additional
6 information from a tribe.

7 You'll see if you turn to Part 558, we
8 have current situations in 558.2, which is on page
9 2 of the draft, for those situations where a
10 gaming operation decides not to license a
11 particular applicant. We've been asking for
12 comment from tribes as to whether we should
13 require or ask tribes to forward copies of its
14 eligibility determination to NIGC.

15 And one of the purposes behind that
16 could be, you know, if a tribe has determined that
17 someone is not eligible for a gaming license and
18 that individual then goes to another tribe and
19 tries to get employed, that second tribe it may be
20 helpful for that second tribe to have access to
21 that information.

22 Some tribes we've heard through the
23 comment process have basically said, you know,
24 we -- that is our information and we may -- it's
25 for us to decide whether we want to share those

1 investigative reports. So that's why we have
2 highlighted this shall or may and want to hear
3 from tribes as to their thoughts on that.

4 MS. SIERS: Question.

5 MR. ROBERTS: Yes.

6 MS. SIERS: My name's Kim Siers. I'm
7 from Rosebud tribal gaming commission. I just
8 have a question. Has the discussion period for
9 this ended also?

10 MR. ROBERTS: It has. But like the
11 other discussion drafts, if the Commission goes
12 forward with a proposed rule making, there'll be a
13 60-day comment period on that. There'll be
14 consultations on that. So there's -- there will
15 be more opportunities for tribal input and comment
16 on that before any sort of final changes will be
17 made to the regulation.

18 So after -- if -- Part 558 provides
19 that if a license is issued prior to NIGC voicing
20 an objection to that license, that the licensee
21 then has to have a right to a notice of a hearing
22 by the tribe. The tribe has to suspend that
23 license until the tribe holds that hearing. And
24 then, following the revocation hearing, the tribe
25 has to notify NIGC of its decision whether it

1 decided to move forward and license that
2 individual or not license that individual.

3 Couple of minor points, we're just
4 making clear that we will accept electronic
5 submissions from tribes on these notice of
6 results. And that, you know, some tribal gaming
7 ordinances may not be consistent with this rule,
8 if these changes were made and made a final rule.
9 And so this would provide that once a tribe
10 decides to amend its gaming ordinance it would
11 then -- at the time that it amends its ordinance
12 sometime in the future, it would then also need to
13 address this issue through those future
14 amendments.

15 So we wouldn't require tribes, for
16 example, to say you must change your gaming
17 ordinance within 60 days. It would be, you know,
18 whenever the tribe next submits its amendments to
19 its gaming ordinance it would address this issue
20 as well. The discussion period on these drafts
21 closed August 10, 2011.

22 And I don't think we noted this
23 morning, but just so you do know on our website
24 all comments received on the discussion drafts are
25 posted on our website and so it may be that some

1 of the comments that you may have in mind may have
2 been put forward by the public and by tribes
3 already. That's not to say that the -- your tribe
4 shouldn't make those comments on a proposed reg if
5 the Commission moves forward with that, but you
6 can see what other tribes are saying, how -- what
7 approaches and comments they've had in terms of
8 the preliminary discussion drafts.

9 MS. STEVENS: Again, 556 is before
10 what happens and what steps you need to take
11 before. 558 is after the submissions. Again,
12 want to make clear, you know, different tribes do
13 different things when it comes to licensing.

14 And with while waiting for NIGC,
15 should we have an objection to 30 days to your
16 applicant? Some tribes issue temporary licenses,
17 some don't. Some wait the whole 30 days so
18 they're not giving a license to somebody that may
19 have an objection from NIGC. Because once that
20 happens as you know, once they've started working
21 and have a temporary license, they are now -- they
22 now have -- you have to go through the procedure
23 of taking that license back and their rights to
24 due process under that. So I think that's why
25 some tribes wait 30 days and, you know, if there's

1 an issue and if NIGC objects and there's an issue
2 with services, you don't have to go through that.

3 But again, different tribes do it
4 differently based on their staffing needs, because
5 sometimes they're not able to wait 30 days and
6 have an adequate process in place that, you know,
7 deals with those kinds of instances.

8 And then the other thing to think
9 about in 558 on the last page of the draft or
10 almost the last page -- what page is that? Page 2
11 558.2(c)(2), just so you know we're asking whether
12 or not we should require or tribes voluntarily
13 submit when they don't license somebody. The
14 application may have come through, but you may not
15 end up hiring them. You may not end up issuing
16 the license, and we won't know that unless you
17 tell us that. And so if you choose not to issue
18 the license for whatever reason, and I'm sure you
19 all realize you have experiences that sometimes
20 people go off and find another job. They go
21 through the process, you know, and they end up not
22 working for you. And so it would be helpful to
23 know whether that should be a requirement that the
24 tribe let us know when they don't issue so we're
25 not left wondering if that licensee is working

1 there, so what happened to that licensee.

2 Pilot program this is an effort to
3 streamline and make clear to every tribe what
4 happens before and after. However, what we've
5 discovered is the process that each of the regions
6 use to meet the same end objectives in our
7 fingerprinting and our licensing program is a
8 little different. In term of forms and processes
9 and how each region is, like I said, processing
10 these.

11 We're not only, you know, proposing
12 these regulation, but we're also -- we'll be
13 making a consistent process across all our region
14 so there might be some slight changes. It's hard
15 to say which regions that might be. In terms of
16 process and what the paperwork looks like, but the
17 end objectives and the requirements will be the
18 same. That way it's consistent, one, all the way
19 across the country but, two, for our purposes, you
20 know, one region may be overloaded with a number
21 of these, and that if we need to transfer some of
22 these processes to another region to move them
23 forward, then they can and pick up and help
24 another region. Because that can happen
25 sometimes. Especially, for example, when there's

1 a new facility and, you know, as regulators you
2 have the same, you know, this cascade of people
3 coming in and applying and, you know, not only
4 does that affect the tribal regulators, but it
5 does affect us. So we want to be able to be
6 responsive, and in order to do that, we want to
7 make sure internally the process will be
8 consistent.

9 Again, this is just about how the
10 paperwork may look. The process that the
11 requirements will -- requirements and submissions
12 will still be the same, but we want to make sure
13 the paperwork and the process is consistent. I
14 bring that up because some -- there have been some
15 tribes who have expressed concerns that, you know,
16 the process doesn't change, but the requirements
17 will be the same but the -- it might look a little
18 different, if we need to change some of the
19 regions to align to a standardize processes
20 throughout the country.

21 What else is there? We have -- we've
22 gone through Group 1, some of Group 4 on
23 backgrounds. You know, there's some other issues
24 that we can talk about that we went over
25 yesterday, but why don't we take a quick break and

1 then when we come back if there are issues anyone
2 wants to talk about or anything that you see in
3 these agendas, we'll be happy to talk about them.
4 This meeting goes until twelve or unless, you
5 know, we run shorter, but that's the schedule for
6 today as we'll go until twelve. So 15 minutes,
7 we'll be back here about 10:30. Thanks.

8 (At this time a break was taken.)

9 MS. STEVENS: Okay. We'll go ahead
10 and resume. We're looking over some of the groups
11 that we went over yesterday that might be
12 beneficial for those who were not able to attend
13 yesterday morning.

14 In your packet let's take a look at
15 Part 573, enforcement, what the discussion draft
16 had suggested. So I'll have Larry go over 573
17 enforcement. If you look in your packet under
18 573.

19 MR. ROBERTS: Okay. So the Commission
20 circulated a preliminary draft for discussion
21 purposes and asked for comment. That comment
22 period closed on August 9, but the primary changes
23 in Part 573 that were closed in the discussion
24 draft relate to -- we've heard from tribes, some
25 tribes, that NOV's that were issued in the past

1 came as a surprise to them. And this Commission
2 and this Chair has been clear from day one that an
3 NOV should never be a surprise and compliance,
4 voluntary compliance, is always the goal in
5 working with our co-regulators.

6 And so what this section does with
7 these changes in this section provide basically is
8 a process, a stepped process, by which the Chair
9 before issuing a notice of violation could issue a
10 letter of concern or a noncompliance notice that
11 be provided the tribe basically indicating what is
12 that concern and how it could be remedied, asking
13 the tribe or tribal regulator to come into
14 compliance within a specified time period.

15 This letter of concern or the next
16 letter of noncompliance notice, neither of these
17 are Agency action. They're basically informal to
18 start that conversation with tribal regulators and
19 the tribe to take action to come into voluntary
20 compliance. And if the corrective action is not
21 completed within a time period, then the Chair
22 could pursue an enforcement action. So in the
23 general day-to-day world of incidents where
24 there's an issue of concern, this basically
25 embodies the Commission's desire to work

1 cooperatively with tribal regulators to come into
2 compliance.

3 It's important to note though that
4 there may be situations where this process is not
5 appropriate, where there's some sort of issue
6 going on that is immediate and it's necessary for
7 the Chair to move forward with an NOV immediately.
8 This provides for that sort of extenuating
9 circumstances. So we would like comments from
10 tribes on this. If you have any comments today,
11 we'd also -- we've heard that this is a process
12 that is used by tribal regulators. If there are
13 other processes that tribal regulators use in
14 terms of an approach where there are issues of
15 concern, how you approach those, we would like to
16 hear those as well as to whether that might be
17 something the Commission could consider.

18 MS. STEVENS: So if you have any
19 questions or comments about the draft language
20 that's in there now under 573.2, this is a
21 completely new section as Larry has explained sort
22 of a incremental ramping up progressive -- it's a
23 progressive process that is focused on making
24 efforts to keep tribes in compliance. You know,
25 we've -- as Larry said as we've gone through our

1 travels and we have talked to tribes, NOV's have
2 come as a surprise, and when tribes are
3 approaching the NIGC about concerns that they have
4 in seeking technical assistance and guidance to
5 remedy it and then having it turning into an NOV,
6 we heard that when we were in South Dakota in
7 February.

8 What -- you know, what we want to do
9 is have a close enough relationship with tribes
10 and the regulatory bodies so that we can keep
11 tribes in compliance by providing technical
12 assistance and training. There are as you-all
13 know we work with our field staff. There's a lot
14 of informal guidance and assistance that we
15 provide, a lot of conversations with whether it's
16 our field investigators or region auditors or
17 general counsel's office in an effort to protect
18 the integrity of any particular gaming facility so
19 you-all have access to that.

20 That's what we want to do, but in the
21 instance where the informal is not working, we
22 wanted to create a progressive process. And you
23 may be familiar with this, you may do this
24 yourself in your own regulatory bodies, but that
25 it's progressive. It says here's step one a

1 letter of concern, and when that is not remedied,
2 then a letter of noncompliance, and then we can
3 move to an NOV. And we have a record that
4 establishes the steps that we've taken.

5 We do do this informally now, and I'm
6 thinking of an instance where the tribe had a lot
7 of turnover, a lot of turnover, and there just has
8 to be a point where we say, okay, this has to be
9 remedied before we just hit them with an NOV. So,
10 you know, this again is an effort to keep tribes
11 in compliance, provide the technical assistance in
12 training that under the statute we're required to
13 provide to tribes.

14 We understand and are aware of the
15 weight of an NOV and how it affects a tribe, so
16 our desire is to provide the tribes what they
17 need, guidance, training, and keep them in
18 compliance and maintain the compliance.

19 So absent any questions or concerns
20 about Part 573 on enforcement, we can talk about
21 Part 571, which is also under Group 4. Did I miss
22 something? Oh, yeah. 571, background
23 investigations -- or I'm sorry -- monitoring and
24 investigation. Sorry. I read that wrong. In
25 Part 571 monitoring and investigation. I'll have

1 Larry go over that, and we'll point to the areas
2 that we're looking for comment.

3 MR. ROBERTS: For Part 571 there are
4 primarily two proposed changes in this discussion
5 draft. The first proposed change is something
6 that the Agency already does from time to time,
7 but we're again basically codifying that
8 regulation, and that is an investigation closure
9 letter. What we've heard is that, you know, at
10 some points NIGC may open an investigation and the
11 tribe will come to NIGC months or years later and
12 say what's -- can you tell us what's going on with
13 that investigation? Is it still open? Has it
14 been concluded? What's the status of that? And
15 in certain circumstances NIGC has issued a letter
16 basically saying we're closing this investigation
17 at this point in time. We're not recommending
18 that enforcement action be taken. And so this
19 section will provide for that.

20 It's important to note that just like
21 in the Agency's past practice that just because we
22 may not be commencing an enforcement action, it
23 doesn't mean that there was -- it doesn't
24 constitute a finding of no violation and it
25 doesn't preclude NIGC in the future from reopening

1 that investigation or taking appropriate action,
2 but it's something that the Commission in a
3 investigation closure letter could move forward
4 and provide the tribe some status as to here's the
5 current status of this investigation, here's --
6 you know, we've decided that at this point in time
7 we're not going to recommend an enforcement
8 action.

9 The other change is more clarified.
10 In the past when we have done investigations or
11 issued NOV's questions have been raised about the
12 Commission's authority to access gaming records
13 that are located off site. So this is a
14 relatively minor change to make clear of NIGC's
15 authority to access those records.

16 The written comment period on this
17 discussion draft closed August 9, and the
18 Commission will be deciding in the near future
19 whether to move forward with the notice of
20 proposed rule making.

21 MS. STEVENS: So that's a review on
22 Part 571. Again, we were talking about the front
23 end in Part 573 on investigate -- or enforcement
24 and making sure the tribes are aware of issues
25 that we have and putting into our reg some

1 formalized progressive process that indicate to
2 the tribe that there are concerns that we have
3 prior to arriving at an NOV.

4 On the other end of this, which is
5 under 571.4, investigations, right now it says
6 investigation closure letter. I think Larry
7 mentioned we're gonna change the word closure
8 letter because there may be some confusion that we
9 mean we're gonna close the facility. It's the
10 same language that's used for closure of a
11 facility. So we'll find another way to say, hey,
12 we're -- there's an end to this investigation.
13 You know, this came up because tribes mentioned to
14 us where's this at or they -- tribes perceived --
15 what they've told us some tribes have perceived
16 this sort of looming, hanging over their head, you
17 know, there's no closure. There's no end to this
18 investigation. It just kind of looms over them,
19 and they just sort of wait for the ax to drop on.

20 We looked at some of the other federal
21 regulatory agencies and I think we were looking at
22 FCC and they do something similar to this. They
23 -- they -- when they're opening investigations
24 let, you know, the stakeholder know. When they
25 close an investigation, they let the stakeholder

1 know. And so that's what we're looking to do on
2 the back end of investigation so there's some
3 awareness of the tribe about whether we're
4 continuing down this road or not or what
5 resolution was there at the end of this
6 investigation, what did we find.

7 I think the other things that are in
8 there are access to records that Larry had
9 mentioned making clear that even off premise
10 records we have access to. And people who work
11 for those who are off premise, whether that's a
12 vendor holding something, a management company
13 holding records or information, we just wanna make
14 clear that our authority access those records and
15 premise. We still have the authority to do that.
16 Are there any questions on enforcement or
17 monitoring and investigations?

18 Please do consider these especially
19 I'm looking at three ladies who are at the tip
20 because I know you're all regulators. Especially
21 would be fair just to -- may effect you in your
22 day-to-day work when it comes to enforcement and
23 how we monitor and investigate.

24 We do have a few new people in the
25 audience. We did go over earlier today just for

1 your -- get you up to speed. We did go over
2 today's agenda, which is Group 5, already, which
3 is self-regulation of Class II gaming and the
4 proposed draft that is currently posted on the
5 website. We talked about sole proprietary
6 interest already. And for review we did go back
7 over yesterday's agenda for fees, Part 514; review
8 and approval of existing ordinances, Part 532;
9 facility licensing, Part 559; Buy Indian. We just
10 went over enforcement and monitoring
11 investigations and as well we went over Part 556,
12 Part 558 regarding the pilot program, what happens
13 before and after applications are submitted. And
14 that's where we're at for those who have just
15 arrived or new to the meeting.

16 Please note that we have recently put
17 up a discussion draft of Part 518,
18 self-regulation. That regulation was -- became
19 final in 1998 and we're revisiting that. For
20 those of you who just arrived, if there's any
21 comments that you want to make, if you have any
22 statements to make for the record, we'd certainly
23 open the floor at any time for attendees and
24 tribal representatives, regulators, leaders to
25 make comment at any time on any of these parts

1 should you need to. Do you have any comments,
2 questions about any of these parts about this
3 process that were undergoing?

4 We'd be happy to field any suggestions
5 about how we're going about this. Just make clear
6 we are -- and we started this process last
7 November when we did our notice of inquiry, got a
8 sense of the priority regulations that tribes
9 wanted us to address, incorporated those with our
10 priorities, and came out with this regulatory
11 review, which ended in April.

12 We put out a number of consultation
13 dates in the beginning in an effort to talk to
14 tribes according to the Executive Order on
15 consultation and coordination with tribal
16 governments 13, 175 to talk to tribes first before
17 we started drafting to get their sense of what
18 issues came up with particular regulations.

19 As you've seen, we've developed and
20 drafted discussion drafts prior to entering into
21 the official notice of proposed rule making
22 process and Federal Register. That's the state
23 where we're at on most of these drafts. The
24 drafts -- many of the drafts have been -- we've
25 sequenced them based on the groupings and the what

1 we -- in timing them so they're not all out at
2 once.

3 One that's still open again is the
4 self-regulation for Class II the comment period is
5 still open. Although we still welcome some
6 comment periods on the discussion drafts. Once we
7 enter those proposed rule making, if we do on some
8 of these regulations, there will be a 60-day
9 comment period again for tribes. That draft will
10 be informed by all these consultation we've been
11 having and discussion and comment received on the
12 discussion drafts.

13 So we wanna make -- what we're -- our
14 effort here is to make sure that tribes as I said
15 according to Executive Order 13, 175 have adequate
16 notice, have opportunity to weigh in before we
17 start drafting, before we start changing policies,
18 and are included throughout the process. Recently
19 we originally started with 33 consultations. I
20 think last week we just put out a notice in the
21 Federal Register that we cut down the number of
22 consultations. We're making every effort to be
23 responsive to tribe's concerns in this process.
24 Also to be mindful of not just our time and our
25 resources but yours as well.

1 There is an unprecedented amount of
2 consultation happening between the federal
3 government and tribal government, which is a good
4 thing. It's exactly what tribes wanted and asked
5 for and are getting, but we also understand that
6 creates conflict for tribes and where they need to
7 be, what their priorities are. And so in being
8 responsive to tribal resources and the time
9 especially, you know, how much travel, you know,
10 most tribes are able to do and how they budget
11 both their time and money, we did cut down on
12 consultations, which is in the Federal Register
13 the new schedule, but it's also been posted on our
14 website at NIGC dot gov.

15 I can't think of the number that we
16 cancelled. Were there like twelve of them? There
17 were a number of them that we cancelled just in
18 order to be responsive to tribal needs. Tribes
19 are taking the opportunity to attend a few of
20 these, but are mostly giving their comments,
21 written comments, as we put up discussion drafts,
22 and I'm sure that we'll receive more comments as
23 we go through the notice of proposed rule making.

24 So that is also -- our new schedule is
25 posted on our website. We've gone from two days

1 down to one day. And as I've noted throughout
2 yesterday and this morning we are moving some of
3 what we originally began discussing back in April
4 Class II, Class III minimum internal control
5 standards and technical standards for Class II
6 machine play for bingo. We're putting them on a
7 parallel track with the Tribal Advisory Committee.
8 So we'll continue with the regulations that we've
9 outlined here today.

10 Those other three topics we'll run on
11 a parallel track with the Tribal Advisory
12 Committee. That's all outlined on our notice that
13 we issued last week and that's on the website. We
14 are currently in the process of taking nominations
15 from tribes for Tribal Advisory Committee members.
16 We do want to make sure that it is -- that
17 individuals that are put forward are authorized by
18 the government body of the tribe however or
19 whoever or whatever that might look like, probably
20 the tribal chairman. Whatever process each tribe
21 goes through to say this person speaks for this
22 tribe and this tribe only.

23 We understand that the Tribal Advisory
24 Committee is not a substitution for consultation.
25 The intent of the Tribal Advisory Committee is to

1 give us suggestions on how to revise change or
2 improve Class II MICS, Class III MICS, and
3 technical standards for Class II play, Part 547,
4 and then be able to take that information and
5 develop some drafts that we will then share with
6 tribes and consult on. So we're very aware that
7 the working group is just that. They're working
8 to provide some comments so we can put together
9 something that we can share with all tribes.

10 The nominations for the Tribal
11 Advisory Committee closes on September 16, which
12 is next Friday. Again, all of that is on our
13 website, and those can be sent in by e-mail or
14 faxed. There's a nomination form. We ask for the
15 resumes. And what we're trying to do for the
16 Tribal Advisory Committee is have a diverse group
17 that's balanced in terms of Class II, Class III
18 experience, regulators, operators, tribal leaders
19 who can speak directly to very technical in nature
20 minimum internal control standards and technical
21 standards.

22 We've had a lot of questions on will
23 these meetings be open. We'll be deferring to the
24 group once they're chosen. Again, diverse group
25 that represents not just expertise, operations,

1 regulation -- or regulators, but also regions in
2 tiers, small facilities, large facilities, Class
3 II facilities, Class III facilities, hybrid
4 facilities. We will defer to that group that will
5 be demised to come up with a plan to incorporate
6 subject matter, experts, and how others may
7 participate in the work groups products. We're
8 still considering them and we certainly will take
9 that appropriate finding to the committee when
10 they're formed.

11 Our goals at the end of the Tribal
12 Advisory Committee will have solid suggestions for
13 and perhaps even a draft that we will work from
14 their suggestion on minimum internal control
15 standards and also technical standards so that we
16 can do more consulting on that and get some of
17 these out of the way. The priority of this
18 Commission is to deal with those, and that's why
19 we set them apart on this parallel track so that
20 we can move forward with some of these other
21 regulations that are not quite as onerous in terms
22 of the specificity in technical nature of those
23 MICS. So that we didn't get weighed down -- these
24 didn't get weighed down in the back and just set
25 it on a parallel track. And that was really in

1 response to tribes desire to do an advisory
2 committee with this new Commission in a way that
3 they can -- that tribes can weigh in, that we get
4 practical, hands-on suggestions on how to approach
5 internal controls and technical standards. And so
6 again, evidence of our flexibility, our
7 responsiveness to tribes and what they would like
8 to see us do or what works so that we can keep
9 these transparent reviews moving.

10 So those are basically the updates on
11 where we're at. Please visit our website NIGC dot
12 gov. You'll see our new schedule, which meetings
13 have been cancelled, which ones will move forward.
14 Those, again, will go from two days to one day.
15 There's one that will have a location change.
16 We'll be back in Great Plains in November.
17 Continue to watch our website as we move forward
18 with producing drafts or notices of proposed rule.

19 Are there any comments that anyone
20 needs to make? Any questions for the record? One
21 last call? Last call any comments, questions?
22 The floor is open. Absent that, what I'd like to
23 do then is close the meeting. Encourage everybody
24 to visit our website. If there's anything that's
25 unclear -- can you go to the last page that gives

1 out the -- there we go. Our contact information.

2 If you have any questions at all, the
3 staff person that is really charged with
4 coordinating and handling all of this, who's not
5 here today, is Lael Echo-Hawk. That e-mail is the
6 e-mail she checks. You can contact her if you
7 have any questions about the drafts, about the
8 nomination process, anything at all, if there's
9 not anything -- if there's, you know, anything
10 that's unclear, please give us a call, send us an
11 e-mail. Please visit our website for more
12 information.

13 I thank everybody that attended these
14 two days. We will be considering your comments
15 and questions and look forward to additional
16 interactions with tribes as we move forward. So
17 thank you-all and hope you-all have a good weekend
18 and safe travels back to wherever you might head,
19 wherever home might be. So thank you-all.

20 (Whereupon, at 11:07 a.m. the
21 proceedings were duly ended.)
22
23
24
25

REPORTER'S CERTIFICATE

CERTIFIED that the foregoing sixty
(60) pages constitutes a true and correct copy of
all proceedings which it purports to contain.

Stephanie L. Marjamaa
Court Reporter

My Commission expires
1-31-2016.

Dated this 28th day of September, 2011.

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