

TRANSCRIPT OF PROCEEDINGS
NRRA CONSULTATION
GLOBAL GAMING EXPO

Held on
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at
The Venetian Hotel & Casino
Las Vegas, Nevada

Reported by: Kimberly A. Farkas, RPR, CRR

Job No. NJ343907

1 P R O C E E D I N G S

2 TRACIE STEVENS: I'd like to take this
3 opportunity to have the representatives that are
4 here on behalf of their tribes introduce themselves
5 before the commission and staff introduce
6 themselves before we introduce ourselves. If we
7 could start over here. If you could state your
8 name and the tribe you're with.

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

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

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

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

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

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

25 TRACIE STEVENS: I'm going to have

1 someone grab this microphone because I'd like to
2 see who is in the audience as well.

3 BRIAN McCLATCHEY: Brian McClatchey
4 (inaudible).

5 UNIDENTIFIED SPEAKER: (Inaudible).

6 UNIDENTIFIED SPEAKER: (Inaudible).

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

20 Also, way in the back is Dawn Pool.
21 She's our deputy chief of staff. Over here is
22 Melissa, she's a staff attorney from headquarters
23 in DC. Right over here is Larry Roberts, our
24 general counsel; chief of staff Paxton Meyer. Over
25 here is Lael Echo-Hawk, she's the counselor to the

1 chair. Next to me is associate commissioner Daniel
2 Little. My name is Tracie Stevens, and I am the
3 chairwoman of the National Indian Gaming
4 Commission.

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

18 This is consultation Number 15 on a
19 number of regulations. I think I counted a total
20 of about 21 since we began, either current
21 regulations or potential regulations. When we
22 started in April, we started in May technically,
23 but we announced in April after talking with tribes
24 about regulatory priorities, which regulations we
25 needed to. This is consultation Number 15 since

1 May going forward on a number of substantive issues
2 with tribes. That's on our agenda here today, the
3 issue that we're talking about.

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

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

24 Hopefully everybody got a packet. And
25 that's the order in which we'll be following.

1 We'll be reviewing today's regulations that are the
2 subject of this meeting.

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

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

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

25 Yes. Right over here.

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

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

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

25 LAEL ECHO-HAWK: This won't be much of an

1 answer, but Larry Roberts, our general counsel's
2 office, has been working with the FBI on our
3 agreement and understanding that we have with them.
4 We've heard that request a lot. And I know that
5 some tribes include in their ordinance who will be
6 fingerprinted and/or who should be fingerprinted.
7 So far we've taken the position if your ordinance
8 says that those people need to be fingerprinted,
9 then we try to accommodate you if we can. But we
10 still have a relationship with the FBI that we're
11 talking to them and making sure that that's
12 something that we can actually do.

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

20 TRACIE STEVENS: Are there others that
21 have questions or opening statements before we move
22 on to the next order of business on the agenda? If
23 not, then I'll again turn the microphone over to
24 Lael. She's going to go through the slides that we
25 have here. In your packet, there is a PowerPoint.

1 If you want to just read along as you go. She'll
2 go through those regulations on Group One as
3 outlined in the agenda.

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

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

20 When we came in and we started looking at
21 the regulations and the QFRs that guide what the
22 agency does and how tribes regulate their
23 facilities, we found a number of regulations, and
24 we divided them up into regulatory groups so that
25 they're a little more manageable. We numbered them

1 Groups 1 through 5. Those with numbers do not
2 indicate priority.

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

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

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

25 The preliminary discussion drafts, you do

1 have those in your packet. They are initial draft
2 only. We're taking and listening to your comments
3 and trying to define those so as we go forward into
4 a proposed rule we consider all the comments and
5 address them.

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

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

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

22 The agenda for the consultation is here.
23 I do want to make a point of clarification and that
24 is that Group 3 that covers class II and class III
25 minimum internal control standards and the

1 technical standards for class II, we don't have
2 them on our agenda. If you feel you'd like to
3 speak to those issues, that's fine. We don't have
4 them on our agenda.

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

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

21 So right now we have a notice of proposed
22 rule. It is at the federal register for Part 514.
23 And this notice was sent. So this Part 514, the
24 notice of proposed rule will be available on the
25 federal register tomorrow and it will be published

1 officially on Tuesday. So that is our first notice
2 of proposed rule. I'm very excited about this.
3 You're probably not as excited about it as I am,
4 but I am ecstatic right now.

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

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

22 We've moved back to quarterly payments.
23 This is actually the requirement of the Act. And
24 even though the NIGC moved to quarterly statements
25 a couple years ago, when we were reviewing the

1 regulation and looking at the requirements of the
2 statute, we realized that it said quarterly
3 payments, so we're going back to quarterly
4 payments.

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

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

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

25 You can look at the regulation. The

1 current draft just has blanks. We went back and
2 looked at some regulations in other agencies. We
3 looked at other penalties, sort of percentage fees,
4 and this is what the Commission came up with. And
5 it's going to be in the notice of proposed rule
6 that you'll see tomorrow and then on Tuesday.

7 We provided appeals of those late
8 assessments. We included the language in that
9 section of the regulation. And then we also noted
10 that the failure to pay an annual fee, which is
11 paying the annual fee 90 or more days late, could
12 result in notice of violation.

13 And then the last section, and it's a
14 section we added to 514, we formalized in
15 regulation fingerprint processing fees. We talked
16 about how we collected fees, what that looks like.
17 You can see that in the proposed draft that you
18 have in your packet. And then we noted that we
19 published the fee amount bi-annually so that we can
20 keep up. If we get charged a different rate, we'll
21 publish that so tribes can know what the rate
22 actually is.

23 Part 523 we've been over and over again.
24 This one was sent to the Federal Register as well
25 and notice of proposed rule making that repeals

1 this part, anticipate that will be published within
2 the next week as well.

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

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

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

25 We've gone to a process where a tribe can

1 request an expedited review from the Chair. The
2 Chair can respond then within 30 days and the tribe
3 can request written confirmation from the Chair.

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

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

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

23 Instead of requiring a bunch of documents
24 and a list of -- in the current regulation there's
25 a list of documents and information that needs to

1 be sent to the NIGC about how they're handling
2 their public safety issues. We removed that list
3 and just added a requirement that a tribe submit an
4 application with an assertion made that the
5 facility and operation is conducted in a manner
6 which adequately protects the environment, public
7 health and safety.

8 That's language straight out from the
9 Act.

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

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

19 The current proposed draft is if the
20 facility is going to be closed more than 180 days,
21 then you let us know. Additionally, if the
22 facility is closed seasonally, we have lots of
23 tribes that operate on a seasonal basis, and if it
24 is just a seasonal closure, the rule now doesn't
25 require notice for that.

1 So that regulation we are working on it.
2 We have to work with other agencies on that one as
3 well so it's taking a little bit longer perhaps to
4 get out, but I'm hopeful that we'll see something
5 out by the end of the month.

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

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

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

23 PATRICK LAWSON: With the facility
24 licensing, what are you doing with a name change?
25 Just change the name? Is there a timeline for

1 notification? Also, expiration dates on each game
2 licensing, do we have to notify you every 30 days
3 when we renew our gaming license or can we just
4 send you a copy of it?

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

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

24 I can't remember off the top of my head,
25 but I don't think the regulation says that you have

1 to send in a name. We just need to be aware of
2 where it's located and the legal description. I
3 think if you change the name, it might be helpful.
4 Our enforcement guys are on the ground. They talk
5 to you. It does say, the name, the address of the
6 property. But we haven't talked about it, so I
7 have to go back and check. But if you change the
8 name, I think that's less important than the
9 location is really what we're interested in.

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

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

18 NATHAN SMALL: Good morning. My name is
19 Nathan Small, tribal chairman Shoshone-Bannock.

20 If we have a meeting facilitated within
21 the boundaries, is there any regulation if it's on
22 fee land? Does it have to be on trust land or
23 would fee land be? The application is still being
24 considered to put it back in the trust.

25 LAEL ECHO-HAWK: The Act says Indian land

1 eligible for gaming. So based on what the land --
2 we do a separate analysis. We do an analysis on
3 whether or not the land is eligible for gaming, not
4 whether it's trust land. There are different
5 requirements in the Act.

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

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

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

1 might not apply to your situation right now and we
2 can talk to you about that at a break.

3 NATHAN SMALL: Okay. Thanks.

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

7 JESS GREEN: My comment relates to 559.6.
8 559.6 says, A chair requests any land or
9 environmental public health and safety
10 documentation regarding any gaming place, facility
11 or location where gaming will occur.

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

1 chair may in his or her discretion request.

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

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

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

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

1 little bit more.

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

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

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

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

15 You couldn't even get this with a
16 subpoena. I could object to a subpoena with this
17 kind of language in it. Saying, I don't possess it
18 and you can't command me to create it in a court of
19 law. Your authority is come and see and copy. And
20 you're changing that to, create for me if I ask you
21 for it. There's a critical difference in if you
22 have it, would you please send me a copy, and, I
23 want something and you need to create it for me
24 because I need it. This discretion request that we
25 must provide is, I think, just too much.

1 TRACIE STEVENS: Okay. We might be able
2 to take the comments that you've given us today and
3 we'll certainly consider it. Thank you, Jess.
4 Yes, Sharon.

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

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

11 JESS GREEN: That would be helpful.

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

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

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

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

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

24 Do we have others that have comments?
25 Any questions about the regulations as we've

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

10 Yes, Joe.

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

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

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

23 We're up for a break right now. It's
24 about 10:15 on the schedule. We'll take a
25 15-minute break. We'll come back, and if there are

1 more comments to be made before people leave on
2 parts of the agenda that are for later today, we'll
3 have a statement after we return from the break.
4 So about 15 minutes. We'll be right back.

5 (Short recess)

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

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

24 So I want to open the floor again if
25 there are others who need to make comment before we

1 move on to the next group. Okay.

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

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

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

21 I heard a gentleman say that a notice of
22 violation should not be a surprise. So that's what
23 we're trying to do. We're trying to build a
24 mechanism that adds that voluntary compliance as a
25 goal of the Commission. We're working through

1 iterations of this currently and we're talking
2 about what does voluntary compliance mean and how
3 does that all work.

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

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

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

25 The warning letter, what we have on the

1 screen here, noncompliance notice, it says, hey,
2 tribe, we've seen this issue. It actually is a
3 violation. Let's talk about how you can correct
4 this so that we don't have to get to a notice of
5 violation stage.

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

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

23 We have added into the draft internally a
24 timeframe for response. The current -- there's an
25 oversight, I think, on our part. We just didn't

1 think to put it in the reg. We wanted to make sure
2 that the notice, that either one of these actions
3 leaves the tribe time to respond, and that these
4 actions contain a timeframe for tribes to respond
5 or to address the violation.

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

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

20 The next grouping of regulations in Group
21 2 all have to do with the proceedings before the
22 Commission. And we're talking about appeals of
23 certain instances or certain disapprovals or
24 approvals that would then go to the Commission.
25 The appeal of these various parts that have been

1 scattered throughout the regulations and create a
2 new subchapter. How can we make this easier for
3 people to find. How can we make it a process that
4 you can just go to a certain section of the regs
5 and have everything there that you need to know,
6 sort of a one stop shop.

7 We created this new Subchapter H,
8 Proceedings Before the Commission. And you do have
9 that in your packet. It covers regulations Part
10 580 and 585. What we tried to do is set up general
11 rules that apply for all these proceedings, what
12 motions can be filed. And then there are four
13 different kind of types of appeals that can happen
14 before the Commission. Appeals of disapprovals or
15 approvals of management contracts.

16 And then appeals of the notice of
17 violation, civil fine assessment, temporary closure
18 or the decision, Chair's decision, to void or
19 modify a management contract, a late fee or fee
20 assessments. All of those can be appealed to the
21 Commission in one of two ways. You can either go
22 before an official and actually have this hearing
23 process where there's lawyers and motions back and
24 forth and discovery. And that's covered in Part
25 584.

1 Part 585 covers those same types of
2 appeals, but it's not in a hearing form. It's all
3 just on written documents submitted to the
4 Commission.

5 So that's what these sections cover.
6 Part 580, again, is the general rules, including
7 definitions, service requirements. We've had lots
8 and lots and lots of communications about exparte
9 communications, so they're taking a second look at
10 that, Mr. Green.

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

17 582, again, gaming ordinances. And a lot
18 of times what we've heard are comments that a lot
19 of this stuff is repetitive. And it is true.
20 You'll see sections in there like what happens when
21 you file late, when you fail to file, what the
22 standards of review are. It is true, a lot of this
23 stuff is repetitive, but it is also specific to
24 that particular section. So we wanted to make sure
25 that it was clear in each section what the process

1 was for that particular proceeding. So even though
2 it's duplicated in other parts, it still is
3 specific to each type of proceeding. So we wanted
4 to make sure it was laid out in each section.

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

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

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

23 TRACIE STEVENS: Okay. That is the
24 fascinating world of proceedings. Very important.
25 I want to emphasize it is very important. And the

1 reason why we address these, not only did we hear
2 from tribes that we should look at this because
3 there were some processes here that were not clear
4 or were inconsistent, but we also heard from our
5 own staff. We have in our general counsel's office
6 a number of staff attorneys who were excited at the
7 prospect of being able to rewrite these. And
8 they've been very helpful in drafting these
9 proposed changes from the folks who are down in the
10 weeds and hands on with proceedings before the
11 Commission for these various different types of
12 proceedings.

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

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

21 I think you need to restrict "any person"
22 to "a person within your jurisdiction." I don't
23 think you have jurisdiction over the entire world.
24 My best for instance is if you leave this language
25 in here, you're going to have states saying, we

1 want you to give notice to the government that he's
2 not negotiating in good faith, would you do that,
3 please. You need to restrict who you are sending
4 these violations.

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

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

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

16 TRACIE STEVENS: Thank you, Jess.

17 Did we have a comment from the table
18 here? Yes, right over here.

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

25 TRACIE STEVENS: What specific part are

1 you looking at?

2 JUSTIN QUIS QUIS: I'm looking at
3 573.3.4. Let's say, for example, number 4, May
4 issue a notice of violation to any persons for
5 violations of any provision and set a reasonable
6 time for correction.

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

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

20 It's hard for me to answer your question
21 because it is so specific to the situation that's
22 occurring. But that gives us enough flexibility
23 and the tribe enough flexibility to be able to
24 respond. And I think that's why we didn't address
25 that.

1 Sometimes putting in specific deadlines,
2 especially if it's -- it's one thing for us, but
3 it's really another thing for the tribe depending
4 on what the situation is. There are circumstances
5 that may be completely outside the control of the
6 tribe like the death of an employee who might have
7 been the one to be responding or a natural
8 disaster. We want to remain flexible on that so
9 that we're not boxing the tribe in, but determining
10 with the tribe what is a reasonable time for them.
11 I think that's why we had to address that.

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

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

17 TRACIE STEVENS: Exactly. Yes.

18 Yes, sir.

19 BRAD SIMMONS: Brad Simmons, Chairman of
20 the Gaming Commission. We receive a letter from
21 you, a notice of violation or any one of these
22 others that we have a reasonable timeframe, will
23 the letter state in there a timeframe? Is that the
24 purpose of the intent is at that point that's when
25 we'll know what the timeframe is?

1 TRACIE STEVENS: Yes. And my hope is
2 that our staff, who in these first parts where they
3 may be taking non-NOV steps, that they're talking
4 to you prior to that. Otherwise, they may not have
5 been able to get the information to write the
6 letter beforehand. And they'd be working with you
7 to determine what will be a reasonable time. We
8 wouldn't want to put an unreasonable time in place
9 that would be impossible for the tribe to meet.

10 TRACIE STEVENS: Yes.

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

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

21 That's, to me, like the most severe
22 action that I can take. And we want to have some
23 informal process in place so that we don't have to
24 get to NOV. And while we do that now and try to
25 get tribes into compliance, there's no process in

1 place that really defines for our staff and for the
2 tribes what to expect.

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

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

22 TRACIE STEVENS: So your concern is how
23 this might appear to those who are doing business
24 with tribes? The NOV is pretty clear. And
25 currently as they stand, from what I'm

1 understanding you say, that this could be more
2 potential black marks against the tribe? Okay.

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

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

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

1 resolution reached one way or the other.

2 TRACIE STEVENS: Any other comments on
3 573? How about the proceedings, all the attorney
4 fun stuff? I just want to say before we hand the
5 mic over to Jess, one of the reasons we're doing
6 this is to provide some clarity for non-attorneys.
7 Not every tribe or every regulatory body will
8 initiate this with the help of an attorney. So
9 we're trying to be clearer about processes to the
10 layperson who is a non-legal person when reading
11 this to know what to do. The tribes have
12 representation, but just in case they start down
13 this road before obtaining representation, to be
14 simplified.

15 JESS GREEN: Your rules here prohibit me
16 from access to members and employees of the
17 Commission. The employees are not deciders of
18 fact, but they, in fact, may be witnesses in regard
19 to whether you follow the correct procedure or the
20 correct procedural notices went out. If I have a
21 technical offense that the notices weren't properly
22 received or that information I was supposed to give
23 you was not properly received or handled, in other
24 words, we got it to you but it didn't get in your
25 files because they put it in the wrong file or you

1 claim that it doesn't exist, how do I question
2 those people? I have no ability if I don't have
3 access to your staff as a procedural issue to make
4 that inquiry.

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

14 Again, I know you've addressed some of
15 the issues we've previously raised and I appreciate
16 that, but please keep in mind that the first thing
17 a good lawyer does is, was the procedure followed.
18 Do I have a procedural remedy. Did we, in fact,
19 get that to them. And the procedural breakdown
20 occurred because of one of their lower echelon
21 people simply filed it rather than listing it as
22 being filed. Therefore, I don't have a violation.

23 So I would suggest that you may need to
24 go back and look at that necessity that I feel I
25 might have to question some of your lower echelon

1 people at least, but I would say make inquiry of
2 anyone that is not a decision maker capacity.

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

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

19 TRACIE STEVENS: I didn't.

20 JESS GREEN: I'm not accusing. You go
21 in, you make that request in private, and they
22 refuse every time. Again, it's not published. I
23 have no mechanism with all this here to do this in
24 any fashion. And I can think of a number of
25 reasons why a commissioner ought to be recused. If

1 you don't want to recuse them for any reason,
2 that's fine. But you've postured it that way
3 without giving me a basis for how I obtain recusal
4 and what your recognized basis might be, and I
5 think that puts me in a very difficult situation as
6 an attorney because I'm going to file something
7 anyway. I simply don't have anyplace in here that
8 you recognize the filing. I think you need to take
9 that seriously.

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

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

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

1 helpful.

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

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

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

22 So, for example, Commissioner Little may
23 be at a conference like this, may be pending on
24 appeal before him. Somebody honestly comes out
25 with the same issue and somehow Commissioner Little

1 has to say, I'm sorry, but that's pending me
2 before. We can't have this conversation.

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

13 On the second point with regard to a
14 method of recusal, as the chairwoman said, that had
15 come up in the context of a communication and we're
16 going to start looking at that. Obviously, there
17 are complete federal laws, responsibilities in
18 place for ethical issues, but if I heard you
19 correctly, the department is just making clear that
20 there's a process in place. It may not be already
21 clear or not. There is a process for motions
22 before the committee. We can put some sort of --
23 we can look at some sort of clearer process for
24 allowing a party to make a motion for recusal as
25 well.

1 JESS GREEN: My other point was I
2 actually appreciate that private, come in your
3 office, did you forget you did hear this four years
4 ago. That has a very valid place because you don't
5 have to publish that. Again, I don't mind handling
6 it any way you want to do it, but a limited
7 approach to recusal sometimes makes good sense.

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

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

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

24 So the pilot program, we've formalized
25 that and we've included it in two parts, Part 556

1 and 558. Tribes are very supportive of this,
2 putting this process in the regulations and
3 allowing all tribes to participate. So what we've
4 done is we've tried to separate what happens before
5 a gaming license is issued by the tribe and what
6 happens after. So Part 556 includes all the
7 procedures that happen before a gaming license is
8 issued by a tribe.

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

15 The regulation, the proposed draft that
16 you have, it requires -- and this was part of the
17 pilot program -- a key employee or primary
18 management official notify an agency, send us that
19 notice of results no later than 60 days after the
20 applicant begins work. We know that tribes have
21 various licensing structures. Some tribes allow
22 applicants or employees to go to work before, we'll
23 just call it, a permanent license has been issued.
24 Many tribes have temporary licenses. We didn't
25 want to interfere with whatever your licensing

1 structure is. So we're very careful of that and
2 hopefully we've accomplished that in the
3 regulation.

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

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

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

24 We know tribes talk to each other; the
25 gaming commissioners are close. Oh, we're hiring

1 so and so; we have the background information, and
2 that we're not duplicating the work.

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

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

18 If that happens, if the NIGC objects,
19 then the licensee has the right to a hearing. The
20 tribe has to suspend the license, provide a
21 hearing. And then after the hearing is provided,
22 the results of the hearing to the NIGC. If the
23 tribe waits to issue the license and waits to hear
24 from the NIGC and then issues the license, then
25 that hearing process doesn't kick in. So it's only

1 after the license has been issued by the tribe that
2 the individual has the right to a hearing.

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

10 So that is the pilot program. The other
11 things that were contained in Group 4, Part 537 had
12 to do with background investigations. You'll see
13 in your draft we had included a section for
14 background. We were going to clarify whether or
15 not an individual or class II or class III
16 management contract was sent back. After a lot of
17 comments that we don't need this, this isn't
18 necessary. Very soon, within the next week, you'll
19 see a notice of proposed rule that amends Part 537.
20 It only adds this provision, not some of the other
21 provisions you see in the draft we have, that the
22 chairman exercise discretion in reducing background
23 requirements. Again, trying to streamline
24 processes and not repeat things over and over
25 again.

1 So you'll see this going out shortly.
2 Probably within the next week it will be in the
3 federal register hopefully, make me happy again.

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

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

1 that would be helpful.

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

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

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

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

22 TRACIE STEVENS: Does anyone have a
23 comment? Jess.

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

1 now?

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

4 JESS GREEN: That would be fine.

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

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

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

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

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

25 The other thing we heard on this topic

1 was for some tribes they wait until 30 days have
2 elapsed or expired before NIGC can object. Another
3 concern came up about whether or not a tribe issues
4 a temporary license while they're waiting, which we
5 have a right to do. If there's an objection, the
6 tribe would then have to probably pull that
7 license. In order to do that, that licensee now
8 has some rights rather than if they had just
9 waited.

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

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

25 Those are the things that came up that I

1 recall on this particular part. Are there any
2 comments on licensing? I ask about this
3 specifically because I know we have a lot of
4 regulators here.

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

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

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

1 Should we be holding onto these records that we
2 have that you've asked us about.

3 And this was our effort to be clear to
4 tribes that we've concluded our investigation.
5 Now, other federal regulatory agencies do this. So
6 in response to tribes' concerns of these
7 investigations just sort of hung over their head
8 indefinitely -- gaming, gaming violations, that
9 tribes weren't left in limbo. This offered some
10 sort of, I don't want to use the word closure
11 because that gets confused with our parts of our
12 responsibilities, but that the investigation had
13 been completed and we notified the tribe so that
14 that limbo state didn't continue.

15 Does that answer your question?

16 MARVIN OSBORNE: Yeah, somewhat. I
17 believe that in cases like this we're out of the
18 one-on one-consultation of the NIGC because it's a
19 matter that concerns the regulations, our laws and
20 the violation that occurred, and it conflicts that
21 we are ending up having with other federal agencies
22 because all the laws that tribes supported, the
23 United States U.S. attorneys or assistants are
24 supposed to help defend the tribes. But we ran
25 into an instance where that is a conflict or a

1 complete tragedy with the regulation we're trying
2 to enforce and use versus what the law enforcement
3 divisions are doing. I mean, it's horrible. But
4 those are things that could impact us and I think
5 that we have to somehow or another consult the NIGC
6 so we don't get a violation because it can be
7 serious issues that we don't want to announce to
8 everybody. At the same time, we need to be frank
9 about what's happening.

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

21 Now, with regard to consulting the
22 tribes, I guess that's one way to put it. What
23 we're trying to do, as I mentioned, that Elliot
24 brought up, we're trying to structure our processes
25 in a way that we're talking to tribes before we

1 take action so we can get them in compliance and
2 keep them in compliance, whether that's through
3 giving technical assistance or guidance on how to
4 do that, training, something so that we're not
5 using the big hammer in the NOV, because we know
6 how serious that mark is.

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

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

21 Okay, Jess, are you paying attention?
22 I'll go ahead and read them. I do want to say that
23 we have 56 nominees. And we have the names here.
24 John Magee, gaming commissioner for Pachenga
25 Indians. In California, Kathy Canell (phonetic),

1 casino general manager; Jason Remos (phonetic),
2 gaming commission chairman; Daniel Magee, gaming
3 commission administrator; Brian Callahan, gaming
4 commission executive director; Christina Thomas,
5 office of gaming regulation compliance executive
6 director; Steve Gargan (phonetic), gaming
7 commissioner; Jeffrey director of gaming; Michelle
8 Sicon (phonetic) gaming commission executive
9 director Confederated tribe; Rea Culo (phonetic)
10 general manager; Mia, and I'm not even going to try
11 to pronounce her last name, gaming commission
12 compliance director Comanche Nation;
13 Robin Lanfee (phonetic) commissioner; Matthew
14 Morgan gaming commissioner; Thomas Wilson; and
15 Carlene Chino, gaming commissioner executive
16 director of Navajo Nation.

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

1 regions.

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

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

18 The people that are nominated, we made
19 that clear in our nomination letter, that they had
20 to be -- they speak only for the tribe they
21 represent and that the governing body of that tribe
22 had to give authorization for that individual to do
23 so. So it had to be the governing body of the
24 tribe. Because the tribe is the government with
25 which we have a government to government

1 relationship. We did get some that came from just
2 the Gaming Commission. We did clarify with this
3 them. They had to turn back in a governing body
4 letter that says that individual speaks for them.

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

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

17 This committee is meant to review our
18 minimum control standards and our technical
19 standards. We pull them out of these consultations
20 because they're very technical in nature and are
21 time consuming. That makes the technical standards
22 role on another track with this tribal advisory
23 committee whose objective is to review the regs,
24 the technical standards, review alternative
25 standards that were proposed to us by a tribe or a

1 number of tribes, and give us their recommendations
2 on those documents.

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

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

24 So we're trying to do this differently.
25 We're trying to take a fresh look at how we can do

1 these and get really honest feedback from the
2 practitioners in Indian country.

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

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

15 Dan, did you want to add anything to
16 that?

17 JERRY DANFORTH: No. Just like the Chair
18 said, we had a very good group of nominees. And we
19 painstakingly reviewed every single application.
20 And we wanted to make sure, and it was very
21 important, that we included folks that had some
22 operational experience because we all know and
23 understand the regulatory side very well and
24 sometimes what the regulations say, how the
25 operators are able to manage an operation under

1 those, is sometimes difficult. So it's important
2 to have operators in there at the table being able
3 to provide this information.

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

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

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

24 JESS GREEN: I didn't get my way.

25 TRACIE STEVENS: Are you as excited as we

1 are? We're giddy today.

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

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

10 JESS GREEN: There's two offices in
11 Oklahoma.

12 TRACIE STEVENS: I know. I'm aware. All
13 right. Are there any questions about this? We
14 were trying to be as informative as to how we came
15 to the decision process. I want to reiterate.
16 We're going to be working with the advisory
17 committee in the next couple weeks and getting some
18 ground rules. It is just necessary so that
19 everybody knows what is expected of them, how the
20 committee is going to work. And, again, I want to
21 reiterate that there will be opportunity and it
22 will be based on what the committee together
23 decides on what will be the mechanism to bring in
24 their experts. Because they'll be bringing people
25 in because they're not expected to know absolutely

1 everything, and then how the public can comment,
2 how we can bring in some experts because there are
3 some very technical aspects. You start talking IT,
4 we do need specialists to be able to come in and be
5 able to speak to that. So we're going to build
6 into the ground rules how that happens and when it
7 happens and that's going to be a committee
8 decision.

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

15 LAEL ECHO-HAWK: So the last group we
16 have on the agenda is Group 5, self regulation and
17 a potential sole proprietary interest regulation.

18 So starting with the self regulation,
19 Part 518, the notice of inquiry that went out last
20 year asked whether or not we should review this
21 regulation or we should review the process for
22 obtaining a certification for class II for tribes.
23 We received numerous comments. All of them
24 supported taking a look at the process and making
25 it more -- making the burden of the application and

1 certification process, making the benefits at least
2 equal. Out of the over 200 and some odd gaming
3 tribes that we have, we have two tribes that
4 actually have the self regulations. We do have the
5 Commissioner Little here today. So if you have any
6 questions, he'll be happy to answer them.

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

17 And just kind of a list of these.
18 Section 518.3 contains the submission requirements
19 in the draft. We pulled a bunch out. And you can
20 see on our website, I think our draft is 29 pages.
21 It was very hard to do a red line because we cut so
22 much out, and see sort of clearly what we had left
23 in and what we added. So we have history of gaming
24 operation, employment criteria for regulators,
25 description of the regulatory agency.

1 We wanted to make sure that this was a
2 body that's going to function. It's going to
3 function well. It's adequately funded. You have
4 people there that are qualified to be regulators.

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

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

24 So then 518.4 talks about the criteria
25 must be met to receive a certificate of self

1 regulation. We couldn't play with this language
2 that much. We tried to be descriptive about what
3 it means.

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

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

10 So we talked about what kind of things
11 would show that this criteria has been met. And so
12 518.4 sub B says, A tribe can illustrate by listing
13 these factors. And we tried to be clear that this
14 is just a list that we sort of took from the old
15 reg and we added some things in, but this isn't
16 all-inclusive. Doesn't mean that if you don't meet
17 one of these, this was some things that internally
18 we thought would be very useful to show that the
19 criteria, the dispute resolution processes,
20 effectiveness, regulatory body has a way to monitor
21 compliance, accounting systems. The gaming
22 regulatory agency has the ability to go and review
23 the accounting information from the gaming
24 operation, that they have access to audit and
25 inspect the papers, books and records. Gaming

1 operation and class II gaming activities. That
2 there's adequate investigating, licensing and
3 monitoring system for employees. License records
4 are kept.

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

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

19 So then what's the process? We're
20 looking at this internally now. We want to make
21 sure that the process is clear for how this
22 happens. You send in your petition. Mr. Little is
23 the office of self regulation in this instance.
24 Makes an initial determination. Issues a report.
25 Issues a certificate of self regulation. Provides

1 a response time so the tribe can say, hey, I did
2 meet these criteria, here's why. Hearings before
3 the office of self regulation, and then the office
4 of self regulation issue a decision which is
5 appealable to the full Commission. Annual
6 reporting requirements are now statutory. We were
7 trying to think of a way that meets the
8 requirements of the Act, and the Act simply says
9 that the tribe then as the certificate must send in
10 an audit, which tribes do anyways, and a complete
11 resume for all management officials and key
12 employees hired by the tribe after receiving the
13 certificate. That has really caused a lot of angst
14 internally at the tribal level. So we are trying
15 to define what that means.

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

1 the regulatory body and the tribes' regulatory
2 structure.

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

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

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

21 The second has to do with sole
22 proprietary interest. As you know, this is an
23 issue that comes up regularly. I think we've done
24 92. The NIGC's office issued 92 different opinions
25 Each is extraordinarily fact specific. And as

1 we've been trying to wrap our brains around how do
2 we address this, should we provide clarity, should
3 a court provide some clarity, and if it's clarity
4 that's needed, what is it.

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

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

19 TRACIE STEVENS: So that was a mouthful.
20 We only have three self-proprietary tribes. The
21 other two have qualified going through the process
22 that is established in the current reg in reports
23 from those tribes every year. I do want to be
24 clear that this is about class II regulation. In
25 previous consultations there was some questions

1 about can you self reg class III. This is just for
2 class II. And I think both of the tribes that are
3 self reg right now are hybrid, they have class II
4 and class III, both separate facilities. But even
5 so, this is only for class II self reg.

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

22 All of our initiatives that the NIGC is
23 taking on right now is reduce redundancies and
24 eliminate duplicative processes, and we saw this in
25 this regulation.

1 The list of things that we need for
2 application, I wanted to comment on that, how to
3 maintain a certificate once you have it and then
4 some of the things that Lael was pointing out that
5 we really will need some comments on, how do you
6 define financial stability. And also because the
7 Act talks about having a list of employees, that
8 means it could be the guy cleaning the bathroom,
9 when what we may want is the guy running the place
10 or key employees or key manager, primary management
11 officials like cage managers. So your comments on
12 our suggestion on just focusing on key employees
13 and primary management officials are helpful.

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

25 So we're still in the

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

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

25 (Recess from 12:07 p.m. to 1:40 p.m.)

1 DANIEL LITTLE: We're going to bring this
2 meeting back to order. I would like to thank you
3 for participating. We went through all four groups
4 and kind of an explanation and some comments. I'll
5 open the floor up for anyone that would like to
6 make a comment on any of the groups or any of the
7 specific regulations we talked about earlier.

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

10 DANIEL LITTLE: Can you speak your name.

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

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

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

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

24 WALTER HAMILTON: I didn't understand
25 that. I thought it was something new.

1 DANIEL LITTLE: The big component in
2 number 514 is to create a process in addressing
3 late fees and trying to take it out of a process
4 that leads to an issue of notice of violation and
5 creating more of a ticketing process, like a fee
6 process, to kind of move along the process. We
7 spend a lot of time and process to issue an NOV.
8 We're not increasing the fee. Setting the fee rate
9 is something the Commission does in -- we do a
10 preliminary fee in January and then we do the final
11 one around July.

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

1 the gaming operation. Section 518.4B7 requires
2 implement with interest policy for the regulatory
3 body.

4 The tribes believe these standards and
5 policies will be valuable (indiscernible) no such
6 mandate. Tribal support the amendment subsection
7 518.9, currently 25 CFR subsection 518.9 works to
8 effectively nullify and lessen oversight. NIGC
9 interpretation interference (indiscernible) with
10 self regulatory tribe and preliminary draft changes
11 518.9. Part 518 may become more important to
12 Oklahoma gaming tribes as contracts expire if the
13 state is unwilling to negotiate these contracts.
14 (Indiscernible) may consider increasing them if the
15 state does not renegotiate by increasing games
16 above the level we currently have and seeking
17 certification under 518 at that time. However, as
18 518 currently (indiscernible) standards effects
19 resulting from waiving the fee requirements are
20 minimal and burdensome and achieving self
21 regulation is still high. The tribes supporting
22 NIGC's efforts to increase the financial incentives
23 and reduce the burden of the application process.
24 However, preliminary draft changes to other parts
25 as identified (indiscernible).

1 (Mr. Hamilton was reading from a
2 document, a copy of which will be submitted to the
3 Commission.)

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

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

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

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

14 DANIEL LITTLE: Thank you.

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

21 DANIEL LITTLE: 518?

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

24 DANIEL LITTLE: I'm not sure if I
25 understand your question.

1 WALTER HAMILTON: The responses to all of
2 your amendments, or whatever they are, they're all
3 negative that's on the webpage.

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

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

19 DANIEL LITTLE: Yes, sir.

20 BRAD SIMMONS: In regard to 518.7, you're
21 looking for opinions back on kind of a definition.
22 I kind of went back through it during the lunch.
23 Since you're trying to do this as more of the
24 regulatory side than it is on the management side,
25 I think it would be appropriate when we ask for

1 resumes at that point from the regulatory
2 authorities, not from the managements, not from the
3 operators. Since this is a self-regulatory
4 certificate, how many government agencies are going
5 to be open -- in this regard I would take that to
6 mean it would be the government wishes those that
7 are on the tribal regulatory agencies.

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

16 BRAD SIMMONS: I understand there's a law
17 to that. To what purpose? You get a resume.
18 You've already licensed, you've already hired --
19 let's say going the operations side. They've
20 already licensed. They've already hired. They've
21 already been approved. What purpose is there to
22 have the resume forum? If there's any chance of
23 changing that section of the law to accommodate --
24 is the NIGC then at that point going to make an
25 opinion on whether we should invite that person?

1 Are you going to be asking for the job descriptions
2 of the people?

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

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

17 I can say that it's not the intent of
18 this Commission to start telling you who you can
19 hire. For this Commission that's not something
20 you're going to see here or in what we're doing. I
21 think it's more about the same type of concerns
22 about -- the same kinds of issues that come up with
23 key employees and primary management officials and
24 then we know who's there. Certainly appreciate
25 your comments.

1 DANIEL LITTLE: Are there any other
2 comments on 518? Some very good additional
3 information that you're providing. Appreciate
4 that. Any other groups or regulations?

5 If there's no other comment, I think
6 we're going to bring this consultation session to a
7 conclusion. I know on behalf of the Commission,
8 we're very grateful for your participation, coming
9 out here, especially on the last day. I know it
10 has been a long week, not just being in Las Vegas.
11 There has been a lot of good meetings and things
12 going on. We're very grateful that you all
13 dedicated time to come out here today.

14 And the transcript for this meeting, all
15 the comments, we'll post those on the website
16 NIGC.gov. We urge you, if there is anything
17 additional you think about on your ride home,
18 please submit them. Like we were saying earlier,
19 these discussion drafts have been very, very
20 helpful in order to kind of get the conversation
21 started. As we start moving forward trying to
22 promulgate a rule, there's going to be real
23 involvement here. We hope that we receive the same
24 participation and comments. That's the way this
25 Commission believes, this is a process that we all

1 have a stake in and we want to make sure that the
2 final product is the best possible product.

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

5 TRACIE STEVENS: So thank you all for
6 returning after lunch. We've gone through all of
7 the issues that we had planned to today. I
8 appreciate you especially coming back after lunch.
9 As Dan said, all of this information can be found
10 at NIGC.gov under the consultation button under
11 2011-12, the consultation reg review. If you have
12 any questions, you can send them to this email.
13 You can call us. You can send your comments in.

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

19 Thank you all for attending today. Wish
20 you safe travels home. And the next -- also I want
21 to thank the staff that helped support us here
22 today. Our next consultation will be at NCAI in
23 Portland on November 3rd where we'll have a similar
24 discussion there, but we will have a list of rules
25 that will be in the federal register at that point

1 in time that we'll start discussing the next step
2 in the process of promulgating final rules.
3 So that consultation will be a little different
4 than this one. We'll be in a different stage of
5 the rule making process.

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

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

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

STATE OF NEVADA)
) SS:

COUNTY OF CLARK)

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

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

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

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

Kimberly A. Farkas, CCR 741

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