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NATIONAL INDIAN GAMING Commission
REGULATION REVIEW
TRIBAL MEETING
at
PRAIRIE BAND CASINO and RESORT
12305 150th Street
Mayetta, Kansas 66509

March 22, 2012

Reported by: Judy K. Moore, RPR, CSR, CCR

(Start time: 9:05 a.m.)

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PROCEEDINGS

1
2 MR. LITTLE: Good morning, everyone. My
3 name is Dan Little. I'm the Associate Commissioner
4 with the National Indian Gaming Commission, and I want
5 to thank all of you for coming here today for our
6 regulatory review for Groups 1, 2, 3 and 5 of the
7 NIGC's regulatory review schedule that we published in
8 April of 2011.

9 I want to welcome all the tribal leaders,
10 Gaming Commissioners and other tribal designees here
11 today. If any of the folks -- well, I guess everybody
12 is sitting at the table. This is actually a first
13 time for some of these where most of the folks
14 congregate at the back, so I'm pleased that everybody
15 is already at the table.

16 Like I said, my name is Dan Little. I'm
17 the Associate Commissioner here. I came on board with
18 the Commission in April of 2010 for a three-year term,
19 so I'm just about reaching my two-year anniversary. I
20 want to send my regards on behalf of Chairwoman Tracy
21 Stevens and Vice-Chairwoman Steffani Cochran. They're
22 back in D.C. getting a lot of important work done.

23 So like I said, a little bit about myself,
24 prior to coming onto the Commission, I worked for the
25 Mashantucket Pequot Tribe and Foxwoods for over ten

1 years, and prior to that I worked for the Connecticut
2 State legislature. So I've been working on Indian
3 issues for the majority of my professional career, and
4 it's very exciting to be here to be able to work on
5 the Commission, get to work with a lot of the tribes
6 and the Tribal Gaming Commissions that I had the
7 opportunity to work with when I was with Mashantucket.
8 So it's wonderful to be here.

9 Before we go any further, I want to
10 introduce Chairman Ortiz from the Prairie Band
11 Potawatomi who's going to make some opening remarks
12 and welcome us properly. So Chairman?

13 CHAIRMAN ORTIZ: Let me figure this out
14 here.

15 MS. WARD: They tell me there's a little
16 switch at the bottom of the microphone.

17 CHAIRMAN ORTIZ: All right. I want to
18 welcome each and every one of you here to the Prairie
19 Band Potawatomi Nation, and especially honored here is
20 the National Gaming Commission sending their folks
21 here to hold this consultation with the tribes that
22 are here. I sincerely appreciate that and respect
23 what you do.

24 And to begin off this morning, I'm going to
25 start off with a morning prayer here. And in

1 Potawatomi country, just go ahead and be seated here.
2 In our way, we do the prayer here, stands up, everyone
3 else just kind of sits down, you know, relax, just
4 kind of listen to the thoughts and things that are
5 going to be said here.

6 (Morning prayer.)

7 MR. LITTLE: Thank you, Chairman. Also
8 probably need to thank you for the wonderful
9 accommodations here. I'm sure many of the folks in
10 the audience here and at the table had the opportunity
11 to stay in your wonderful facility last night, and I
12 know on behalf of the Commission we really appreciate
13 the hospitality from all of your staff. You've got a
14 lot of great folks working for you. I'm sure you
15 probably know that already. So thank you for that.

16 I'd like to introduce our staff. We've got
17 a lot of folks here that came from Washington or from
18 some of the area offices, including the Tulsa office,
19 but with me I have Paxton Meyers, who is the Chief of
20 Staff. I have Sarah Murray. She's the counselor to
21 the Chair. Michael Hoenig, he's with the Office of
22 General Counsel. Jennifer Ward, she's also with the
23 Office of General Counsel. Rest West who's hiding in
24 the back, he'll be up at the table later. He's with
25 our audit division. Tim Harper, he's the Tulsa

1 Regional Director. And then out in the hallway Karen
2 Simmons who -- she's also from the Tulsa region. She
3 is the admin assistant there. So I want to thank all
4 of them.

5 I know we make it look nice and easy at the
6 Commission, but really a lot of the hard -- most of
7 the hard work is done by our staff. And I like to say
8 this as much as I can, that we're very grateful to the
9 previous Commissions or previous Commission that had
10 the insight to hire a lot of these great people. They
11 do a lot of the hard work. They're out there in the
12 field every day providing technical assistance and
13 guidance and doing really good work for a lot of the
14 tribes. They understand, you know, our partnership
15 here where, you know, we regulate this industry with
16 all of you, and they do a wonderful job. So anytime I
17 can thank them, thank the previous Commissions for
18 hiring them, I like to do so. So we're really happy
19 to be here, and they're going to help maybe answer
20 some of the questions that you all may have today.

21 I always like to take an opportunity
22 whenever there's an audience to kind of reiterate the
23 Commission's priorities. When we came on board as a
24 full Commission in July of 2010, we determined there
25 were four major priorities that we really want to work

1 on, and a lot of them kind of go hand-in-hand, at
2 least two of them.

3 Now, the first one was consultation and
4 relationship building. We wanted to make sure that we
5 were consulting properly with tribes and we are
6 building that relationship so that, you know, we do
7 have a partnership in how we regulate this industry
8 together.

9 So the second one was training and
10 technical assistance, getting out there. You know, as
11 part of our partnership, we've got a role to play in
12 ensuring that the gaming facilities are
13 well-regulated, and in areas where there is assistance
14 that is needed, we're there to help provide that.

15 So HC operations, you know, I think one of
16 the things that is often neglected here is that, as
17 Commissioners, we have an obligation to ensure that
18 the agency is operated effectively and efficiently,
19 just like all of you do with your governments and your
20 Gaming Commissions.

21 So whenever our priorities -- and then the
22 last one and what we're here for today is the
23 regulatory review. It's been 20 years or so since the
24 Commission was formed, and it was appropriate that we
25 look at our regulations and ensure that they are

1 effective and they're meeting the needs of the
2 industry.

3 So I'm going to talk a little bit about the
4 history of where we are today. Like I said, the
5 Commission was fully staffed in July of 2010 with the
6 confirmation of Chairwoman Tracie Stevens. We came
7 together and decided that doing a comprehensive review
8 of the regulations was going to be a priority.

9 In the fall of 2010, we published our
10 notice of inquiry, and basically we went out and
11 consulted to determine from the tribes what was
12 needed, what was needed to be reviewed and what
13 regulations were -- you know, were ones which we
14 should focus on. We did that in the winter of 2011.

15 In April of 2011, we published our notice
16 of regulatory review, and that basically set forth the
17 agenda that we're working off of today, the Groups 1,
18 2, 3, 4 and 5, and basically looked at the regulations
19 that, from our staff and from what we heard from the
20 tribes, we felt needed to be reviewed.

21 The next step we took was we published, or
22 we distributed, rather, discussion drafts on the
23 particular regulations and we went out and consulted.

24 As you look on the agenda today, you'll see
25 notice of proposed rules, and you also will see two

1 discussion drafts. It's been the policy of the
2 Commission and it's what we've heard in our
3 consultation that -- what we've heard from tribes is
4 that they want to have an active role prior to us
5 moving into the formal rule-making process, and that's
6 the reason for the discussion drafts. It's a starting
7 point. It's an opportunity for us to get things out
8 there in an informal way and to seek comments. So we
9 did that. It's worked out well, and we're going to
10 continue to do that.

11 So throughout 2011, we distributed
12 discussion drafts and we moved to notice of proposed
13 rule making, and in January we actually finalized two
14 rules to Part 514 on the fees and Part 523 on the
15 obsolete regulations.

16 So today we're going to talk about three
17 regulations, and that is Part 559, the appeals regs,
18 which is 580 through 585; and the...

19 MS. WARD: Self-regulation.

20 MR. LITTLE: Self-regulations, Part 518,
21 yes. Okay. Thanks, Jen.

22 And then we're also going to talk about two
23 discussion drafts on the Part 547, the technical
24 standards, and then the Part 543, the MICS for Class
25 II gaming.

1 So while it appears we've done a lot of
2 consulting, this is what we've said we've heard from
3 tribes, and it's actually consistent with Executive
4 Order 13.175. We're going to talk about them in a
5 Power Point presentation here in a few minutes.

6 So before we get started with the Power
7 Point, just kind of a couple of housekeeping things I
8 want to go over. As you can see, the meeting is being
9 transcribed, so when you do speak, we request that you
10 state your name, speak into a microphone, and your
11 organization.

12 Also, we're scheduled to go all day today,
13 until 5:00. If for some reason we get through the
14 agenda early, we probably will end early, but I do
15 understand that, you know, some of you may have
16 schedules, you may be here for -- particularly the
17 tribal leaders, you may be here for only a certain
18 amount of time, so as soon as I'm explaining a couple
19 more things, if anyone has opening statements and
20 they'd like to make them, we'll move to that.

21 And then the last thing, I think, you know,
22 I want to point out that this is an official
23 government consultation between the United States
24 Government and tribal governments. This is not open
25 to the public or the media, so I would kindly make the

1 request that if you're not a tribal designee, tribal
2 official or tribal leader, that you leave the room.

3 Next I'd like to go around the table. And
4 I guess we could start with my good friend Robin. And
5 if you could just introduce yourself and the
6 organization that you're here with today.

7 MS. LASH: Good morning. I'm Robin Lash.
8 I'm the in-house counsel to the Gaming Commissioner
9 for the Miami Tribe of Oklahoma.

10 MR. LANKFORD: Hello. I'm Doug Lankford,
11 Second Chief for the Miami Tribe of Oklahoma. I'd
12 like to thank you for the opportunity to have this
13 consultation today. You know, gaming is very
14 important to the tribes. Its revenue is very
15 important to the tribes, so it's very important that
16 the tribes have a voice and a say in drafting these
17 documents so the tribes can continue to flourish and
18 profit from gaming. So thank you again for the chance
19 to be here.

20 MR. TUCKER: Chris Tucker, slot manager,
21 Golden Eagle Casino, representing the Kickapoo Tribe
22 in Kansas.

23 MS. TRUMBLA: Good morning. Rhonda Trumbla
24 from Cherokee Nation. I'm a special projects officer.

25 MS. WILSON: Debra Wilson, Administrative

1 Office for the Cherokee Nation Gaming Commission.

2 MR. KRUSE: Jim Kruse, Wyandotte Nation
3 Gaming Commission.

4 MR. WOOD: Richard Wood, Gaming
5 Commissioner for Seneca-Cayuga Tribe in Grove,
6 Oklahoma.

7 MR. LITTLE: Go to the back of the room, if
8 possible.

9 MR. NANOMANTUBE: I am Robert Nanomantube.
10 I'm Chairman of the Sac & Fox Gaming Commission in
11 Kansas.

12 MS. CADUE: Rhoda Cadue with Sac & Fox
13 Gaming Commission.

14 MR. MITCHELL: My name is Gary Mitchell.
15 I'm with the Prairie Band Potawatomi Gaming
16 Commission.

17 MR. LUTHEY: Dean Luthey, Oklahoma Indian
18 Gaming Association.

19 MR. TAHSUDA: John Tahsuda, Oklahoma Indian
20 Gaming Association.

21 MS. MORAGO: Sheila Morago, Oklahoma Indian
22 Gaming Association.

23 MR. LITTLE: Okay. Thanks --

24 MS. WARD: We've got a couple that have
25 joined us here.

1 MR. LITTLE: We can't let you off the hook,
2 so introduce yourselves.

3 MS. O'TOOLE: Carrie O'Toole for the
4 Prairie Band Potawatomi Tribal Council.

5 MS. COSI: I'm Linda Cosi. I'm the
6 assistant to our Chairman.

7 MR. LITTLE: There are some seats at the
8 table here. If anyone would like to join us, I would
9 encourage you to do so.

10 We're going to get started with our Power
11 Point, and like I had mentioned earlier, these are
12 consultations between NIGC and tribal governments.
13 And then we work off of Executive Order 13.175. It's
14 an executive order from the Clinton administration
15 that every additional administration has reaffirmed.

16 And basically, you know, Section 3,
17 Policymaking Criteria, when undertaking to formulate
18 and implement policies that have tribal implications,
19 all agencies, like the NIG, are encouraging Indian
20 tribes to develop their own policies to achieve
21 program objectives. Where possible, the agencies need
22 to defer to Indian tribes to establish standards. And
23 in determining whether to establish Federal standards,
24 we need to consult with tribal officials as to the
25 need for those Federal standards or alternatives.

1 Like I said earlier, all consultations that
2 we do are transcribed. They'll be placed on our
3 website NIGC.gov, so if you miss anything here today,
4 you can access that at a future date. It usually
5 takes a couple of weeks to get them up, but we'll have
6 them up there.

7 And if for some reason you think of things
8 you want to talk about after the consultation today,
9 we encourage you to submit written comments and just
10 kind of, you know -- to let you know, we -- and I'm
11 talking about "we" the Commission. We read every
12 comment submitted. They're on our website. We do get
13 them. They're very important and they're very much
14 appreciated. So if there are things that you want to
15 talk about today that you may not mention here or you
16 think about on your ride home, please, I encourage you
17 to do so. And like I said, we're going to put
18 everything up on the website because we're really
19 committed to a clear and transparent process.

20 So how we're going to operate today, we're
21 going to go through the Power Point presentation,
22 which is going to be led by either Jennifer Ward or
23 Michael Hoenig here, and we're going to go through
24 each group -- there's actually only -- with the
25 exception of Group 3, there's only one reg per group,

1 so Jen or Mike will discuss the topic, and then we'll
2 open it up for comments. Okay? So if there's
3 something that you'd like to talk about, please, we
4 encourage you to, you know, pick up a mic and make
5 your comment.

6 As we go through, we'll take breaks. I
7 know a lot of folks are probably here in the hotel.
8 We'll take a break around 10:00 so everybody can check
9 out of their room. We'll take a break for lunch and
10 then we'll pick up on Group 3 in the afternoon. Like
11 I said, if we've gone through all the groups and
12 there's no comments, you know, we may end early, but
13 that does not mean you can't submit comments.

14 So before I move forward, I think I want to
15 make one more -- raise an issue one more time. Does
16 anyone have opening statements that you'd like to
17 make?

18 Okay. Then I'm going to turn this over to
19 Jen to start explaining the agenda.

20 MS. WARD: Okay. Good morning. We have
21 three regulations we're talking about this morning
22 that should be familiar to most of you. They're in
23 the proposed rule stage, and the comment period was
24 published as a proposed rule on January 31st of this
25 year, and it's still open for comment. The comment

1 period on these three regulations is open until
2 April 2nd.

3 The first of these three that we're talking
4 about is 559. It's facility license notifications.

5 There have been some changes in facility
6 license notifications based on comments received from
7 tribes, but some things stay the same. One of the
8 things that stayed the same is that we require, 120
9 days prior to issuing a license, a notification to the
10 NIGC that there's going to be a license issued, and
11 the facility -- if it's a new facility, the
12 facility -- well, it is a new facility -- the lands
13 information.

14 And if a tribe requests it, we can do an
15 expedited review of the lands information, and that's
16 merely to confirm that the materials have been
17 submitted as required under Part 559. And the Chair
18 will respond to requests for expedited review within
19 30 days.

20 The proposed rule also says that within 30
21 days of issuing a facility license, the tribe should
22 send NIGC a notice and a certification that the
23 construction and maintenance of the property meets.
24 This regulation no longer requires that a list of
25 those standards be provided. And the license should

1 be renewed every three years.

2 When a facility closes, notice should be
3 sent to NIGC within 30 days of the time it closes
4 unless it's a temporary closure that's expected to
5 last less than 180 days.

6 Comments generally supported the approach,
7 and some suggested that the temporary or seasonal
8 closure should be less than 180 days. And NIGC will
9 also accept electronic submissions of any facility
10 license notification or notices.

11 Does anyone have any questions on facility
12 licenses?

13 That was pretty quick. At this point, I
14 think all the questions may have been coming in
15 because this one's been out there for a while.

16 CHAIRMAN ORTIZ: I do.

17 MS. WARD: Yes?

18 CHAIRMAN ORTIZ: So you're talking about
19 this quick process here to have the information. Does
20 that mean we can begin construction? I don't want to
21 put you on the spot, but I'm saying, from the tribal
22 point of view, if I've submitted the paperwork and you
23 said you have it and I have these contractors lined up
24 and everything wanting to go and I have investors
25 waiting in line, too, does that...

1 MR. HOENIG: I think the licensing is maybe
2 a little different from the construction. This is
3 just notification that the tribe is going to issue a
4 license to its facility. So, you know, whenever the
5 tribe decides to do that, they just need to make sure
6 that the license and all the required information is
7 submitted with enough time that the Commission can
8 review it, make sure that it's correct.

9 MS. WARD: I think in the past tribes have
10 looked at it as the NIGC granting permission or giving
11 the okay to go ahead and do the construction, and
12 that's not what this license notification is intended
13 to be. It's intended to give NIGC the time to review
14 the information.

15 And we're just double-checking and crossing
16 our T's, dotting our I's, making sure that it's in our
17 records, but it's nothing that you need permission
18 for, especially if it's maybe on reservation gaming
19 property. That's pretty cut and dried. If you feel
20 comfortable going ahead with construction, you can
21 certainly go ahead with that.

22 MR. MYERS: And just to add to that, we
23 have given notification to tribes earlier than that
24 180 days for construction. We did that with
25 Mississippi Band of Choctaw with their smaller

1 facility. They were -- we gave notice to them before
2 the 120 days so they could receive their financing for
3 their construction.

4 CHAIRMAN ORTIZ: So let me ask you one
5 other question. With the unique situation that we
6 have here in Kansas, we're only allowed one Class III
7 gaming facility. One of the things we've discussed
8 and thought about is opening up a Class II facility
9 within the reservation other than our Class III
10 facility. And we would need to get a license for that
11 exactly, right, that proposal? As long as it's -- it
12 falls within the guidelines that you just discussed --

13 MR. HOENIG: Yes.

14 CHAIRMAN ORTIZ: -- if it was garnered to
15 be within our reservation, but it would be strictly a
16 Class II facility, not a Class III, because I've seen
17 other tribes have satellite operations.

18 MS. WARD: Yes. I just want to clarify
19 that the tribe is the one that issues the license, not
20 NIGC. You just want to send a notice to NIGC that you
21 are issuing the license.

22 I saw someone else.

23 MR. NANOMANTUBE: Did I understand that
24 when you submit -- when you renew the license, you no
25 longer will have to send the listing of the AEP

1 maintenance list with which you're complying with or
2 whatever the mandates are?

3 MS. WARD: That's correct. Instead of
4 sending the list of all of the rules that you're
5 following for construction and maintenance, you merely
6 sign a certification certifying that it's constructed
7 and maintained in accordance with your tribe's rules.

8 MR. NANOMANTUBE: Okay. Good.

9 MS. WARD: We received a lot of comments
10 that that was cumbersome to list all of those.

11 MR. LITTLE: Robin?

12 MS. LASH: One thing I would like to point
13 out that I think would be helpful to the tribes, when
14 we submit our land determination opinion and our
15 notice of intent to license, we receive back from the
16 NIGC a letter that says, we've received your
17 information and we're reviewing it, we'll contact you
18 if we need anything further.

19 I think it kind of leaves the tribes in
20 limbo that that's all we get. And when I called to
21 inquire about that, I do understand that the NIGC
22 can't send a letter saying, we approve this because
23 of -- for your legal reasons, but if you request, you
24 can send a letter to the tribe saying, we don't
25 object.

1 And I think that that would help the tribes
2 if that was just sent out as a standard correspondence
3 instead of upon request, because that just supplements
4 our file and makes the tribe feel more comfortable
5 with moving ahead with construction.

6 MS. WARD: Great. I know we're reviewing
7 that process, so we'll definitely note your comments.

8 MR. LITTLE: Yeah. That's a great point,
9 and not necessarily just for a facility license
10 notification. You know, we have been reviewing our
11 overall notification process for any of the issues
12 that we take up. So it's always a good reminder, so
13 thank you.

14 MS. WILSON: I have one question. Where we
15 don't have to supply the list of all the regulations
16 that we follow, do they still have to be available
17 upon request, or are we just not submitting those in
18 the packets, listing those?

19 MR. LITTLE: If you're attesting that these
20 are being done, I would -- I mean, they should be
21 available upon request.

22 MS. WILSON: Okay. Thank you.

23 MS. WARD: Okay. If you're ready, we'll
24 move on to the appeals process. Let me make sure that
25 I'm in the right place.

1 This one was meant to consolidate all of
2 the existing appeals sections. You see that before it
3 was in 519, 524, 539, 577. People really had to dig
4 around to find the parts of the "Appeals" section that
5 applied to them, so we have taken it and moved it into
6 a new Subchapter H, proceedings before the Commission.
7 And these are going to be found in Sections 580
8 through 584 -- 585. I'm sorry.

9 And just like the facility license regs,
10 this proposed rule was published on January 31st and
11 the comment period closes on April 2nd.

12 And this subchapter covers a lot of things
13 that probably are not of interest unless you find
14 yourself in the position that you want to appeal a
15 decision. It covers the general application, how
16 motions are filed and what kind of motions get filed;
17 the appeals of disapprovals of gaming ordinances,
18 resolutions, amendments; appeals of approvals or
19 disapprovals of management contracts or amendments;
20 the appeals before a presiding official for
21 violations, proposed civil fine assessments, temporary
22 closure, and the Chair's decision to void or modify a
23 management contract, the Chair's proposal to remove a
24 certificate of self-regulation, notices of late fees
25 and late fee assessments.

1 And then Part 585 covers the same things as
2 Part 584, except that those would be -- those would
3 apply to appeals that are done only on motions, so
4 they're all on paper, not before a presiding official.

5 Under here, some of the broad strokes. The
6 Commission may grant an extension of time for appeals.
7 That's discretionary and based on showing of good
8 cause. The Chair has the burden -- under burden of
9 proof, the Chair has the burden of proving that his or
10 her action was correct, and this burden was never
11 really spelled out before. Now this regulation spells
12 it out as a preponderance of the evidence, so the
13 Chair needs to prove that more likely than not his or
14 her decision is correct.

15 And another thing that we received comments
16 on was whether the Chair's decision would stand
17 throughout the appeal, whether you had to act as --
18 under the Chair's decision, and the Commission
19 determined that, yes, in order for good law
20 enforcement policy, the Chair's decision would be
21 effective throughout the appeal, and only if
22 overturned would we then not follow the Chair's
23 decision.

24 There was also a question about motions for
25 reconsideration, and motions for reconsideration will

1 be heard but only in extraordinary circumstances.

2 Part 581 covers the other motions. 581
3 typically, though, refers back to the other sections
4 that are governing that particular appeal. So you'll
5 see in 581 where it will refer you to Part 584 as to
6 intervening parties for presiding officials.

7 And there was also a concern about
8 opposition briefs having to be filed within ten days,
9 and some folks felt that that was too short of a time
10 period, so the Commission has gone ahead and defined
11 those ten days as business days. So for any motion
12 that's -- any brief for a motion that's required
13 within less than 11 days, those 11 days are not to
14 include Saturdays, Sundays and Federal holidays.

15 Under Part 582, appeals of disapprovals of
16 gaming ordinances, resolution and amendments, only
17 tribes may appeal these, but anyone may file a request
18 for a limited participation within ten days of the
19 notice of appeal if they state an interest and if the
20 Commission approves the request. And the Commission
21 will also provide a copy of the record, I believe it's
22 within ten days of the notice of...

23 MR. HOENIG: I believe so, yes.

24 MS. WARD: So once the tribe sends in a
25 notice of appeal, the Commission's putting together

1 the record and will send it out within ten days or as
2 soon as practical.

3 And the decision will be issued...

4 MR. HOENIG: I believe it's 30 or 60 days.

5 MS. WARD: 60 days after the conclusion of
6 briefing?

7 MR. HOENIG: Yes, exactly.

8 MS. WARD: And, again, under 582, you'll
9 see that comments suggested more clarity on limited
10 participation, and the proposed rule provides for more
11 process, including requiring the motion for limited
12 participation within ten days of filing the appeal.
13 And all notices of appeal will be posted promptly to
14 our website to give parties notice if they want to try
15 to intervene.

16 And a comment also asks for clarity on
17 whether the Commission can refuse to grant an appeal,
18 and the preamble clarifies that the Commission can't
19 refuse to hear an appeal. All appeals get heard by
20 the full Commission.

21 Under Part 583, and this deals with
22 appeals, appeals from approvals or disapprovals of
23 management contracts or amendments to management
24 contracts. Only parties to those management contracts
25 may appeal the approval, disapproval of management

1 contracts or their amendments.

2 Part 583 will cover how to appeal. It
3 covers the motions, when the copy of the record will
4 be provided, and the timing of the decision.

5 There were very few comments on this
6 section, and they suggested clarity while there may be
7 an appeal of an approval of a management contract.
8 Folks didn't understand, if you get your management
9 contract approved, isn't that what you wanted? The
10 Commission addressed that comment in the preamble, and
11 I think they referred to a situation where a tribe had
12 a management contract approved but another branch of
13 the tribe disagreed and didn't want the management
14 contract to go through. So the Commission does hear
15 both approvals and disapprovals.

16 One comment also asked for clarity on which
17 motions will be allowed under this Part, and the
18 proposed rule clarifies those motions that are
19 allowed.

20 Part 584 is appeals before a presiding
21 official. It also covers who may appeal, how to
22 appeal, the motions, motions to intervene, the copy of
23 the record. It covers confidential information as
24 well, but moving back to who may appeal, it may only
25 be brought by those that are the subject of the

1 action, and others may intervene if the presiding
2 official finds that certain conditions are met, and
3 those conditions are in 584.5.

4 And as for confidential information, tribes
5 were rightfully very concerned about that. The way
6 that works out is the information is submitted to the
7 presiding official. The presiding official reviews
8 it, and if the presiding official finds that it should
9 not be confidential, that it should be submitted to
10 the hearing, then he sends something back to the tribe
11 saying -- the party who presented it saying, this
12 isn't confidential, and the party may then withdraw it
13 from consideration.

14 Some comments requested clarification on
15 the role of the presiding official. Comments also
16 were on whether the party has been denied limited
17 intervention, should they be allowed to submit amicus
18 briefs, and the proposed rule eliminates the limited
19 interventions that still allows for filing of amicus
20 briefs at the discretion of the presiding official.

21 There was a comment that on closure orders
22 decisions should be made within 30 days on whether or
23 not to make permanent. The proposed rule provides for
24 a hearing within 30 days unless it's waived by the
25 appellant, and the decision by the Commission is

1 within 30 days of receiving recommended decision.

2 And there was a comment that the rules
3 should explain how confidential information should be
4 handled when there's more than one party. And we just
5 covered the confidential information and how that's
6 going to be covered.

7 Part 585, appeals to the Commission on
8 written submissions. This is almost exactly the same
9 as the "Presiding official" section, except that it's
10 all written before the Commission. And this is for
11 parties who don't want the extra time involved with
12 getting a presiding official. They want to send it
13 all in to the Commission and have that taken care of
14 as soon as possible. And this will cut down up to 30
15 days off the time for a decision?

16 MR. LITTLE: Uh-huh.

17 MS. WARD: And there were comments that
18 requested clarification on what happens if one party
19 requests a hearing before a presiding official and one
20 party requests to proceed under Part 585 with the
21 written submissions. The proposed rule addresses that
22 issue. Do you remember how?

23 MR. HOENIG: It goes -- if one party
24 requests a hearing and one party just wants to do it
25 on the papers, it goes to a hearing because there's

1 basically more process involved there, so to err on
2 the side of giving the maximum amount of process to
3 everybody, it goes to a presiding official.

4 MS. WARD: Then there was a comment that on
5 closure orders, the decision should be made within 30
6 days on whether or not to make it permanent. The
7 proposed rule provides for a decision within 60 days.

8 And, finally, there's a comment that the
9 draft is too restrictive on who may appeal and the
10 tribe should be able to designate who may appeal. The
11 proposed rule provides for the tribe to designate a
12 representative.

13 So, that's it for appeals. It's pretty dry
14 stuff unless you happen to have an appeal before the
15 Commission.

16 MR. HOENIG: Or you work there.

17 MS. WARD: Even then.

18 MR. HOENIG: Yes.

19 MR. LITTLE: You guys, as the Associate
20 Commissioner, these are pretty important. I know when
21 I came on the Commission I immediately looked at our
22 appeals process, and what I found out was it was
23 pretty scattered and pretty limited.

24 And, you know, as we've gone around to the
25 tribes, there is big concern about due process, mostly

1 in regards to timelines, how long an appeal can take.
2 Sometimes they just hang out there, there's no
3 finality, there's not a process here. So it was
4 really important to me to take care that we do create
5 this regulation and we do kind of, you know, look for
6 a way to make sure there are really good, clear rules
7 of the road out there so everybody understands it.

8 So does anybody have any comment or -- like
9 I said, there are a lot of comments on our website you
10 can always review. We've talked about this for over a
11 year, so like Jen had said earlier, maybe all the
12 comments have already been asked, but we are still
13 reviewing everything and still taking everything into
14 account. The comment period for this, like Jen said,
15 closes April 2nd.

16 Is there something you guys want to add?

17 MS. WARD: No.

18 MR. LITTLE: Are there any comments?

19 You guys are making it too easy.

20 I guess we'll move along to Part 518.

21 MS. WARD: Okay.

22 MR. HOENIG: So 518 is our self-regulation
23 regulations. Right now there are not a lot of tribes
24 that are doing self-regulation. Do you remember what
25 the number is?

1 MR. LITTLE: Two.

2 MR. HOENIG: Two. So very few. So I think
3 the purpose of these regs is maybe to make it a little
4 easier to get there. So if we can just start...

5 So Section 518.5(b), this is going to list
6 examples of how a tribe may illustrate -- did I skip
7 one? Oh, boy, yeah. I skipped a bunch. All right.
8 So, yeah, let's start with the actual proposed rule.

9 So this shifts the focus from the gaming
10 operations to the Tribal Gaming Regulatory Agency
11 which is going to make the application, I believe, on
12 behalf of the tribe?

13 MS. WARD: Yes.

14 MR. HOENIG: Reduces the submission of
15 duplicative information to kind of make it a little
16 easier to get there. It makes the certification
17 accessible to all tribes while maintaining the
18 existing standards.

19 We received comments here that stated the
20 regulation should focus on the effectiveness of
21 regulatory system rather than the gaming operation, so
22 I believe those comments were taken into
23 consideration?

24 MS. WARD: Yes. In fact, we changed the --
25 the Commission changed the reg quite a bit to focus on

1 the TGRA rather than the gaming operation itself.

2 There are several things that the tribe
3 needs to submit. One is the history of the gaming
4 operation, the TGRA organizational chart, the
5 employment criteria for TGRA regulators, TGRA funding
6 description, a list of TGRA regulators, and a
7 description of the gaming operation's accounting
8 system. I think there are more on the next slide, but
9 as we go through, you notice that all of these are now
10 TGRA-specific.

11 The tribe will also need to submit a list
12 of internal controls...

13 MR. HOENIG: So I think as we go through
14 this, you'll see we're focusing more on what the TGRA
15 does and what they have to have in place rather than
16 the tribal gaming operation itself since this is about
17 regulating.

18 So, yeah, there's a list of internal
19 controls that the operation operates under, the
20 record-keeping system for investigations, current
21 tribal gaming regulations.

22 We received comments that the tribe should
23 not be required to submit copies of ordinances and
24 other documents that have already been submitted to
25 the NIGC or the DIA, so we removed this requirement,

1 knowing that, yes, we already have the tribe's gaming
2 ordinance and our Chairwoman will have approved that.

3 518.5, again more criteria that has to be
4 met, criteria that the tribe maintains an effective
5 and honest accounting of revenues; has a reputation
6 for safe, fair and honest operation; fiscally and
7 economically sound basis; and is generally free of
8 criminal or dishonest activity. Has to show that the
9 gaming is being conducted in compliance with the
10 Federal and tribal laws and regulations. So kind of
11 just looking back on what kind of history the
12 operation has. Also includes that the tribe can show
13 that it has an adequate system for the accounting and
14 its revenues. Investigation process is for licensing
15 and monitoring the gaming employees and for
16 enforcement and prosecution of violations.

17 It has examples of how a tribe may
18 illustrate that it's met the criteria, including the
19 tribal gaming regulatory body monitors compliance with
20 applicable laws and regulations, monitors the
21 effectiveness of the revenue accounting system, audits
22 Class II gaming activity and reviews accounting
23 information from the operation, just basically showing
24 that they're paying attention and watching what's
25 going on inside the operation.

1 518.7 is the process that the agency, the
2 NIGC, will conduct when it reviews these petitions.
3 Office of self-regulation will conduct a review of the
4 petition within 30 days. That office will then notify
5 the tribe if the application needs to be -- if it's
6 incomplete, we need more information, at which time
7 the tribe has another 30 days to submit that
8 additional information.

9 Within 120 days of the application
10 submission, this office of self-regulation will
11 provide a recommendation report to the Commission and
12 the tribe, at which point the tribe then has 30 days
13 to respond to that report. The Commission then issues
14 its preliminary findings, and after that, the tribe
15 can request a hearing to discuss that finding. So if
16 the tribe -- after the hearing, the Commission will
17 issue its final decision within 30 days and then -- or
18 30 days after the preliminary findings or a hearing,
19 whichever is later. And at anytime before a decision
20 is issued, the tribe can withdraw its application for
21 petition.

22 So we got some comments stating that the
23 process for certification needs clarification, so this
24 proposed rule attempts to provide greater clarity.
25 Comments that the Commission itself should consider

1 petitions. Under the proposed rule, the Commission
2 issues the preliminary findings and makes a final
3 determination.

4 And comments that the process should
5 facilitate collaboration with the NIGC to meet the
6 approval criteria. Now, this proposed rule provides
7 opportunities for NIGC to provide technical assistance
8 to the petitioning tribe throughout the entire
9 process.

10 Okay. 518.10 is the annual reporting
11 requirement. So this is after a tribe has gotten the
12 approval for self-regulation. So annual reporting,
13 there must be an independent audit, complete resumes
14 for all employees of the tribal regulatory body hired
15 and licensed by the tribe after receiving certificate
16 of self-regulation.

17 The tribe has a continuing duty to inform
18 the Commission of changes in circumstance material to
19 the approval of the Part. So if anything that was the
20 basis for the approval decision changes, there has to
21 be notification of that.

22 Comments suggested that the Commission
23 define tribal regulator. NIGC has not done so, given
24 the diversity of tribal regulatory bodies we see.
25 They're set up all different ways, and it's just kind

1 of impossible to write a regulation that encompasses
2 all of those.

3 518.12, there's references to the NIGC's --
4 I'm not sure I understand that.

5 MS. WARD: 518.12 references IGRA and its
6 limitations on NIGC's powers during the
7 self-regulation period. I think that's what that
8 means to say.

9 MR. HOENIG: Right. I understand that.

10 MS. WARD: Some comments stated that the
11 section in the current regs is unclear and overbroad.
12 Other comments suggested removing the section or
13 amending it to reiterate the statutory language of
14 IGRA. The NPRM, the proposed rule was published on
15 January 31st again, and the comments close April 2nd.

16 One thing that we glazed over but I wanted
17 to point out is the difference in the annual reporting
18 requirements under this new proposed rule. Under this
19 new proposed rule, all that's required to be submitted
20 annually is the audit, which is required by all tribes
21 anyway, and the resumes of TGRA employees, which is a
22 requirement from IGRA directly, so we couldn't cut
23 that one out.

24 And before, it was every year the tribes
25 had to submit all kinds of information.

1 MR. LITTLE: Well, it was pretty unclear
2 with the two tribes. One would submit a plethora of
3 documents, and one was limited. So -- and it just was
4 not clear. So like we had talked about, you know, out
5 of over 240 tribes that, you know, authorize gaming,
6 only two have been able to navigate the
7 self-regulation process.

8 And I remember the first time I had a
9 public appearance as a Commissioner here, one of our
10 good friends from Oklahoma, Jess Green, said this has
11 gotta be a priority, and he was right. It should be a
12 priority for the Commission. It's what Congress
13 intended. It's what IGRA established. It's something
14 that we learned during our regulatory review that the
15 regulation is broken and it doesn't work.

16 So we're really interested in hearing from
17 all of you, you know, what you're thinking. And in
18 some of the comments, you know, like Jen and Mike had
19 talked about, you know, that we heard that the current
20 process is burdensome and there's no benefit. The
21 benefit does not -- you know, it's not worth the time.
22 So, you know, submission requirement is duplicative
23 and burdensome. The reporting requirement, like Jen
24 had talked about, is a problem.

25 And then we did hear also the definition of

1 tribal regulator or definition of employee, so we're
2 working on trying to clarify that.

3 But I think most importantly about the
4 proposed regulation is that it does shift the focus to
5 the TGRA versus the operation. And I think that's
6 important to realize that. We're judging the tribes
7 on how well they can regulate this industry, not how
8 well they operate their industry but how well they
9 regulate it. And I think that's the fundamental
10 importance here. So clearly we want a well-operated
11 operation, but, you know, for self-regulation, it
12 should be the focus of the TGRA.

13 So, you know, I just want to open it up.
14 Does anybody have any comments here? I know, you
15 know -- you know, we've heard, okay, well, you know,
16 this is for Class II gaming and that there is a small
17 financial benefit to it, but I think one of the major
18 reasons that the Commission is pushing for it is, you
19 know, all of us have, immediately preceding taking
20 these Federal jobs, we worked for tribal governments,
21 so we definitely understand. And the importance of
22 self-regulation is -- you know, it just reenforces
23 your sovereignty. It's your ability to regulate, you
24 know, your gaming operations, you know, as intended.
25 So it's -- you know, I think it's one of the most

1 important regulations, and it -- you know, it's
2 something that we're really, really interested in
3 hearing from all of you.

4 Like I said, we've heard a lot of comments.
5 They're all on our website so that you can review
6 them. But I would like to open it up if anybody does
7 have any additional comments.

8 MR. KRUSE: Part 518, could you clarify for
9 me what you mean by employment criteria for TGRA
10 regulators? Are you saying that you're going to
11 establish who we should hire to be regulators in our
12 organization? Is that what that means?

13 MR. LITTLE: No. We would never -- we
14 would never tell you who you can hire. And I think
15 maybe Jen or Mike could explain it better.

16 Just to ensure -- you know, IGRA has this
17 resume requirement. Now, it's kind of unclear, and
18 does that mean every single person you have to submit
19 a resume? I think that's what we're getting at,
20 right? I'll let Jen maybe further explain that.

21 MS. WARD: Let me repeat your question to
22 make sure I understand it. You want to know if we're
23 setting out criteria on who your TGRA people should
24 be?

25 MR. KRUSE: It says, "Employment criteria

1 for TGRA regulators." I'd like you to clarify what
2 that means.

3 MS. WARD: Okay. I think that's in the
4 submission requirements of 518, if I'm correct. All
5 we want to know, what are you looking at when you hire
6 these TGRA enforcers? Are you -- what are the
7 standards for them? Do they have to have a college
8 degree? Do they -- yeah, we're looking at any
9 standards you have. We're not judging those
10 standards; we just want to know what they are.

11 MR. KRUSE: Okay. So you're limiting this
12 to not necessarily the Executive Director or the
13 Commissioners? Are you limiting this to people that
14 we hire as auditors, as enforcement, or does this --
15 is this a broad thing for our executive people? It's
16 kind of unclear the way it reads here.

17 MR. HOENIG: I believe that it's the TGRA
18 employees. It's basically we just -- to have a better
19 understanding of how the -- your regulatory authority
20 works, you know, it's your criteria that you set up
21 for how you hire your people.

22 Again, as the Commissioner and Jen said,
23 not telling you what the criteria should be by any
24 means. That's what the TGRA's going to establish
25 itself. We just want to know what that criteria is so

1 that when we get the resumes and when the Commission's
2 reviewing or the office of self-regulation is
3 reviewing the process, they have a better
4 understanding of what it is your TGRA does and how you
5 go about doing it.

6 MR. KRUSE: Okay. Thank you.

7 MR. LITTLE: Any other questions? Well,
8 we're a little ahead on the schedule here before I
9 move into Part 547.

10 Why don't we move the break up. We're
11 supposed to break at 10:30. It's 10:00 now. Let's
12 break for 15 minutes, come back at 10:15, then we'll
13 go right into 547. And we'll see how far we can
14 progress with that before lunch. So 10:15.

15 (Brief recess.)

16 MR. LITTLE: Okay. I think we're going to
17 get started again. We've had a little shuffling of
18 the chairs. I think it makes it easier for the
19 transcriptionist.

20 We're going to get started on Group 3. And
21 I think before we get started I just kind of want to
22 provide a little historical background on, you know,
23 where we are, how we've come to the discussion drafts
24 that we have before you today.

25 As you know, particularly in relation to

1 Part 543, it was a result of the Colorado River Indian
2 tribe's decision that said that the National Gaming
3 Commission does not have authority over Class III
4 MICS. So the previous Commission created a Part 543
5 and they promulgated a regulation which currently has
6 been finalized, however, has been delayed. This
7 Commission has delayed it twice now. It's now
8 scheduled to go into effect in November of this year.
9 That regulation was a result of a 2008 Tribal
10 Advisory -- mixed Tribal Advisory Committee. A lot of
11 their recommendations went into that, plus what the
12 Commission and staff had previously learned.

13 And then from the 2008 mixed advisory
14 committee, on our website you might see a 2010
15 proposed regulation. That was actually the -- I think
16 I misspoke. That was the result of the 2008 Tribal
17 Advisory Committee, mixed Tribal Advisory Committee.
18 So when it came time to -- when we did our regulatory
19 review, we quickly realized and we heard very clearly
20 from the tribes that, in particular, Part 543 needed
21 some serious review.

22 The Part 547 was a regulation that was
23 already in effect. Having been working for a tribe at
24 the time, I know the industry did play a large role in
25 crafting that regulation; however, there were some

1 areas that needed to be addressed, and I think we've
2 done so in the draft.

3 So on the Part 543, basically what we've
4 done is, in this Commission, we established basically
5 our tribal -- mixed Tribal Advisory Committee that
6 began work in October of last year which Robin was a
7 member of. I'm very grateful for her hard work and
8 dedication to that and to the Miami Tribe for
9 providing her to us, so we're really happy about that.

10 We had 15 members in the Tribal Advisory
11 Committee, representing a pretty good cross-section of
12 the industry, both for Class II, Class III; operators,
13 regulators, auditors, a really good mix of folks. And
14 they were tasked with reviewing a document provided to
15 the Commission through the Poarch Band of Creek
16 Indians from Alabama, a document that was put together
17 by the -- I guess you could call it the Tribal Gaming
18 Working Group. And they did a really thorough job of
19 going through Part 543 and organizing it and finding
20 some areas so that it would flow well. There was some
21 major gaps in the current regulation that we have on
22 hold, so the advisory committee reviewed that and then
23 made recommendations to the current Commission.

24 We took those recommendations and those of
25 the 2010 -- or the 2008 Tribal Advisory Committee from

1 the -- or the 2010 proposed rule, the 2008 current
2 rule. I know it's kind of confusing, but we took all
3 of these things into effect when we put together the
4 current 543 draft.

5 One of the key points of the Tribal Gaming
6 Working Group's document that was reviewed by our TAC
7 was a lot of the guidance. So a lot of the guidance
8 you may see in the regulation as we go through it.

9 Like I said earlier in the discussions this
10 morning, this is a starting point. These are
11 discussion drafts. This is not set in stone. This is
12 the Commission's attempt to basically begin
13 discussions. You know, while we are very grateful for
14 all the hard work that the Tribal Advisory Committee
15 and all the -- and the industry through -- and the
16 tribes through the Tribal Gaming Working Group, we're
17 very grateful for all the work they did, our
18 responsibility is actually to consult with the tribes,
19 and that's what we're here to do.

20 We took into account the recommendations of
21 the Tribal Advisory Committee and we put together this
22 discussion draft. But ultimately our responsibility
23 is going to be to discuss this with the tribes. So as
24 it's been practiced here with the Commission, we've
25 put forth a discussion draft, like I said, a point to

1 start to get the discussions going, not -- it doesn't
2 necessarily mean, this is what we've -- what we've
3 agreed upon. It just means it's something that we can
4 start talking about.

5 I just want to, you know, once again
6 recognize our staff. They have worked feverishly over
7 the last month putting these documents together.
8 We've had a lot of conference calls, a lot of late
9 nights, a lot of weekend work to get this done.

10 There had been some reports of the Tribal
11 Advisory Committee, we kind of sped up the process.
12 And everybody can have their opinions. From my
13 perspective, not having attended all of the events,
14 the Tribal Advisory Committee was moving very quickly
15 and doing a very good job. We realized that we were
16 going to finish the review a lot earlier, and we
17 wanted to make sure that we had the opportunity to
18 craft discussion drafts to get them out there. I'm
19 not quite sure if we would have been able to do that
20 if we had continued along the time frame that was
21 originally -- originally scheduled for the TAC.

22 So we did request that the TAC move forward
23 and submit their documents early. They did. We're
24 very grateful for that. And because of that, we were
25 able to get a discussion draft out for all of you to

1 review today. So we're grateful for their hard work.
2 We're grateful for all the hard work from our staff
3 and from the Tribal Gaming Working Group who spent a
4 lot of time.

5 I know tribes have committed a lot of
6 resources to that process, and I hope as folks review
7 that, they see clearly that we have taken a lot of the
8 recommendations and we have utilized that document as
9 much as we could in areas that, you know, we feel will
10 work for the industry.

11 So I'm going to turn this back over to
12 Mike, and he's going to kind of go through Part 547
13 and give you a little update of some of the changes in
14 the discussion draft, and then we'll, like we did
15 previously, open it up for questions.

16 MR. HOENIG: Thank you. So just to kind of
17 talk about 547 a little bit, the draft that was put
18 out as a discussion draft is based on the -- what
19 you'll see from redlines in that discussion draft that
20 went out is from the existing Part 547. The changes,
21 as Dan said, took into consideration lots of
22 recommendations, including the TAC's. So why don't we
23 just go ahead and get started.

24 The first thing you're going to notice
25 about this discussion draft is that the first five

1 sections of the Part 547 have been rearranged. And we
2 moved the order around a little bit just to give them
3 a little bit more clarity and flow from the existing
4 Part 547. It seemed like some of the general things
5 that should be upfront were mixed in a little further
6 down the road of the regulation after the specific
7 thing, so we just kind of moved things to put them in
8 what we thought was a more logical order.

9 So, for example, "Definitions" section was
10 moved up from 547.3 to 547.2 since this is the
11 definitions and kind of the -- it is the terms that
12 are going to be used throughout the rest of the
13 document. Figured it made sense for that to be right
14 upfront.

15 The section on who's responsible for
16 implementing these standards was moved, then, from
17 547.2 to 547.3. The rules of general application for
18 the Part, it was renamed slightly and it was moved
19 from 547.5 down to 547.4. So those are the more
20 general things. We wanted to put those upfront.

21 And then the section on how a tribal
22 government will comply with this Part, we moved that
23 back. So we took that, since that's starting to get
24 into more of the specifics, we took that from 543.4
25 and put it into 543.5.

1 So let's look at the "Definition" section.
2 There's not a lot of changes here. We added a few
3 definitions that are specified in this slide. For
4 example, the Tribal Advisory Committee made a
5 recommendation to add a definition for patrons, so we
6 did that.

7 We changed slightly the definition of
8 EPROM, and for the non-technical people in here, like
9 me, that means erasable, programmable, read only
10 memory. And we changed that to specify that it has to
11 be a non-volatile storage device rather than a storage
12 area, which when I read that, I thought they were
13 talking about a closet.

14 We also added a definition for the
15 proprietary Class II system component, and that's to
16 distinguish the proprietary manufacturer-specific
17 systems from the non-proprietary.

18 Let's see. So in 547.3 -- and this is who
19 is responsible for implementing these standards. This
20 section explains that the standards are minimums as
21 recommended by the TAC. We inserted some language
22 recognizing that the TGRA's are also responsible for
23 regulating Class II gaming and that these TGRA's may
24 implement additional or stricter standards that don't
25 conflict with the rest of Part 547.

1 We kept language in that says a section
2 should not be interpreted to restrict technology, and
3 if a standard is not applicable to a particular -- to
4 a particular machine or a particular area, it doesn't
5 apply. Standards are only applicable to what they
6 apply to.

7 The section states that it should not be
8 construed to grant or extend State jurisdiction, and
9 the minimum standards and applicable standards
10 subsections that you'll find here now, those were
11 migrated from the rules of general application section
12 because we just felt they fit in a little bit better
13 here.

14 So 547.4, this is the "What are the rules
15 of general application for this Part?" Again, this
16 part was moved up from 547.4. This sets out the
17 general rules that have to apply to all the games.

18 You'll notice here that we removed the
19 minimum odds from the fairness subsection, requiring
20 instead that the test lab must calculate and/or verify
21 the mathematical expectations and report to the TGRA.
22 And then at the request of the TGRA, the manufacturer
23 must also submit the mathematical expectations to the
24 TGRA.

25 When we get a little further along in the

1 slide show, you'll also see that we added a new
2 disclaimer to Section 547.16(c). And since there
3 aren't any minimum odds anymore, we included language
4 basically requiring that the player interface must
5 notify a patron if the odds of winning a game exceed
6 the 100 million to 1, which, I believe, was the
7 minimum odds in the -- or is the minimum odds in the
8 existing Part 547.

9 This also specifies that all gaming and
10 gaming equipment software has to be approved by the
11 TGRA and all equipment and software must function
12 according to the manufacturer's design and operating
13 expectations.

14 Part 547.5, this is "How does a tribal
15 government or a TGRA comply with this Part?" This is
16 where we get into the grandfathering standards. And
17 really they haven't been changed at all for purposes
18 of this discussion draft.

19 Only games that were being utilized before
20 November 10th, 2008, may qualify for the
21 grandfathering provisions. Any grandfathering game
22 must have been submitted for testing within 120 days
23 of that November 10th, 2008, date. The grandfathered
24 games then have to be brought into compliance with the
25 general standards or removed from the gaming floor by

1 November 10th, 2013.

2 And that was -- in the existing 547, it
3 gives a five-year deadline from November 10th, 2008,
4 so we didn't change that for purposes of this
5 discussion draft.

6 The games may only use remote communication
7 if permitted by the TGRA, and the game must have the
8 ability to enable or disable remote access. The
9 default state of the remote access may be set to --
10 must be set to disable. Excuse me.

11 So we would be very interested to hear from
12 everyone what possible effect that may have on
13 machines that are grandfathered or are on the floor
14 currently.

15 I think that's it for this slide. Okay.

16 547.7, this is "What are the minimum
17 technical hardware standards applicable to the Class
18 II gaming systems?"

19 We skipped over 547.6 and went on to 547.7
20 because there really aren't any significant changes to
21 the current regulations, so everything you see there
22 is pretty much the same.

23 547.7 makes a few changes. We removed any
24 references to the Federal Communications Commission.
25 We took those out, and instead we just inserted a

1 provision that requires the test lab to report that
2 the games must be in compliance with all Federal laws
3 or regulations.

4 We also removed a reference to Underwriters
5 Laboratories and we inserted a requirement into 547.7
6 requiring that the player interface must display the
7 serial number and date of manufacture of the game.

8 547.8, "What are the minimum technical
9 software standards applicable to Class II gaming
10 systems?" Here we adopted the Tribal Advisory
11 Committee suggestion that there be no requirement for
12 entertaining display recall. That's taken out, so
13 there's no last game recall for entertaining displays.

14 We also adopted the recommendation and we
15 removed any provision that any change in the rules
16 constitutes a new game. What we did, however, keep
17 was the requirement that any change in the rules has
18 to be disclosed to the player.

19 547.12 -- I'm going to skip 547.9 through
20 547.11 for the same reason that I did earlier.
21 Basically, there's no significant changes to the
22 current regulation, so, you know -- you'll see in here
23 that we made some small changes. We changed "shalls"
24 to "must" and things like that, but there aren't any
25 significant changes.

1 So in Section 547.12, we adopted the Tribal
2 Advisory Committee's regulation to delete the
3 requirement that the TGRA approve all downloads. The
4 recommendation that, rather than requiring the TGRA to
5 log each download, that the Class II gaming system
6 itself must be capable of providing all the required
7 information that would have gone into that log.

8 And, finally, to change -- we changed
9 Subsection B to require that downloads on a Class II
10 system must be capable of being verified by the Class
11 II gaming system.

12 Moving on to 547 -- I'm sorry. We're
13 skipping 547.13 again because there are no significant
14 changes there.

15 In 547.14, this draft discussion
16 incorporates the TAC recommendation that certain RNG
17 tests be mandatory. And then the others are going to
18 be, where applicable, the Tribal Gaming Regulatory
19 Authority may require them or they may be done.

20 We also incorporated the recommendation to
21 delete the specific unbiased algorithm requirement,
22 and instead we require simply that any algorithm --
23 that an algorithm is used and that any biases in that
24 algorithm must be reported to the TGRA. I believe
25 before we had a very specific number in there, and

1 even after that number was released in the regulation,
2 a bulletin had to be issued to kind of clarify what
3 that number meant. So just for purposes here, we just
4 took it out. We just require that an algorithm be
5 used.

6 So, let's see, we're just going to skip 15
7 and go on to 16. This is where I mentioned earlier
8 we're requiring patrons to be notified -- this draft
9 discussion, I should say, has a requirement in here
10 that patrons be notified if game odds are greater than
11 1 in 100 million. Again, this doesn't require minimum
12 odds; it merely requires that if the odds are greater
13 than this set number, that the patron be notified.

14 In 547.17, which is "How does a TGRA apply
15 to implement an alternative standard to those required
16 by this Part," this used to be variances, and as
17 you'll see when we get to 543, we change variance to
18 alternative standard, and that's because in 543 we
19 were using variance in a couple of different ways and
20 it was getting a little confusing.

21 So what we're really talking about here is
22 an alternate standard, so that's what we changed the
23 name of it to, just for clarification.

24 Under this draft discussion, the TGRA will
25 have 30 days to submit an approved alternative

1 standard. The Chair then has 60 days to approve or
2 object.

3 In talking to some of our field staff that
4 actually does the -- what used to be variance reviews
5 and will be alternative standard reviews, some days 60
6 days is more than enough and some days it's not --
7 sometimes it's not. It just really depends on what
8 the alternative standard is. So if additional time is
9 necessary, the Chair may extend that 60-day deadline
10 by another 60 days.

11 If there is an objection, we're going to
12 move the "Appeals" section out of the 547. And,
13 again, you'll see this reflected also in 543. We're
14 going to take it out of this 547 and 543 and we're
15 going to put it with the rest of our appeals so that
16 we have one uniform system for all appeals of a Chair
17 and Commission decision. So that's where you'll see
18 all of the appeals process taken out. It's not gone;
19 it's just going to be migrated over into Subpart H.

20 And I believe that is it for 547, so...
21 Jen, did you have anything you wanted to add?

22 MS. WARD: No.

23 MR. LITTLE: Chairman, go ahead.

24 CHAIRMAN ORTIZ: I just had a quick
25 question to help me understand this more in the legal

1 sense. When they changed from the "shall" to the
2 "must," I do a lot of contracts, and "shall" is really
3 kind of definitive, but, to me, "must" means that at a
4 minimum it must have this but you can have other
5 things on there. I was just trying to figure out, is
6 it --

7 MR. LITTLE: I'm not laughing at you, sir.
8 We just had a very extensive conversation about that.
9 And it just so happens we did bring our Commission
10 expert with us today.

11 CHAIRMAN ORTIZ: It just seems like
12 "shall," to me, is pretty definitive authority and
13 "must" is kind of at a minimum you must, but you can
14 have more.

15 MS. WARD: You're right. There are people
16 on both sides of the shall/must discussion. In legal
17 circles now in law school -- and I graduated about six
18 years ago from law school, and as I was coming up, I
19 was always taught that "shall" is sort of an archaic
20 legal term because it can mean different things. It
21 can mean they will do this in the future or they must
22 do this, and there's a couple of other different ways
23 "shall" can be used. And we thought, you know, just
24 for clarification, let's just say "must" because
25 that's what we really mean here.

1 CHAIRMAN ORTIZ: Okay.

2 MS. WARD: It is open for comment, and
3 there are -- we use "must" in 547 and 543. That's
4 because Mike and I were primarily the folks that wrote
5 them, but you'll see that "shall" is used in other
6 regulations, so it's really up for discussion as well.

7 CHAIRMAN ORTIZ: Okay.

8 MR. LITTLE: Chairman, I think a lot of it
9 was -- a lot of times we've got non-attorneys that are
10 reading the regulations, a lot of the TGRA's, and, you
11 know, to me, I'm not an attorney by trait, although I,
12 you know, have been confused with one in the past,
13 it's much clearer. Must is must. And that was the
14 reasoning behind it. I can definitely understand your
15 point. We did have a number of conversations about
16 that, so I appreciate your raising that.

17 Yes, sir?

18 MR. LANKFORD: I appreciate the changes
19 that you've made that the TAC have suggested, but I
20 have a question of why did you not make a change on
21 the recommendation to remove the time limit on the
22 grandfather clause?

23 MR. LITTLE: Like I said earlier, this is a
24 discussion draft. This is not set in stone yet. From
25 some of our -- from the discussions that we've had,

1 some of the comments that we've gotten in the past, a
2 lot of the -- most of the manufacturers have already
3 come into compliance, fully compliant. Okay?

4 There was a concern that it's kind of
5 unprecedented that the Government would permanently
6 extend a grandfather, a permanent grandfathering. I
7 don't know if that's ever happened in the past.

8 So it does not mean -- this is not set in
9 stone. It's, I think -- one of the reasons why it was
10 not -- it was left in there was because we want to
11 hear comments. We want to know, how many tribes does
12 this affect, what would be the challenge to become
13 fully compliant that some of the manufacturers would
14 have?

15 And, you know, keeping in mind that we know
16 that any of the costs are going to be passed along to
17 the tribe, so there will be a cost to the tribe. We
18 want to be cognizant of that fact. So it's a
19 discussion draft that we're hoping -- I'm pretty
20 confident we're going to get some good comments on but
21 does not necessarily mean that this is the direction
22 that we've already agreed upon.

23 I hope that answers your question.

24 MR. LANKFORD: Well, pretty much. I would
25 just hope that as you continue to work on this draft

1 that you consider the possibility that time, time
2 itself -- you don't have to set a drop dead date.
3 Time itself will take care of these machines. The
4 player demand will take care of these machines. Let's
5 don't -- let's don't make a rule that ends up costing
6 a tribe money, because it's going to come back no
7 matter whether it's loss of revenue because of an
8 empty space on the floor or because the manufacturer
9 does an upgrade and they pass the cost back. You
10 know, the cost is going to come back. And time, time
11 itself will take care of this problem for us.

12 And so -- the Miami Tribe's opinion is that
13 this rule is -- this drop dead date is not needed
14 because time will take care of it for us without
15 putting a strict rule in there, today's the day.
16 Thank you.

17 MR. LITTLE: Very good points, and I
18 appreciate you making them.

19 One of the -- -- and I will get to you, I
20 promise.

21 One of the other issues that came up in the
22 TAC and I'd be really interested in hear from you
23 about is that there was a deadline where the games had
24 to be in operation. I think that was 120 days of the
25 2000 -- November 2008 date. What is the actual -- how

1 many systems or games does that actually affect? We'd
2 like to know that if there's a large group of, you
3 know, games that, you know, tribes have been unable to
4 utilize. So it would be helpful to hear about that.
5 And then what are the, you know, ramifications. If
6 the grandfathering date is changed, would also that
7 compliance date need to be changed?

8 Do you want to add, Robin?

9 MS. LASH: On the TAC, I specifically spoke
10 to this issue because the Miami Tribe owns Rocket
11 Gaming Systems. That's our tribally-owned gaming
12 manufacturing company, and with the grandfathered
13 language as written that games in use have to be
14 submitted, Rocket owns games that were not in use
15 during that time, and that language restricted those
16 machines from being included in this grandfathered
17 provision.

18 So the TAC changed the language to games
19 that are in use or manufactured by that date, which
20 would then allow these older games to be tested if
21 they were going to be brought back on the floor, and I
22 see that suggestion was not included in 547.

23 As far as what the impact would be, I think
24 our manufacturer said we have some 6,000 machines that
25 are older that are not in use, and the value of each

1 machine is between 6 and \$8,000. So if Rocket is
2 restricted from bringing those games back, that's a
3 problem.

4 And I know that there is a request for one
5 of the large tribes in Oklahoma to bring some of those
6 older games back onto their floor, and that Gaming
7 Commission hasn't approved it. They're waiting to see
8 what the final decision is on this grandfather
9 provision.

10 So, yes, there is a request and a need for
11 these games, and I think that this provision unfairly
12 limits that opportunity for tribes.

13 MR. LITTLE: I think as we talk about this,
14 we -- and, you know, this is a previous Commission.
15 We can't really -- I don't know what their logic or
16 thinking was why they set that five-year deadline or
17 what the date was.

18 Chief, I think it might have been right
19 along the lines of what you were saying, that maybe
20 they thought the market would eventually work it
21 through the system, you know, not probably taking into
22 account the economy over the last few years and, you
23 know, how -- you know, what kind of market demands
24 that you all had to weather through.

25 So I do appreciate your comments, and

1 they're -- you know, we will take those into account,
2 so thank you very much.

3 Yes, sir?

4 MR. KRUSE: I'm glad the people from Miami
5 brought that up. I agree with them 100 percent. I
6 think if you question anybody in Class II gaming, they
7 will -- this has been a contentious thing from day one
8 when your previous administration brought it up.

9 To me, the term grandfathered and expired
10 are contradictory. I can't think -- and I've shared
11 this with other people -- of anything that's
12 grandfathered in that expires. If it's grandfathered
13 in, it's infinite, at least in my mind and in the
14 minds of a lot of people that I've talked to about
15 this as soon as it came up. And in my opinion, again,
16 I think this is one area that the Commission really
17 needs to take a look at if your goals are to work with
18 the tribes, which I'm sure they are, and change it.

19 MR. LITTLE: I appreciate that. Thank you.

20 MR. HOENIG: I know that this is a lot to
21 review and it just was put on the website recently,
22 but as you are reviewing it, I think there are some
23 other questions that I think Commissioners could
24 benefit from some comments on. And, you know, I think
25 we've gotten to them generally.

1 Just a little more specifically, does the
2 grandfathering clause specifically affect your
3 operation? We've heard about that.

4 And I raised this during the Power Point a
5 little bit, but the remote enable, disable
6 requirement, what affect will that have, especially
7 with machines that are on the floor that are
8 grandfathered now? So we would really appreciate to
9 hear comments on that.

10 And I think that's all I have.

11 MR. LITTLE: And like I said earlier, if
12 you don't have comments on them right now, you can
13 always submit them at a later time.

14 Were there any other comments on the reg
15 that you want to talk about? There's a lot in here.
16 We really tried to go through the regulation to make
17 sure it was consistent with 543, the definitions.

18 During the TAC, they were very meticulous
19 of ensuring that what is in 543 should be in 543, the
20 operational stuff; and what should be in 547 is in
21 547, because there was some crossover there. So we've
22 pretty much taken all of those recommendations.

23 You know, the requirement here that the
24 manufacturer must submit mathematical expectations to
25 the TGRA's, I know that there's been some difference

1 in opinions on that whether or not -- and I guess
2 they're accustomed to a par sheet with a Class III
3 machine. We are assured by our mathematical experts
4 that these can be provided. It would not necessarily
5 be on a player interface or a machine; they would be
6 on the overall system, the overall game, the group of
7 games played, that the mathematical expectations could
8 be provided by the manufacturer. But we'd like to
9 know what you all think on that.

10 Like Mike had said about the default
11 settings and the remote communication, disabling that
12 or leaving that to the discretion of the TGRA whether
13 they want that open or closed.

14 We did remove the specific UL reference.
15 And we heard from at least one of the manufacturers
16 that that was one of the reasons why they couldn't
17 bring their machines into compliance was because of
18 that particular reference, so that was one of the
19 recommendations made by the Tribal Gaming Working
20 Group and the TAC that, you know, we adopted.

21 The entertaining display, there was a lot
22 of controversy. This Commission is very clear. We
23 understand the type of gaming this is. This is
24 electronic bingo, and the game is played on the bingo
25 card, so we removed that at the recommendation of the

1 TAC.

2 And then, you know, like Mike had talked
3 about, we'll talk a little bit more about the
4 change -- clarifying the term "variance" and creating
5 the alternative standard. I think that helps
6 everybody. Variance is a term that, you know, is used
7 in the gaming world or, you know, the accounting
8 world, and it did have a different use here, and that
9 caused a little confusion, so... Are there any other
10 questions or...

11 The TAC requests that we remove the minimum
12 probabilities, which we did, but we did ask that a
13 disclaimer be posted there for anything above 1 in 100
14 million. That's industry standard that we've seen out
15 there and thought it's something that was reasonable,
16 but we'd definitely like to hear your thoughts on
17 that. So if you could -- you know, if you want to
18 think about that at a later date and submit something.

19 MS. WARD: I have a question about that.

20 MR. LITTLE: You're not allowed to have
21 questions.

22 MS. WARD: As one who wasn't so familiar
23 with the 547 draft as it was being put together, when
24 it says odds of 1 in 100 million of winning the game,
25 does that include intermediate prizes so if maybe to

1 win the grand prize it's 1 in 105 million but you can
2 win a small intermediate prize of your money back and
3 the odds of that are 1 in 100?

4 MR. LITTLE: I think it could be the
5 jackpot, the grand prize or anything in between.

6 MR. HOENIG: The top prize.

7 MR. LITTLE: The top prize?

8 MR. HOENIG: It's the top prize. We
9 clarified that.

10 MR. KRUSE: This would almost have to be an
11 area of progressive to have something with the odds
12 that high. I can't think of anything in-house that
13 would be even close to that, 1 in 100 million for the
14 grand prize?

15 MR. LITTLE: Right. I think what we heard
16 was that the limitations that were in there were just
17 arbitrary and shouldn't have been in there, so I
18 can't -- I don't know what particular prize they are
19 offering, but in the event they wanted to do
20 something, that is -- we would allow that as long as
21 there was a disclosure there.

22 Robin?

23 MS. LASH: Aside from the grandfather
24 clause, I can see the NIGC has incorporated most of
25 the suggestions from the Tribal Gaming Working Group

1 and the TAC, and I think that's absolutely fantastic,
2 and we greatly appreciate that.

3 I just wanted to ask, again, on this
4 proposed draft, what document was this redlined from?
5 I think you said the original 547 or existing 547?

6 MR. HOENIG: That's correct.

7 MR. LITTLE: Existing, yes.

8 MS. LASH: Okay, existing, because in this
9 draft, I can see some problems in it, and it's a
10 little difficult to interpret because some things that
11 were changed are not redlined. Like, for example, on
12 the first page of definitions, the word "Agent" is a
13 change, a proposed change that was accepted instead of
14 employee, and agent is a new definition, but it's not
15 redlined to show that it's a new definition.

16 And I kind of see that throughout the
17 document, like Chair instead of Chairman, it was just
18 Chairman, but that's not redlined.

19 MR. LITTLE: Robin, this is like an inside
20 joke with us, right? In the TAC, we had this issue
21 with redlines.

22 MS. LASH: I know it can be quite
23 difficult, but, you know, like, on Page 6, there is so
24 much that's redlined there, but these definitions for
25 the most part are the same definitions in 547 and -- I

1 was looking at the Tribal Gaming Working Group
2 document, the TAC document, the existing document and
3 yours kind of going through all of them to try to
4 figure out what we were redlining or what were
5 changes. So I think you guys might want to take a
6 look again at this draft, and maybe that will be a big
7 help to the tribes.

8 MR. LITTLE: Well, like I said earlier
9 today, one of our priorities is our agency operations.
10 And, you know, in all honesty, we are struggling with
11 some outdated software that we're using, particularly
12 Office. As simple as that is, it is Microsoft Office,
13 so we're in the process of updating all of our
14 computers and our software, and this may have been a
15 software issue. So we'll work on it and we'll try to
16 get some better drafts.

17 Like I said, this is just a discussion
18 draft, so -- but I appreciate your raising that point,
19 Robin.

20 Any other questions or comments? A lot of
21 information here, so I want to make sure if there's
22 anything that's not clear, you know, that we talk
23 about this. We've got our -- you know, a good team
24 assembled here that can hopefully answer most of your
25 questions. Ideally -- our in-house expert is Nimish

1 Purohit who a lot of you might know does our machine
2 training. We requested he be here; however, one of
3 the tribes down in Texas had been asking for a very,
4 very long time and they scheduled us a number of
5 months ago to have him down there and provide some
6 technical assistance, and we did not want to change
7 that date because, you know, that's one of our --
8 that's one of our primary missions is to provide that
9 technical assistance.

10 So if there are some questions that we have
11 not been as clear as you would like, please submit
12 them to us, and we'll make sure that Nimish receives
13 them and we thoroughly review them and, you know, get
14 good answers for that. You'll have ample
15 opportunities to, you know, come -- you know, visit
16 these consultations. We're going to be meeting in San
17 Diego immediately following the NIGA trade show on
18 April 5th. We're doing a whole other day of
19 consultation. On that day you'll be -- you'll have
20 the full Commission there instead of just me, so that
21 will be a treat there.

22 And then, like I said, once we -- the
23 deadline for submitting comments for the discussion
24 draft is April 16th. Once that date passes, we'll
25 review all the comments submitted and then we'll --

1 we'll, you know, look at areas and possibly make some
2 changes before we move to any kind of formal
3 rule-making process. So there will be a lot of
4 opportunity for you to participate in the process.
5 Like I said, this is a discussion draft, starting
6 point to start hearing some comments and start moving
7 forward in line with our -- what we've done previously
8 and just to fill in this Commission and what we've
9 heard from tribes that you want us to come talk to you
10 first before we issue formal rules for those proposed
11 rules, so does anyone have anything else?

12 Well, we have one hour until the lunch
13 break, so I say we start moving right into 543. And
14 with that, I'm going to turn it over to Jen.

15 MS. WARD: All right. Dan, if it's all
16 right with you, since we've got so much time, I was
17 thinking that maybe what we could do is pull out the
18 543 discussion draft and have folks follow along the
19 Power Point with the draft alongside them and raise as
20 they come up any questions because there are so many
21 details.

22 MR. LITTLE: I think that's a fantastic
23 idea.

24 MS. LASH: Before we get started, I do
25 think that's a great idea to go through this together

1 because, again, it's not redlined. You know, there
2 are huge sections of guidance document language in
3 here that's not redlined to show that that's a change,
4 so it's really hard for the tribes to read and
5 interpret this draft.

6 MR. LITTLE: And like I said, it was
7 impossible to provide a redline for this because we
8 took the existing redline hold, we took the 2010
9 proposed, the Tribal Gaming Working Group document and
10 the recommendations of the TAC all into account, so it
11 was really difficult to do.

12 And, actually, I'm going to ask Rest West,
13 one of our auditors, to come sit up here so he can
14 enjoy all the festivities. And Rest is one of our
15 senior auditors. He's one of our top experts on this
16 regulation and was very helpful in the Tribal Advisory
17 Committee process and as we've -- as we drafted the
18 discussion draft, so thanks, Rest. So I'll turn it
19 back over to Jennifer.

20 MS. WARD: Okay. So as Dan was saying,
21 there just was not a way to put this into a redline,
22 so I apologize, but the only way we could do it was to
23 put out however many pages this is, 61 pages, of new
24 text. So this Part, 543, addresses only Class II
25 games and associated functions. It's not meant to be

1 a classification document at all.

2 This discussion draft again is a new
3 document, and we drew ideas and language from several
4 sources, including the current MICS, both the 543
5 that's out there and also the 542 that did have some
6 Class II gaming information in it.

7 We took the TAC recommendation ideas, TGWG
8 guidance and 2010 proposed MICS ideas as well.

9 MR. LITTLE: It probably would be helpful,
10 to be clear, we talked about the 2010 proposal. That
11 was a result of the previous Tribal Advisory
12 Committee, so that also was a tribal -- a tribal
13 process that the Commission used to help craft a
14 regulation. So, you know, this is a whole group of --
15 this is the best from a lot of different sources,
16 including, you know, our staff.

17 Are you ready?

18 MS. WARD: Ready.

19 All right. So 543.1 is mostly unchanged.
20 It simply reads that "This Part establishes the
21 minimum internal control standards for the conduct of
22 Class II games on Indian lands as defined in IGRA."

23 So starting with 543.2, the definitions,
24 this "Definition" section looks very different from
25 the existing MICS, and that difference reflects the

1 goals of simplifying the MICS and making them more
2 reader friendly.

3 There are a few items in here, like kiosks
4 and player interfaces, that have been added to reflect
5 the widespread advances in technology. And several
6 other terms, such as game server, have been removed
7 because they now have everyday common meaning in the
8 industry. If you come across a term that you believe
9 may have multiple definitions or the definitions are
10 unclear, please speak up. Let us know. And
11 especially if you have any suggestions on what that
12 definition should be.

13 543.3, this is "How do tribal governments
14 comply with this Part?" It's on Page 6 of the
15 discussion draft. And we want to reiterate here that
16 these standards are only minimums. It's expected that
17 the TGRA's may implement additional standards that
18 suit the needs of their particular operations.

19 One important change here comes from the
20 TAC who recommended that the TGRA establish a
21 threshold at which variances will be investigated
22 rather than have an arbitrary amount set by the
23 Federal Government. This draft incorporates that TAC
24 suggestion, and you'll see as we go through this that
25 the final line of nearly every section of this

1 document requires the TGRA to determine a variance
2 threshold for that section.

3 Also, the gross gaming revenue threshold
4 for Tier A has been increased from 1 million to 3
5 million. This means that operations with less than 3
6 million in gross gaming revenues do not have to comply
7 with the MICS standards so long as they established
8 alternative procedures and meet the requirements
9 detailed in this section.

10 And on to 543.5.

11 543.4, small and charitable, is largely
12 unchanged. The only difference there is that it has
13 increased the threshold of small and charitable to
14 \$3 million. So as long as gross gaming revenues are
15 under 3 million, they fall under small and charitable.

16 543.5 starts on Page 9, and this section,
17 as Mike was discussing in 547, was originally called
18 variances, but the name's been changed to prevent
19 confusion with the sorts of statistical or dollar
20 variances that are referenced throughout this part.

21 Under this section, a TGRA may implement a
22 standard other than the one required by the MICS if it
23 demonstrates that the alternative standard
24 accomplishes the purpose of the standard it is
25 replacing and the Chair and Commission agree -- the

1 Chair or the Commission agree. I'm sorry. There is
2 an appeal provision for that.

3 Please note that this section is meant to
4 apply only to the controls held out to be equal to the
5 MICS. A TGRA may always establish more stringent
6 standards without approval.

7 Moving on to 543.7. 543.6 is reserved.

8 543.7 covers the minimum internal control
9 standards for Class II gaming system bingo, and it was
10 discussed that the standards for paper, i.e., manual
11 bingo, and gaming system bingo are really very
12 different. The games are run differently even though
13 they're both bingo. And so this section, creating --
14 putting the gaming systems into its own section, kind
15 of clarifies the standards for it.

16 Class II gaming system bingo contains
17 elements such as comparing manufacturers' math sheets
18 against the server information to discover statistical
19 variances and allowing the player interface to
20 constitute one verifying signature. It also sets
21 standards for vouchers and requires shipping
22 information to comply with the Johnson Act, although
23 we don't specifically reference the Johnson Act in
24 these regulations.

25 Okay. We're going through these pretty

1 quickly, so if you have any questions, please feel
2 free to speak up. I'm going to pause for a moment
3 while I find my place and to give you a chance to look
4 over 543.7.

5 Okay. And moving on to 543.8, this covers
6 manual bingo. The prize verification thresholds of
7 \$1,200 for bingo and \$600 for pull tabs are unchanged
8 from the current MICS levels. The amounts were
9 selected because they coincide with IRS reporting
10 requirements, and we just thought it was convenient --
11 it may be convenient for tribes to have one number to
12 remember rather than two, but certainly if you feel
13 that tribes should establish that threshold, those are
14 comments we'd like to hear as well.

15 One other thing that we noticed as we were
16 going through these is that these MICS do not include
17 standards for pull tab technologic aids, such as
18 dispensers that have bill accepters and entertaining
19 displays, so the question is, are these types of
20 machines for pull tabs, the technologic aids, are they
21 in wide use and do they require standards that should
22 be added to the MICS, particularly in regard to the
23 drop and count if these machines have bill accepters?

24 Rest?

25 MR. WEST: One option might be to make some

1 changes to the 543.7 for electronic bingo, but I think
2 what you're trying to say is that it's already
3 incorporated in there when pull tabs -- an electronic
4 pull tab game is offered to patrons in a Class II
5 environment that it's -- would it come under 543.7?

6 MS. WARD: Pull tabs would not be under
7 543.7. Pull tabs are under 543.9. But you're saying
8 we could just add those kind of electronic aids into
9 the game server bingo section towards the bottom?

10 MR. WEST: (Nods.)

11 MS. WARD: I don't know. Off the top of my
12 head, I think that it would be easier to keep pull
13 tabs separate even if they have the electronic aids
14 with them because there aren't going to be the same
15 game server math sheets that there are in electronic
16 bingo and I don't want to confuse that with the issue.
17 But that's just a thought.

18 MR. LITTLE: So it would be nice to -- if
19 the tribes have any comments on that, they can submit
20 those.

21 MS. WARD: Does anyone here use pull tab
22 machines with electronic aids? And there's a whole
23 lot of head shaking going on.

24 All right. Well, then we'll save that
25 question for tribes that have them, and maybe that's

1 the answer.

2 MR. WEST: Well, that's what I'm saying is
3 they may not make the comeback, you know, because I
4 used to see a lot of the pull tabs in Class II, so...

5 MS. WARD: Well, I don't want to waste
6 anyone's time with questions that don't affect them,
7 so...

8 So we just covered 543.8 and 543.9 manual
9 bingo and pull tabs at the same time. The only thing
10 to note was the threshold for the prize verification
11 amount. And, again, that's something we would
12 appreciate comments on.

13 MR. HOENIG: What about the surveillance
14 requirement for pull tabs?

15 MS. WARD: Oh, yeah. Thank you.

16 We added the surveillance requirement for
17 pull tabs that they be -- the storage area that the
18 pull tabs are kept in be under surveillance to
19 identify any persons accessing the area. That wasn't
20 there before, and as we were going through, we
21 realized that it was there for bingo, the bingo cards
22 were under surveillance, and those are subject to
23 other controls, such as accounting for the serial
24 number and making sure that the person with the
25 winning card has a serial number contained in the lot

1 for that day, but there was no such thing for pull
2 tabs, so if someone got into the pull tab
3 compartment --

4 MR. KRUSE: Did you review inventory
5 control at the same time on the pull tabs?

6 MR. HOENIG: Yes.

7 MS. WARD: Uh-huh. Pull tab inventory is
8 at 543.9(b). It's towards the top of the page on Page
9 23. And it requires the -- that controls be
10 established and procedures implemented to make sure
11 that access to pull tabs is restricted to authorized
12 agents. It's controlled by agents independent of pull
13 tabs.

14 It looks like 4 and 3 are a little bit
15 confused there. I have another draft. If you're
16 interested in clarification, I can tell you how it's
17 supposed to read.

18 It should say -- 3 is "Pull tabs exchanged
19 between agents are secured and independently
20 controlled." And then comes Number 4 after the
21 semicolon to continue with "Increases or decreases to
22 pull tab inventory are recorded, tracked and
23 reconciled."

24 MS. O'TOOLE: So surveillance is required?
25 It doesn't matter the minimum of the tier?

1 MR. HOENIG: Right.

2 MS. WARD: You know, that's a good
3 question, and I think we need to take that back and
4 note it, because I know that with bingo we require
5 Tier B and C operations to have surveillance, but I
6 don't think we require that for Tier A. Good point,
7 yeah.

8 So I think we probably want to change that
9 or think about changing that with pull tabs. I think
10 that was unintended. We'll make them consistent.

11 Okay. And then 543.10, card games.
12 Probably the most important thing to note here is that
13 it continues the standard that no administrative or
14 overhead fees may be taken from player pool funds.
15 That's an existing MICS standards.

16 There were some questions about it that I
17 don't think ever got fully fleshed out in discussion,
18 and because we didn't have the discussion fleshed out
19 for us as to why the TAC and TGWG recommended against
20 that, we just went with the current MICS standards.

21 So if you have thoughts on that, we'd like
22 to hear them.

23 And another question that I have is the
24 electronic equipment for card games, such as maybe
25 virtual electronic tables or the digi deal sort of

1 systems, those kinds of things. They don't appear to
2 be covered in the card games section, so the question
3 is, do these rules in this discussion draft, do they
4 cover everything or should there also be standards for
5 electronic equipment added since technology continues
6 to make its way into the gaming arena?

7 Okay. 543.12. It starts on Page 28 of the
8 discussion draft and it covers gaming promotions and
9 player tracking systems.

10 Now, it's important here to note we tried
11 to compromise. There was some discussion about
12 whether NIGC has authority over player tracking and
13 gaming promotions.

14 We've changed the definition of gaming
15 programs so that it covers those promotions that
16 require game play to be eligible for the prize. So
17 this new definition will exclude promotions like those
18 door prize tumbler raffles that someone puts -- that
19 visitors will put their contact information in and the
20 name's drawn later. It doesn't include those.

21 This includes anything that you swipe your
22 player card for and you're playing and then you may
23 get promotional points for it, like bingo tournaments
24 and other prizes associated with game play and player
25 tracking information.

1 Did I see a question? No? Okay.

2 543.13 is MICS for complimentary service
3 items, and that is on Page 29, the very next page.
4 TGRA and the operation are to establish specific
5 controls and procedures, and the TGRA establishes
6 thresholds for recording the comps.

7 In the discussion draft, one of the things
8 in the definition, it's under 543.13(b), and it reads,
9 the very last line is, "The comps provided directly to
10 the patron by the gaming operation or indirectly to
11 patrons on behalf of the gaming operation by a
12 third-party."

13 When we put that in there, I believe that
14 we were intending that to mean a third party being
15 maybe a hotel that's run by a company associated with
16 the tribe next to the gaming operation, maybe the
17 restaurant, something like that.

18 If you have other ideas for a third-party
19 or you just don't think it's appropriate here, again,
20 those are comments we'd be interested in hearing.

21 CHAIRMAN ORTIZ: So how does that affect,
22 like we have a golf course? I have two separate
23 entities. I have a golf course that isn't -- it's
24 owned by the tribe but not the casino.

25 MR. HOENIG: I think that's one of the

1 comments that we want to hear from folks, because when
2 we were putting this in there, we noticed that it's in
3 the former 543 or 542, I'm not sure which, covering
4 comps, and there was some discussion internally as to
5 exactly what this meant. And so we were kind of
6 hoping that we'd get some comments from folks saying,
7 this doesn't need to be in here or it does, this is
8 what it applies to and this is why it's important. So
9 that's why we left it in, because we didn't want to
10 take something out if it is important and it needs to
11 be addressed, but we are very interested in hearing
12 what folks think this applies to, basically.

13 MR. LITTLE: And I think what we were
14 thinking is more and more we're seeing tribes becoming
15 basically landlords where they allow a, you know,
16 commercial restaurant or hotel to come on the
17 reservation. We're thinking that's what maybe -- if
18 it's a hotel and they provide a room, it could be part
19 of a contract, same with a restaurant that may be
20 they're, you know, paying rent to the tribe to lease
21 the space. So that's what we're thinking, but like he
22 said, we're really interested in hearing your comments
23 on that and how this applies to that.

24 MS. WARD: Okay. If no one has any
25 comments on the comp section, we'll move on to patron

1 deposit accounts.

2 So this next section, 543.14, there weren't
3 very many changes to it. I believe that the TAC
4 recommended some language about unrestricted player
5 accounts, and upon further review, we looked at the
6 Bank Secrecy Act, and under the Bank Secrecy Act,
7 unrestricted player accounts just aren't allowed. You
8 have to know who's accessing the accounts that are
9 available, so we took out all references to
10 unrestricted patron accounts.

11 Under 543.15, the lines of credit, although
12 the TAC recommended eliminating the "Lines of credit"
13 section, some operations do still extend credit to
14 players, and so we felt that controls are necessary
15 there since it relates to gaming.

16 And 543.17 --

17 MS. MURRAY: Jen?

18 MS. WARD: Oh, yes. Sorry.

19 MS. MURRAY: Mr. Kruse, did you have a
20 question?

21 MR. KRUSE: Yeah. I think that of --
22 again, I think in the evolution of Indian gaming lines
23 of credit are the next thing that will move it to a
24 different level. I come from corporate gaming, and I
25 don't think people in Indian gaming at this point

1 maybe don't realize the possibilities of what
2 credit -- issuing credit can do for your operation.

3 And if you're going to get into it, then
4 you might as well learn all about gaming credit. I
5 see nowhere where room credit is addressed. Does
6 anyone in this room know what room credit is?

7 MR. WEST: Typical table games, though,
8 because we're looking at bingo and card games here, so
9 we're not looking at the Indian table games lines of
10 credit like room credit.

11 MR. KRUSE: There is an overall credit
12 where it's just like, I'll sign a marker for \$500 or a
13 thousand dollars?

14 MR. WEST: Right. We didn't get too
15 detailed because we don't look at table games as
16 standards.

17 MR. KRUSE: As standards, right. Credit is
18 credit, and in my opinion, I think in the evolution of
19 this business credit is something that all tribes
20 should be looking at as far as proving a bottom line.

21 And if you do it, I'm not too sure that the
22 ways to regulate it shouldn't be handled internally by
23 the tribe with no outside influence because it's a
24 very, very tricky area and there are very few
25 professionals left in the business that can establish

1 a credit department for your casino. Used to be they
2 were everywhere, and now there are very few of them
3 because some states, as they went into riverboat
4 gaming and so forth, would not allow credit.

5 And I don't know if that's going to change,
6 but being the sole proprietors we are, I think that
7 looking at lines of credit, again, is a way to
8 increase our bottom line, and it's something that all
9 tribes that are in the gaming business, especially
10 with heavy table games, should be looking at.

11 MR. LITTLE: You know, what we found at
12 least during the Tribal Advisory Committee meetings
13 was that not a lot of tribes are utilizing lines of
14 credit in the Class II world. So I think of the 15
15 members, there was one tribe that did operate a Class
16 II/Class III facility, and so that's -- so they
17 utilized that, but I don't think anyone else has,
18 so -- and like Jen said, it's not widely used, but
19 it's something that, you know, we feel that we should
20 have some minimum standards in the regulations for.
21 So thank you.

22 MS. LASH: I was on the previous section.
23 Could you just repeat what you said you did not adopt
24 from the TAC?

25 MS. WARD: We didn't -- I believe that the

1 TAC recommended eliminating the lines of credit
2 section, and we felt that some tribes still operate
3 lines of credit and it is related to gaming, and so
4 therefore we kept it.

5 And 543.17, although it has -- oh, yes,
6 Rest?

7 MR. WEST: I want to get back to the comps.
8 I mean, to me, if you comp -- if you have a gaming
9 operation and you comp someone to go to your golf
10 course, which is a separate entity, that would fall
11 under the comp directly to the patron by the gaming
12 operation and not under the indirect because,
13 actually, the gaming operation, you got this good
14 player and you want to comp hotel and the golf course,
15 so a lot of these issues will come under that directly
16 to the patron by the game operation because the gaming
17 operation is going to reimburse the golf course or
18 they've got some arrangement or something.

19 So I think what this is talking about is
20 there is some abuse in other jurisdictions of some
21 comping privileges that didn't really go through the
22 gaming operation because they wanted to avoid scrutiny
23 by the oversight in the jurisdictions. I think it's
24 New Jersey to be specific. So we're talking about
25 some high-level abuse back east, and that's kind of

1 how this got in there.

2 But I think typically if you've got a high
3 roller and you're sending him to a, you know, limo
4 service and the golf course, that would be, in my
5 mind, directly comped by the gaming operation. The
6 gaming operation would handle the payment or the
7 reimbursement or whatever.

8 CHAIRMAN ORTIZ: Okay.

9 MS. WARD: Okay. 543.17. It's on Page 34.
10 It takes up very limited space on the Power Point, but
11 it is pretty important because this is where all of
12 the details happen. In this section, even more so
13 than the others, is a blend of all the sources that we
14 talked about at the beginning, the TAC, the existing
15 MICS, the 2010 proposed MICS. It comes from
16 everywhere.

17 And the existing regs are very specific.
18 They detail exactly how to make count corrections. It
19 will tell you that when there's a count correction,
20 you must draw a single strike through the correction,
21 you must write it -- do it in ink, write the new
22 corrected amount above the original amount. You must
23 initial it with two initials, et cetera, et cetera.

24 And we changed that in this discussion
25 draft to require only that they be -- let me find the

1 language here.

2 MR. HOENIG: I think it just says,
3 "permanent and identifiable."

4 MS. WARD: Yeah. Permanent, identifiable
5 and that the original amount be legible, something
6 like that. So we give more discretion to the tribes
7 in exactly how they go about doing that.

8 Another area where that occurs is in --
9 prior to the drop, they had to notify surveillance so
10 that surveillance could insert a new tape into the
11 VCR, et cetera, et cetera, and now it just says,
12 notify surveillance and then likely surveillance will
13 put their digital equipment on so that they can see
14 what's happening, but no longer does it specify that a
15 new tape must be inserted, et cetera.

16 And the goal here is to leave as much
17 discretionary details as possible to the TGRA while
18 protecting a sensitive area like drop and count.

19 MR. LITTLE: Yeah. This was a big topic of
20 discussion during the Tribal Advisory Committee, and,
21 you know, when we were drafting this, we were -- we
22 looked for every opportunity where we could leave
23 the -- you know, just provide the minimum standard of
24 what we need and then leave the rest up to either the
25 TGRA or the operation to implement how they go about

1 doing that.

2 So we heard from the Tribal Gaming Working
3 Group and that's what we heard during the TAC. So as
4 you go through the discussion draft, if there are
5 other areas where you think that we are being too
6 specific, we seriously -- now, Robin, don't take that
7 too seriously. Okay? No, we do take it seriously.

8 If there are areas where there is another
9 method that we can reach the same goal, please submit
10 those -- submit those comments or let us know how we
11 can do it. We really did a -- we tried very hard to
12 go through each specific area and identify those
13 areas.

14 And, you know, I do commend our audit staff
15 because they really worked -- they were working very
16 hard to, you know, see if there were other
17 opportunities and ways that we could achieve the same
18 goal with, you know, giving deference to the TGRA or
19 the operation.

20 Now, keep in mind, doing so does actually
21 create, you know, more work for the Commission
22 because -- and what had been brought up in the past is
23 oftentimes some tribal gaming regulatory authorities
24 will just basically take our regulation and put it
25 into their TICS and it creates some holes there where

1 it will say, you know, the TGRA must establish. You
2 know, under the new regulation, it's going to really
3 take our staff to go out there and make sure that when
4 they're adopting their TICS that they are filling in
5 those holes, that they are establishing those goals
6 and those procedures, so -- but it's something that
7 the tribes had requested. It's something that, you
8 know, this Commission firmly believes that they are
9 capable of doing. And we want to make sure that they
10 have that opportunity to do so, so...

11 MS. WARD: Right. And as Dan is talking
12 about, the TGRA will need to go through and make sure
13 that they fill in all of those holes. If you're
14 reading along, if you'll notice again not only is
15 there the variance section at the end of most of the
16 sections that requires the TGRA to set a threshold at
17 which they're going to review variances for cause, but
18 there's also throughout here -- one example is with
19 correcting the amounts when they have to be permanent,
20 identifiable, et cetera, it requires that the
21 operation and the TGRA establish procedures for that.
22 So it sets out the standards. It says, needs to be
23 permanent, needs to be identifiable, but you go ahead
24 and figure out what that procedure is going to be.

25 All right. Slide 61. 543.18, this is

1 cage, vault, cash, cash equivalents and kiosks. And
2 this is on Page 42, about midway down the page.

3 And the main thing that was added here is
4 kiosks. Technology has changed. More and more places
5 use kiosks. It's hard to find a place that doesn't
6 use a kiosk anymore. And we added those and the
7 standards for them. And you'll see the kiosk
8 standards at -- I believe it's towards the end.

9 MS. O'TOOLE: 44.

10 MS. WARD: What's that?

11 MS. O'TOOLE: 44. The kiosk starts on 43,
12 and then it explains everything on 44.

13 MS. WARD: Okay. That's why I couldn't
14 find it.

15 The heading for kiosk is at the very bottom
16 of Page 43, and then the standards for it continue on
17 Page 44. It should be fairly straightforward.

18 Yes, Chairman?

19 CHAIRMAN ORTIZ: I just had a quick
20 question as we were talking about these cash kiosks.
21 Nowadays everybody's going to these smart phones and
22 using them as cash machines. How is that going to
23 relate into these MICS? Because I could just see
24 getting the younger player in who would be utilizing
25 this instrument more than an older person. As I try

1 to get a market that has a market with these younger
2 folks, having an equivalent for them to transfer
3 monies and be able for them to do that in a casino.

4 I'm just throwing that out there because
5 I've noticed now you can pay parking machines, soda
6 machines, and other equivalents are starting to appear
7 in the market out there using these devices and
8 they're already hooked up to their banking account, so
9 I would want in my casino if they could, if they went
10 up to a kiosk coming up, that you'd be able to
11 Bluetooth it in there and get cash out and it would
12 count that number.

13 I know that technology is going to be
14 coming soon, but I just wanted to throw that out there
15 because I sure as heck don't want to miss out on that
16 market.

17 MS. WARD: Thanks for the discussion.
18 Again, it highlights how fast technology changes.

19 CHAIRMAN ORTIZ: Yes, it does.

20 MS. WARD: And it's a good point to insert
21 in here that, while these will be the MICS, we intend
22 to publish with them a guidance document that includes
23 additional information, and that may be something for
24 a guidance document. When technology changes so
25 quickly, that may be a place for it, because

1 otherwise, if we have to go through notice and
2 comments for everything, it's very difficult to keep
3 up with technology in the MICS.

4 So we've tried to keep this as general as
5 possible, and something like that certainly would be
6 something for guidance.

7 Okay. I also wanted to point out, it's on
8 Page 43, it's about two-thirds of the way down. It's
9 Number 2, D2, and it requires that increases and
10 decreases to the total cage inventory be verified and
11 supported by documentation or recorded. And the
12 individual increases or decreases that exceed \$100,
13 documentation has to be provided and include certain
14 things. So that's Line 24 on Page 43.

15 And I wanted to point out, the amount of
16 \$100, it was chosen because it was determined it was
17 an amount not too big and not too small, but if you
18 feel that we should insert instead an amount
19 determined by the TGRA or some other amount that would
20 better fit you, let us know, please.

21 All right. Moving on to 543.20. This is
22 the IT section, and I believe that in the TAC they had
23 another name for this section, and we've termed it
24 information and technology instead of -- we just
25 thought that was clearer, simpler.

1 And this section has been entirely
2 revamped. The provisions have been taken largely from
3 TAC recommendations but not solely. It covers all
4 sorts of things that I don't really understand. We
5 rely on Nimish for a lot of this, to explain it.

6 So as we -- as we go through it, as we read
7 it, if something strikes you as being more important
8 than others or that you have a question about, please
9 let us know.

10 MR. HOENIG: I would just say that this is
11 mostly to stress security for the IT system, to make
12 sure that the right people are accessing it, so on and
13 so forth. It talks about passwords and security.

14 I don't know if Rest has anything that you
15 want to add about IT, please do, but, yeah, as you go
16 through it, if you have any specific questions or any
17 suggestions, we definitely are interested in hearing
18 them.

19 MR. WEST: Well, I don't -- on 47, I don't
20 see a D. I see a C and an E. I want to note that.

21 MS. WARD: I did note it. I've got a
22 version here that's got corrections on it that I went
23 through after it was printed.

24 MR. WEST: And then over on 49, remote
25 access, should that be vendors instead of agents? I

1 mean, I'm not the IT person, and Mike and Nimish are
2 not here, so...

3 MR. HOENIG: We will ask them.

4 MR. WEST: Typically those controls are
5 when you have vendor access to your accounting
6 systems.

7 MS. WARD: I may be wrong, Rest, I'm going
8 to ask Mike, agents, that can include vendors because
9 vendors would be authorized persons?

10 MR. HOENIG: I believe that's right, but,
11 yeah, I would definitely want to check with Michael
12 Curry and Nimish that definitely are two experts on IT
13 for clarity on that, but I've made a note of it.

14 MS. WARD: And we'll just go back to
15 definitions since we have the time. "Agent" is
16 defined as a person authorized by the gaming operation
17 as approved by the TGRA to make decisions or perform
18 assigned tasks or actions, so that would include
19 vendors.

20 MR. WEST: Well, they don't act on behalf
21 of the gaming operation, though.

22 MR. HOENIG: Right.

23 MS. WARD: Oh.

24 MR. WEST: Vendors don't.

25 MS. LASH: I would agree, because as part

1 of the Tribal Gaming Working Group and part of the
2 TAC, that wasn't what we meant when we changed the
3 word "agent." Agent was to replace the word
4 "employee." So I think it's confusing in this
5 situation, and I think a different terminology for a
6 manufacturer, you know, would be necessary.

7 MS. WARD: Okay. Excellent point.

8 MR. LITTLE: Yeah. Like Robin said, this
9 was -- we did discuss this issue, you know,
10 considerably during the Tribal Advisory Committee, and
11 I think one of the -- there was another issue there we
12 talked about, possibly the gaming server being the
13 agent, which I think was removed, but it's definitely
14 something that probably deserves, you know, a more
15 thorough analysis of because it is important. You
16 know, it was, you know, a recommendation of the Tribal
17 Gaming Work Group and the TAC, so -- and we felt it
18 does have a lot of merit, so it's definitely worth
19 looking at. And, you know, we would be interested in
20 hearing further comment on that.

21 MS. WARD: Okay. Moving on to 543.21, MICS
22 for surveillance. And over the break I learned that
23 Jim has a background in surveillance, so hopefully
24 he'll have some comments for us here.

25 One of the main things that we changed in

1 the surveillance section -- you'll find it on Page
2 50 -- one of the main things we changed is actually
3 not in the surveillance section itself but it's in the
4 definitions. We redefined "sufficient clarity." That
5 was a matter of significant contention.

6 You'll find the definition for "sufficient
7 clarity" on Line 21 of Page 5. The current MICS
8 require 20 frames per second, and I believe that's it,
9 it's just 20 frames per second.

10 MR. HOENIG: No. I think that's the CF --

11 MS. MURRAY: 30.

12 MR. HOENIG: -- the CF 30. 30 and --

13 MS. WARD: The current MICS or the
14 proposed? I don't think so. I think --

15 MR. WEST: The MICS are 20.

16 MS. WARD: The current MICS are 20.

17 And there was discussion about whether that
18 should be changed to 30 frames per second since
19 digital is now capable of that and whether there
20 should be a resolution requirement. And we were
21 afraid to get too bogged down with changes in
22 technology and lock ourselves into a standard that
23 could be increased or maybe be obsolete, so...

24 MR. LITTLE: During the Tribal Advisory
25 Committee meetings, we did hear from tribes that the

1 sufficient clarity issue, it was a big issue, in that
2 what -- there were different needs for different types
3 of cameras, depending -- and that the standard should
4 not specify one specific frames per second and that it
5 should -- that, you know, the strength of the camera
6 should meet what the job is supposed to do.

7 And by us creating some kind of arbitrary
8 standard, it does not take into account future
9 technology, and that could be a problem. You know,
10 like Jen said earlier, these regs are not easy to
11 change, it takes a long process. As the Chairman said
12 earlier about changing the technology, you know, we
13 want to make the regulations as flexible as we can so
14 it takes those into account but make sure that at
15 least minimum standards are provided.

16 So I'll just keep reiterating, this is a
17 discussion draft. Just because it's in here does not
18 mean we are necessarily set on this particular point,
19 but we're very interested in hearing your thoughts on
20 this, so we would hope that would be something that
21 you all could provide some additional comments on.

22 Thanks.

23 MS. WARD: And I also want to note in the
24 surveillance section that the sufficient clarity, it
25 only applies to three areas. It applies to the count

1 room, the card tables and the cage and vault. So the
2 sufficient clarity, whatever definition is ultimately
3 adopted, 20 frames per second and -- what does this
4 say?

5 MR. HOENIG: 30?

6 MS. WARD: 20 frames per second at a
7 resolution sufficient to clearly identify the intended
8 activity, person, object, et cetera. That's only for
9 those particular areas.

10 And the TGRA may certainly -- is encouraged
11 to implement additional standards as it sees
12 appropriate.

13 There's also in the "Surveillance" section
14 the addition for Class II gaming systems that the
15 surveillance system must include the game server and
16 the jackpot meter.

17 MR. HOENIG: This was added as a
18 replacement for the standard that required a camera to
19 be put on a machine if there was more than a
20 25 percent probability that it would hit a certain
21 jackpot or a certain prize.

22 In talking with our technical expert,
23 Nimish, he explained to us that, well, that doesn't
24 really make a whole lot of sense for a bingo machine.
25 So he said what would make more sense is to have a

1 camera on the server and on the jackpot meter so you
2 can ensure that nothing is being tampered with, but
3 there's no need for it to be on a particular machine.

4 So we took those requirements out and we
5 added this one, so we're very interested to hear what
6 folks think about that, too.

7 MS. WARD: And then we also added a
8 provision that the TGRA have approved procedures for
9 reporting suspected crimes and suspicious activity.
10 Whether that's up the chain of the gaming operation or
11 to authorities, I don't know, but we figured -- we
12 were looking through the section and we noticed that
13 they -- there's a retention requirement for suspected
14 suspicious activity, suspected crimes, et cetera, but
15 nowhere does it say that they're ever required to tell
16 anybody about it.

17 So you can be sitting on these tapes for a
18 year because it's suspicious, but no one's ever known
19 about it, so we just included the requirement that
20 TGRA had approved procedures for that.

21 All right. And, finally, it's 543.23 and
22 24. These are the accounting and audit sections.
23 543.23 is audit and accounting, and that includes the
24 annual requirements, and they adopt the TAC
25 recommendation for that.

1 And 543.24, that was included in the TAC
2 recommendation. They put it all together in one
3 section, and we separated it out because we felt that
4 the "Revenue and Audit" section -- I'm sorry -- the
5 "Revenue Audit" section really needed to be its own
6 document. And it is fairly lengthy. And that will
7 include the frequency of each testing procedure in
8 each of the game sections, so the Class II gaming
9 systems, bingo, pull tabs, card games. And in those
10 sections you'll see that we adopted many of the Tribal
11 Gaming Working Group's guidance for those.

12 Rest, since you wrote this, would you like
13 to add anything?

14 MR. WEST: Nicole wrote it.

15 MS. WARD: Nicole wrote it.

16 MR. HOENIG: Pass the buck.

17 MS. WARD: All right. And that is the
18 summary of the MICS. As you go through and digest it,
19 some questions that we've got for you to keep in mind
20 as you go through, does your operation do much of
21 what's in this draft right now; and if so, which
22 sections are you doing, which sections are you not
23 doing? Will these regulations if they're put into
24 place, will they work for your tribe, your regulators,
25 your operation; and if so, which of the sections work,

1 which sections don't? How can we improve it? And,
2 finally, are these controls appropriately minimum?
3 Are there places that we can go and pull it back a
4 little bit and leave more discretion with the tribe
5 while still providing a firm standard for the
6 industry, and do they adequately address the risks
7 that are out there? All questions that we're really
8 interested in hearing the answer to, so as you go
9 through them, let us know.

10 And I'll open the floor for questions now.

11 MR. LITTLE: Like I said earlier, this
12 is -- I mean, this is a lot. It's a lot to digest.

13 We tried to get these out as soon as we
14 could, you know, just to begin the discussions here.
15 I thank Jen and Mike for, you know, kind of walking us
16 through this whole process here. There's a lot of
17 changes.

18 You know, we did -- we were able to adopt a
19 lot of the recommendations of the TAC, and, you know,
20 I think for the most part we've got a good foundation,
21 you know, where to work from.

22 The Commission is very grateful for all the
23 hard work that the Tribal Gaming Working Group did in
24 kind of, you know, providing a starting point. I know
25 a lot of tribes invested a lot of money in that

1 process, and we want to be very cognizant of the fact
2 that you had all done that. And, you know, we're very
3 happy that that was a part of the process. It is
4 consistent with Executive Order 13.175 where we can
5 look at alternative standards, and that is one, and
6 that was one of the reasons why we decided to utilize
7 that.

8 So does anyone have any questions or
9 anything specific?

10 MR. LANKFORD: Jennifer had made mention of
11 a guidance document, and I believe the TAC had put
12 forth a suggestion that was just a general standards
13 and then a guidance document. Is there a reason that
14 we've reinserted a lot of this back into the document?
15 You know, a skinnier document is always better, and
16 that document needs to be a little more fluid than the
17 standards because things do change, and so, you know,
18 I'm just curious the reason for reinserting a lot of
19 this language back into this.

20 MR. LITTLE: You know, when we went through
21 the submission from the Tribal Gaming Working Group,
22 there were a lot of very good recommendations there.
23 The challenge that the Commission faces is that we've
24 got a regulation that has to fit the entire industry.

25 Oftentimes our regulation is the foundation

1 for, you know, the TICS that the tribes are adopting
2 there. And going through that, you know, we were able
3 to take some of the recommendations from the TAC, and
4 other areas we felt that we just -- it wasn't
5 sufficient to ensure that, you know, the minimum
6 protection would be in there. And that's where you
7 see some of the guidance from the TAC recommendations
8 were put into the actual regulation.

9 In some regards we are taking -- I mean,
10 obviously a guidance is just a recommendation.
11 There's no -- there's no legal authority. We cannot
12 issue an NOV on a guidance document. The standard
13 doesn't allow us to do that. And so we did try to
14 utilize the guidance submitted by the TGWG whenever we
15 could because in many areas it was very good. There
16 were a lot of good recommendations there.

17 But like I said earlier, we're open to
18 suggestions. If there are things in there that we put
19 in there that you think are too strict, you know,
20 there's an easier way that we can go about doing so --
21 and we've tried to give deference to the tribal
22 gaming -- the TGRA, the regulatory authorities or the
23 operations to create their own standards and/or
24 procedures, we've tried to do that in many areas.
25 There may be some areas we did not address

1 sufficiently, and I would -- in fact, I know if
2 Robin's working for you, you will bring those to our
3 attention. So, you know, I hope that kind of answers
4 where we are.

5 This is, once again, a discussion draft.
6 It doesn't necessarily mean we're set on these; it
7 just means that we want to hear more comment from --
8 you know, from the tribes, so...

9 MS. LASH: To your comment that you just
10 made about not being able to issue an NOV to a
11 guidance document, the purpose of the NOV is because
12 the regulation has not been met. The guidance
13 document is -- was intended just to be a means for a
14 tribe, guidance for them to meet that regulation if
15 need be, kind of a minimum.

16 So I think it's inaccurate to say that you
17 would need to issue an NOV to a guidance anyway. Your
18 NOV goes to, has the regulation been met or not?

19 And I think overall and, of course, through
20 the TAC meetings, you know, the Miami Tribe is on the
21 record saying that it's more appropriate to allow
22 tribes the ability to implement their procedure. You
23 know, having seen so much of the guidance document
24 back in the regulation as standard, I think, is
25 inappropriate because, you know, you need to have your

1 standard, and then how you meet it doesn't need to be
2 a law.

3 I mean, that's the position of the tribes.
4 I think that was clear in the Tribal Gaming Working
5 Group documents, which was a compilation of a lot of
6 tribes, and then, of course, the TAC recommendation as
7 well, and I think that Indian country has made it
8 pretty clear that as the primary regulators of the
9 Class II gaming, we feel we should have that ability
10 to create our own procedure.

11 MR. LANKFORD: And just a little food for
12 thought on that is that I'm also the network
13 administrator for the tribe. I play a lot of hats.
14 And you just mentioned Microsoft issues a while ago.
15 Microsoft's a good way to look at how you address it.
16 Microsoft says, here's how you do this. They don't
17 say, oh, but by the way, there's other -- eight other
18 ways that you can also do this that are not wrong but
19 there's eight other ways to do the same task; there's
20 online, there's five different ways to launch an
21 application, you know how to do it and they're all
22 right.

23 And I think that's what we're trying to get
24 to is there are other ways, and if you put all this
25 regulation in there on the standard, there are other

1 ways that we're already doing these things, and you're
2 imposing on our regulating it ourselves.

3 So I think that's what we're trying to
4 really drive home on this is let's don't come to --
5 you know, get it too cumbersome, let's keep it skinny
6 and make it work. Thank you.

7 MR. LITTLE: I appreciate those comments.
8 And like I said, you know, we did attempt to try to
9 create the needs of the Commission, you know, and then
10 leave it up to the TGRA or the gaming operation to get
11 those procedures and controls in place to meet that.
12 And Jen had mentioned earlier, you know, areas where
13 we've done that, and we have gone through this, so,
14 you know, a lot of the -- just because we utilized the
15 TGWG's guidance documents in the regulation doesn't
16 mean we didn't actually amend or take those guidance
17 documents and loosen them. You know, in the instance
18 -- I mean, we pulled out a lot of specific points in
19 those guidance documents, but there were some very
20 good, you know, points that, you know, we needed to
21 include in the standard.

22 When Jen said earlier we would be providing
23 some guidance documents, you know, that's our general
24 term for we do bulletins quite often, and we will be
25 probably issuing bulletins, you know, that will

1 coincide with the implementation of this regulation to
2 help, you know, tribes comply with it.

3 So, you know, I would just reiterate -- I'm
4 sure you're tired of hearing me say this -- is that
5 this is just a discussion draft. Okay? It's our
6 starting point, and we definitely are interested in
7 hearing your comments. And, you know, there will be a
8 lot more consultation before we ever go to a formal
9 rule.

10 MS. LASH: I'm a little bit unclear here
11 since so much procedure has been put back into the
12 regulations what -- what's the additional -- what's
13 the additional guidance? Can you be more specific
14 about -- are you calling them bulletins or are you
15 calling them guidance documents that are going to be
16 submitted in addition to what we're reading now?

17 MR. LITTLE: I mean, bulletins are what we
18 issue that provide additional background information
19 on a regulation, okay, or actually a number of -- not
20 necessarily a regulation but a number of areas. So,
21 you know, Robin, it just may be a difference in
22 opinion of how much is too much or not enough.

23 And, you know, we will take into account
24 your comments if -- you know, when we move forward
25 with this regulation, but, you know, we're going to

1 have differences in opinions what is too much or not
2 enough. We are inclined to be, you know, as
3 accommodating as we can but still ensuring that we
4 have a regulation that has to fit an entire industry.

5 Were there any other comments?

6 MS. LASH: Well, and I guess in response to
7 that, I would just kind of like to say, I mean, that
8 was a problem with the TAC and the Tribal Gaming
9 Working Group was the -- kind of the cookie cutter
10 approach that the NIGC feels that they need to take.
11 And I think, you know, that's why the proposal of just
12 the standard and then the guidance documents and
13 letting the tribes adapt to implementing that
14 regulation. It's just very hard to take an industry
15 that's so varied from a small facility to a very large
16 facility and make us all one cookie cutter thing. I
17 mean, I think Indian country has made it pretty clear
18 that that isn't a very -- that that approach doesn't
19 really make sense for Indian gaming.

20 MR. LITTLE: I appreciate your comment.
21 Thank you.

22 Were there any other comments out there?

23 MS. WARD: I was just going to say, if
24 there are facilities, small or large, that don't --
25 that look at these minimum standards and don't feel

1 that they can meet them, let us know and let us know
2 why.

3 I'm sure -- I don't know what the procedure
4 would be, but I'm sure if it's something that the
5 tribe didn't want on public record that they're not
6 going to meet these standards that we can find a way
7 to leave it off and still consider their comments.
8 But, please, let us know if you're having trouble
9 meeting some these standards or they're truly not
10 minimums in your view, let us know.

11 MS. LASH: And I think we have let you know
12 through the TAC and the Tribal Gaming Working Group
13 document. What we submitted are what we feel the
14 minimum standards are, just the standards, and then
15 the procedure was removed out of the regulation into
16 guidance documents. So that's Indian country letting
17 you know what we feel the minimum standards are.

18 MR. LITTLE: We have an obligation to
19 consult with the tribes. Okay? The Tribal Advisory
20 Committee was one aspect of us reviewing this
21 regulation. It wasn't the only aspect of reviewing
22 this regulation. We have an obligation to go out and
23 meet and consult with the tribes, and that's what
24 we're doing here.

25 MS. LASH: Well, and I appreciate that. I

1 know that that's what you're doing and I know that the
2 previous consultations which took place in the -- last
3 summer when we started initially discussing this
4 approach, I think there's also for the -- that's what
5 I'm referencing when I'm saying Indian country is in
6 support of the different approach, you know, that I
7 think Indian country has spoken. And I do appreciate
8 these consultations and the opportunity for Indian
9 country to review what you have proposed.

10 MR. LITTLE: Thank you.

11 We're at just a few minutes after 12:00, so
12 in the event that there are some folks -- first of
13 all, are there any other comments?

14 In the event there are some folks that were
15 planning to be here after lunch, we will reconvene at
16 1:00. I think we'll break now for lunch, and if there
17 are no other comments, then we'll probably close out
18 for the day, but we will come back at 1:00. Okay? So
19 thank you, everyone.

20 Oh, I'm sorry. One other thing. Chairman
21 Ortiz wanted to make an announcement.

22 CHAIRMAN ORTIZ: I just wanted to thank
23 everyone for coming here today, and us being the host
24 today, I know we can't offer it to the Feds, but to
25 all the tribal people, I'll pick up your lunch today.

1 I just need to have you come over to the buffet area
2 so I can get you in, so you'll have lunch on us today.

3 (Luncheon recess.)

4 MR. LITTLE: Okay. We're going to bring
5 this meeting back to order. And before we broke for
6 lunch, we had determined that we were going to open
7 the floor back up for any questions. We were
8 discussing Part 543; however, we're hoping to hear any
9 comments on any of the parts that we covered today.
10 Are there any other comments?

11 MR. WOOD: What do we have time-wise to put
12 in comments, you know, if we don't like them today?
13 Is that to April 2nd or --

14 MS. WARD: There's two different timelines.

15 MR. LITTLE: Yeah. For the discussion
16 drive, April 16th. For the 5 -- I think all three of
17 the 559, 580, 585 and...

18 MS. MURRAY: 518.

19 MR. LITTLE: 518 is April 2nd.

20 MR. WOOD: And at the consultation in San
21 Diego, will there be possibly updates there on any of
22 the --

23 MR. LITTLE: Well, the comment period will
24 have ended for the three regs that are in the notice
25 of proposed rule-making process, so that consultation

1 will be primarily on 547, 543. And we do -- we're
2 going to talk about the Class III MICS also. Okay?
3 So after the April 16th, after we receive all the
4 comments -- and, once again, those can be submitted on
5 our website. We'll take a look at them. We haven't
6 decided when we will move forward with -- you know, or
7 decided whether or not we'll go forward with the
8 notice of proposed rule, but we'll take a look at
9 everything before we do so...

10 Okay. If there are no other comments, then
11 I will adjourn. I just want to thank everybody, thank
12 all the staff, and safe travels.

13 (Meeting concluded at 1:04 p.m.)

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C E R T I F I C A T E

I, JUDY K. MOORE, a Certified Shorthand Reporter of the State of Kansas, do hereby certify:

That the foregoing proceeding was taken down by me in shorthand at the time and place hereinbefore stated and was thereafter reduced to writing under my direction;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel or financially interested in the action.

WITNESS my hand and seal this _____ day of _____, 2012.

JUDY K. MOORE, RPR, CSR

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