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TRANSCRIPT OF CONSULTATION MEETING
NATIONAL INDIAN GAMING COMMISSION
NOTICE OF INQUIRY FOR REGULATION REVIEW
HELD AT THE CHOCTAW CASINO AND RESORT
IN DURANT, OKLAHOMA, ON APRIL 28, 2011
AT 9:00 A.M.

Job No. NJ328073

REPORTED BY: DAVID G. HARJO, CSR RPR

1 VICE-CHAIRWOMAN CHOCHRAN: Good morning.
2 My name is Steffani Chochran, I'm Vice-Chairwomam
3 for the National Indian Gaming Commission. I'm with
4 the Chickasaw Nation, born and raised here in
5 Oklahoma. I'm glad to be here consulting with the
6 tribes, and I am honored that we are starting that
7 process here in my home state and with people that I
8 admire and am very familiar with.

9 So with that, we going to start. We have
10 asked Chief Pyle to provide some opening remarks
11 this morning. Chief Pyle is an amazing leader. I
12 know he has been doing this a long time. I know
13 that he, as is Governor Anoatubby, as are many of
14 the leaders around here, are very focused on the
15 needs of the tribes and making sure their economic
16 tribal activities produce revenues sufficient to
17 meet those needs, including health care and
18 education and things that I know Chief Pyle is very
19 actively involved in, so I'm going to turn it over
20 to him. I just want to say good morning, and thank
21 you, Chief Pyle, for being here this morning. I
22 know you have a very busy schedule, so I'm going to
23 turn it over to you.

24 CHIEF GREGORY PYLE: Well, if I may, I
25 just want to welcome everyone here to the Choctaw

1 Nation Casino and Resort. You know, we are only
2 about ten minutes from the Texas border and you can
3 be downtown Dallas in about ninety minutes.
4 Actually, you can be here to McKinney in fifty
5 minutes and so that's our major markets all up and
6 down the river.

7 We have four casinos that are on the
8 river. We have six major casinos and about eight
9 minor casinos. That's the travel classes. And if
10 you have a travel class, we are just now really
11 getting into those, where you find that in a lot of
12 towns that we have making a very good income.

13 So we learn every day. So we are proud
14 to have you here. And I know many of you have
15 traveled a long ways. And NIGC is -- we are really
16 proud they are here. If you don't mind, they have
17 come a long ways, let's give them a great round of
18 applause. (Applause.)

19 Well, usually I give an hour-and-a-half
20 speech, I'm going to cut it down to one hour. No,
21 I'm kidding you. We keep ours pretty brief here.
22 We mentioned the Chickasaws, all of Oklahoma, the
23 southern half was originally deeded 275 years ago to
24 the Choctaw. We were the first tribe to come over
25 the Trail of Tears, 1831.

1 And we traded land in Mississippi for fee
2 simple title here. That means everything we have.
3 So now, the Chickasaws share 22 counties on natural
4 resources. And, of course, now it's lots of other
5 issues.

6 We had gaming back there. Now we have
7 natural resource, which is water. And there's lots
8 of people that want it. We work every day with
9 Governor Anoatubby and many other tribes, but since
10 we share so much, you will see us working together.
11 Our staff were together yesterday.

12 And the reason we can work and probably
13 help save a big portion of this natural resource
14 from becoming very long, very expensive is because
15 of gaming.

16 We send about 5,000 kids a year to
17 college around the nation because of gaming. We
18 built a hospital with gaming dollars. And the list
19 goes on and on.

20 We generally try to do it the
21 old-fashioned way. We try to stay out of debt.
22 Sometimes we have borrowed, sometimes we haven't.
23 But the big thing there is, where did we get this
24 great facility?

25 We could start telling you it's probably

1 out of about fifteen or twenty casinos. And many of
2 them in California, in New Mexico, mostly out west,
3 because they have been in gaming longer. And so we
4 started out by looking and looking and looking. And
5 we ended up in Vegas looking for some too.

6 But that's what we did. Choctaws don't
7 invent too much, they steal their best ideas. So
8 watch out if we come around.

9 We do share. When I first became
10 assistant chief twenty-eight years ago, and I was
11 fourteen years there, now I've been chief fourteen
12 years, we don't try and invent too many things. We
13 try to go to other tribes.

14 I've been all over the tribes many times,
15 business-wise and how they function with their
16 council, and we could just tell you how we function
17 with our council, because we were at many of your
18 tribes many years ago looking how you did it, making
19 friends, relationships.

20 And today, what you're about is really
21 relationship building here. All the tribes coming
22 up, commissioners. We have a government to
23 government relationship, and once you kind of meet
24 somebody, and you know Indian saying that says "you
25 don't trust anyone until you eat much bread

1 together."

2 Well, that's basically what we found.
3 And to be very honestly, we find that we either go,
4 you know, here, have dinner with somebody, you get
5 to know them. That evening you sit around and then
6 you visit, and you find, oh, we have a lot more
7 common ground than we began. And that's where it
8 really begins, and so we really appreciate that.

9 When I was first started, I thought just
10 go to the meeting and get back home. No, now we
11 understand it's staying a little bit longer,
12 visiting a little longer, coffee breaks, taking
13 someone to lunch, to dinner.

14 And I'm still learning every day. So
15 what I'm saying is after twenty-eight years in the
16 business, usually if there's a problem, you just sit
17 down with somebody and say, hey, we would like to
18 sit down and discuss this with you.

19 Most of the time I find it's probably
20 sixty or seventy percent of me climbing a ladder
21 like, I think they are after us. And they, go, no,
22 no, that's not what was intended. And then we work
23 it out. And you generally can work it out before
24 you get to that level.

25 That's just for twenty-eight years of

1 gray hair. I had coal black hair and it was long
2 back in those days, so, you know. We really
3 appreciate your coming down to Choctaw Resort and
4 Casino.

5 Anything we can do or improve on, let us
6 know because we can tell you the casinos we went to,
7 there was probably, like I said, at least a dozen
8 different casinos, you will see maybe how the rooms
9 where they come out of or we saw a lobby area
10 somewhere or why didn't we have a buffalo, that's
11 come out of a different casino.

12 Everything here was probably from rest of
13 Indian country. So, again, we are here to provide
14 the best we can to the people, keep people happy,
15 coming back.

16 And it really means so much because we
17 have a large tribe and we take care of Choctaws from
18 coast to coast. We share our tribal money with our
19 people out there that have had to move away.

20 My folks ended up -- took them a year
21 before I was born to go. I grew up in northern
22 California in a little Redwood, nobody's --
23 Mendocino, it's a very small community still today.

24 And so my folks, their goal was to get
25 moved back here. When I was 16 we moved back. So

1 I've been upon both issues.

2 And so the big thing is that we try to
3 help other people and work with everybody. And
4 that's what you're, I think, going to do today here.
5 So we really appreciate everybody's effort here.

6 I was going to say just welcome and
7 anything we can do or any suggestions, please come
8 up there. And thank you for coming. God bless.

9 (Applause.)

10 VICE-CHAIRWOMAN CHOCHRAN: Thank you
11 Chief. President Patterson I understand that you'll
12 be providing our invocation this morning. If you
13 would like to do that now, I think that would be
14 appropriate.

15 DON PATTERSON: Let me say just a word.
16 It's certainly my pleasure to be here and an
17 unexpected honor to offer prayer. I am the
18 president of the Tonkawa Tribe, which is a lot
19 smaller than the Choctaw Tribe.

20 The history books said that our tribe,
21 the Tonkawa, was one of the most warlike tribes in
22 the Southern Plains in those days and so I take a
23 lot of pride in that. I have been president now for
24 eight terms but I've been fighting for Indian causes
25 and issues since 1969. I was at Alcatraz Island;

1 those of you that are familiar with that history, I
2 was part of that takeover there. I was in the march
3 on Washington in 1972 and the takeover of the Bureau
4 of Indian Affairs building. I was at Wounded Knee
5 in 1973.

6 And so we are gathered again to deal with
7 issues that confront our people and so it's always
8 my pleasure.

9 In our tribes, you know, we have names
10 for our higher powers, you know, God, if you will.

11 The Sioux call him Wakan Tanka.

12 Poncas is Omaha call him Wakonda.

13 Sac and Fox people call him Getamonatoo.

14 Cheyenne people call him Maheel.

15 Kiowa people call Da Kiee.

16 In our language, we call him Takushtacot.

17 I understand all of these languages.

18 What the great Chief Sitting Bull once
19 said, "Let us put our minds together and see what
20 kind of life we can make for our children."

21 And so if we put our minds at least
22 together spiritually we can do likewise. So let's
23 pray together.

24 Almighty God, our most gracious Heavenly
25 Father, it is so good to stand before You and

1 acknowledge Your goodness, Your graciousness, Your
2 most wholly nature.

3 We are so thankful, Father, for
4 opportunity to gather together here today, to
5 consult with leaders across the nation pertaining to
6 issues that affect our people.

7 We are so thankful for who we are,
8 Almighty God, Father, the various and diverse
9 nations of indigenous Native people.

10 Surely, Father, in the beginning You must
11 have had a special place in your heart when You
12 created us into the beings that we are, and so we
13 are so proud to stand before You, Father, and
14 acknowledge you as our God.

15 We give You thanks, Father, for all the
16 good, and for all of the love, and for all of the
17 many tender mercies that You have bestowed upon us,
18 for all of the blessings, Father, that our tribes
19 have enjoyed in the past and continue to enjoy this
20 day.

21 We are so thankful for so many good
22 things, Father, that words escape us. For we know
23 how good and how great You are, Father. We also
24 acknowledge sometimes how pitiful that we are when
25 we stand before You. Too often, Almighty God,

1 Father, as individuals and even as nations of people
2 we turn and drift apart from You, Almighty God,
3 Father, as we concern ourselves with the pursuit of
4 the pleasures of this life, but we know how patient
5 and how faithful You are, Almighty God.

6 Now we turn to You again this morning,
7 this hour, Almighty God, Father, asking You to look
8 kindly upon us, Almighty God, Father. Look into the
9 depths of our hearts, Almighty God, Father, all of
10 us here who are representative of our various tribes
11 and communities.

12 Consider, Almighty God, Father, all that
13 is about us. And forgive us of any our shortcomings
14 and our failings, Almighty God, Father, that You
15 might indeed reconcile us unto You this very hour,
16 Almighty God, and that You would indeed hear our
17 prayer.

18 We are so thankful, Almighty God, Father,
19 for so many things, but we are most thankful,
20 Father, because we have You, Almighty God, Father,
21 and we acknowledge that apart from You we can do
22 nothing. So we call upon Your name this morning,
23 Almighty God, Father, to guide and direct our hearts
24 that we might do and say those things that will not
25 only be beneficial to ourselves and our people, but

1 pleasing in Your sight, Father, for we love You.

2 We believe and trust only in You. We ask
3 Your spirit to abide with us throughout our
4 gathering here this day. Be with us even as we
5 depart from this place, Father. Be with us
6 tomorrow, the days and weeks ahead. Be with us,
7 Father, even unto the world, even and to the end of
8 the world, even as You promised.

9 We'll always be careful to praise and
10 honor, and glorify Your name, Father, for we love
11 You.

12 We acknowledge you, Almighty God, Father,
13 as the one and only true and wise God. And to You
14 is all glory and all majesty, all dominion and all
15 power forever and ever.

16 In the name of your Son, we ask this
17 prayer. Give us thanks, Father, for who we are, for
18 we thank You indeed, Almighty God, Father, for who
19 You are.

20 Be with us now, I ask in His Holy
21 precious name, Jesus. Amen.

22 VICE-CHAIRWOMAN CHOCHRAN: Thank you,
23 Mr. President.

24 I would like to next spend just a few
25 moments introducing the people we have in the room.

1 I know that there are many tribal leaders with us.
2 There's also many representatives from tribes here,
3 and then once we have introduced each other so that
4 we know who is here today, then I would like to have
5 the staff introduce themselves from the NIGC, so --
6 start this way?

7 We can start over here. If you would,
8 just tell us your name and who you are representing.

9 MARTIN TSATOKE: My name is Martin
10 Tsatoke, better known as Pepper Tsatoke, Kiowa
11 Nation Gaming Commissioner.

12 MATTHEW MORGAN: Good morning. My name
13 is Matthew Morgan, and I am representing the
14 Chickasaw Nation. I serve as their Gaming
15 Commissioner.

16 JIM SCHREEN: Jim Schreen, Tonkawa Tribe,
17 Vice President.

18 DON PATTERSON: Again, Don Patterson,
19 President of the Tonkawa Tribe.

20 ROBIN LASH: Good morning. Robin Lash, I
21 am the in-house counsel for the Miami Tribe and
22 Gaming Commissioner as well.

23 TOM GAMBLE: Tom Gamble with the Miami
24 Tribe. I am serving as chief.

25 JASON NICHOLS: Good morning. My name is

1 Jason Nichols with the Muscogee (Creek) Nation,
2 Gaming Commissioner.

3 RICHARD WOOD: Richard Wood,
4 Seneca-Cayuga Tribe, Gaming Commissioner.

5 BARBARA COLLIER: Barbara Collier, Quapaw
6 Tribe, Director of Regulatory Gaming.

7 KAY BUSBY: Kay Busby. Thank you for
8 coming. I am the Executive Director for the Gaming
9 Commission for the Delaware Nation.

10 VICE-CHAIRWOMAN CHOCHRAN: Good morning.
11 I'll start over this way. We do have other chairs
12 up here if there's other leadership or
13 representatives who want to come and sit at the
14 table. Please join us.

15 DEBRA WILSON: Good morning. I am Debra
16 Wilson with the Cherokee Nation Gaming Commission.

17 ELIZABETH HOMER: Good morning. I am
18 Elizabeth Homer and I am an attorney. I am a member
19 of the Osage Nation of Oklahoma.

20 KYLE NORMAN: Kyle Norman, I am with the
21 Choctaw Nation.

22 JODY NELSON: I am Jody Nelson, I am with
23 the Choctaw Gaming Commission.

24 VICE-CHAIRWOMAN CHOCHRAN: We have
25 somebody transcribing so if you can use your louder

1 voices.

2 MURIEL WHEELER: I am Muriel Wheeler and
3 I am from the Sac and Fox Nation.

4 LORENA WOOD: I am Lorena Wood and I am
5 from the Sac and Fox Nation.

6 FRAN WOOD: Fran Wood, Quapaw Tribe, Vice
7 Chairman of the Quapaw Casino Authority.

8 JEFF JONES: Jeff Jones, Osage Nation,
9 Attorney General.

10 JILL PETERS: Good morning. Jill Peters,
11 Executive Director, Comanche Nation Gaming
12 Commission --

13 LISA DAWSEY: I am Lisa Dawsey, Licensing
14 Director of the Comanche Nation.

15 BRANDON GRIMES: Brandon Grimes with
16 Video Gaming Technologies.

17 TIM COTTON: Tim Cotton with Video Gaming
18 Technologies.

19 Russell Witt: Russell Witt, Director of
20 Gaming Compliance, Video Gaming Technologies.

21 JERRY LANKFORD: Jerry Lankford, Miami
22 Nation Gaming Commission.

23 LAEL ECHO-HAWK: Okay. I'm sorry. If
24 you could, just speak a little louder.

25 Okay. Go ahead.

1 JERRY LANKFORD: Can you hear me? Jerry
2 Lankford, Miami Nation Gaming Commission.

3 GRANTHUM STEVENS: Granthum Stevens,
4 Pawnee Nation Gaming Commission.

5 YVONNE WILSON: Yvonne Wilson,
6 Cheyenne-Arapaho Director of Gaming.

7 RICHARD HENSON: Richard Henson, Acting
8 Chairman, Comanche Nation.

9 MICHAEL MARTIN: Michael Martin, Gaming
10 Commissioner for the Cheyenne-Arapaho Tribe.

11 CHEEVERS HEAP OF BIRDS: Cheevers Heap of
12 Birds, Gaming Commission, Cheyenne-Arapaho Tribe.

13 WALTER HAMILTON: Walter Hamilton,
14 Cheyenne-Arapaho Tribe Gaming Commission.

15 CHRISTINE BAKER: Christine Baker,
16 Executive Director, Tonkawa Tribe.

17 ROBERT WILSON: Robert Wilson,
18 Cheyenne-Arapaho Tribe.

19 KAY WYNN: Kay Wynn, Director of Internal
20 Audit for the Chickasaw Nation.

21 KEVIN WILKINS: Kevin Wilkins, Chicasaw
22 Nation Internal Audit.

23 WILLIAM NORMAN: William Norman, attorney
24 with Hobbs Straus.

25 KIRKE KICKINGBIRD: Kirke Kickingbird,

1 attorney, Hobbs Straus.

2 RICHARD GRELLNER: Richard Grellner,
3 attorney.

4 TOM CUNNINGHAM: Tom Cunningham, Regional
5 Director for the Oklahoma City Office of NIGC.

6 BRAD MOODY: Brad Moody from NIGC.

7 OSCAR SCHUYLER: Oscar Schuyler, Osage,
8 Manager.

9 AMBER TOPPAH: Amber Toppah, Kiowa Tribe.

10 CHARLOTTE BOINTY: Charlotte Bointy,
11 Kiowa tribe.

12 DORINDA HANRAHAN: I am Dorinda Hanrahan,
13 I am a staff attorney for the National Indian Gaming
14 Commission, I've been there for about a
15 year-and-a-half.

16 CHRIS WHITE: I am Chris White, I am the
17 NIGC Comptroller and I have been at the agency about
18 six years now.

19 LAEL ECHO-HAWK: Good morning. Lael
20 Echo-Hawk, member of the Pawnee Nation of Oklahoma,
21 and I am currently counselor to the Chairwoman.

22 And just to ease everyone's mind, we will
23 provide Mr. Harjo a list of everyone who's
24 registered so even if we couldn't hear you it will
25 be transcribed.

1 Just a logistic point. If you could
2 speak up. We thought we were going to have wireless
3 mics. Unfortunately we don't. So if you do have
4 comments as we move forward, it would be helpful if
5 you either come forward around here. We will try
6 to be Vanna White here and move this microphone
7 around, but we are transcribing it so if you could
8 speak up. And if you do have comments, come from
9 the back of the room forward here, that would be
10 helpful.

11 FROM THE AUDIENCE: Also, if you have not
12 registered with the ladies out front, if you would
13 do that before you leave, we would appreciate it.

14 VICE-CHAIRWOMAN CHOCHRAN: For those of
15 you who have participated in the last set of
16 consultations we did, we did have those recorded and
17 transcribed as well.

18 And the other part of the process is, is
19 when you speak, it's to get up and identify yourself
20 first, again for the transcriptionist so he can
21 identify who is making what comments.

22 I again want to welcome you. I also want
23 to send wishes and let you know that Chairwoman
24 Stevens and Associate Commissioner Dan Little also
25 send their best for this meeting and are excited

1 that this is the beginning of a very long process,
2 but it is a process that we are very much looking
3 forward to as we go through looking at the
4 regulations that the Commission currently has and
5 trying to make some improvements and revisions to
6 those regulations during our time, so they send
7 their best.

8 We have got a long road ahead of us on
9 the Commission side, as do the tribes, and so we
10 will be splitting up our time. You will see one
11 Commissioner out at every consultation because there
12 are so many that we will be handling. So I was luck
13 of the draw and got to come here so I am very
14 grateful for that.

15 Lael has been handling the regulatory
16 review process, which is one of the major
17 initiatives of this Commission. We have the four
18 major initiatives that that we have been working on,
19 and will continue to work on during our time: One
20 being Consultation and Relationship Building; the
21 second being Technical Assistance and Training;
22 third being Agency Operations, Review; and then the
23 largest part of what we are here for today, which is
24 the Regulatory Review Initiative. And Lael has been
25 spearheading that. And this lady has done an

1 amazing job with the amount and volume of
2 information that she's been tasked with to keep
3 track of and to keep us on track of.

4 So I am going to turn it over now to Lael
5 and let her begin the conversation. At any point,
6 if you want us to clarify something or you have
7 questions, please let us know and then I'll let her
8 lay out the rest of the meeting process for this
9 afternoon.

10 LAEL ECHO-HAWK: I will try not to get
11 twisted up in the microphone cord here.

12 Thank you, Steffani. I appreciate the
13 responsibility I have been given and I hope that,
14 you know, as this process progresses that we end up
15 with a better product for Indian Country.
16 Ultimately that's the goal.

17 So, again, my name is Lael Echo-Hawk and
18 I am counselor to the Chairwoman. Right now, as
19 Stephanie mentioned, I am sort of the point person,
20 certainly not the only person working on this
21 project but if you have comments, and they do come
22 to me, and if you have any questions about the
23 process, et cetera, feel free to contact me,
24 reg.review@NIGC.gov. is the easiest way to do that.

25 I have got hyphens, et cetera, in my name

1 so my personal email is a little bit tricky but
2 reg.review@nigc.gov will come directly to myself if
3 you have questions.

4 If you haven't already, everyone should
5 have received a packet of handouts when you came in
6 the door.

7 Did everyone receive a packet?

8 Okay. In that, we have several handouts
9 including the agenda. We are a little bit behind
10 but that's okay, we are used to that. And we try to
11 be real flexible with everyone as we move forward.
12 So we will be kind of moving along agenda.

13 As you can see right now, the Summary of
14 the Regulations. I am going to go through the
15 PowerPoint that's also contained in the packet, so
16 you can follow along, take notes, jot down questions
17 that you might have.

18 I am going to try to do a very
19 30,000-foot summary of the draft regulations for
20 Part 514, which is the C regulation, also included
21 in the handout, also up on the website. So if you
22 forget it, you leave it here, you can go home, look
23 on our website, we have got -- on the website
24 there's a tribal consultation but if you click that
25 button, there's a reg review section and all this

1 information is contained on there.

2 So I am going to try to walk through
3 where we are at in this process for the Group One
4 regulation. Again, if you need a point clarified,
5 just please let us know.

6 After that, the floor is yours and we
7 hope that we can engage in a conversation with you
8 about the proposed -- just the discussion draft.
9 Again, remembering that this is a discussion draft
10 only and the Commission put it forward as a way to
11 stimulate conversation, not necessarily taking a
12 position one way or another just yet.

13 We are coming out to Indian Country to
14 consultation. This first part is a drafting phase,
15 and so we really want this to be a conversation. We
16 wanted to hear what your ideas, input, concerns are
17 as we move forward.

18 So, again, this is part of the
19 consultation phase. That is a portion of the
20 executive order that the Commission feels very
21 strongly about, particularly C3, which is
22 determining whether to establish federal standards,
23 we consult with tribal officials.

24 And that's what we are doing. We have
25 not issued a notice of proposed rule making. We

1 have no -- the Commission hasn't made a decision yet
2 on regulation or standards. We are here to consult
3 with you before we do that.

4 So there are three phases. Today is the
5 kick off for the rest of the year. It is also the
6 beginning of Phase I, which is drafting. We are
7 just drafting right now. I want to be clear about
8 that, that this is a conversation. This is just
9 discussion. The draft that you have is a discussion
10 draft. There will be other drafts coming forward,
11 probably in the next week for Part 559. Again,
12 discussion draft only.

13 Please keep your eye on our website. We
14 try to -- we don't try, we will put all of this
15 stuff on there, but just make sure that you check it
16 periodically as things are updated.

17 Additionally, I anticipate that the Buy
18 Indian draft regulation will be out within the next
19 week or two as well.

20 So as we move forward, and as we come to
21 point where a draft looks like it's going to be
22 ready for a proposed rule making, we will issue a
23 proposed rule making.

24 The consultations. As we continue, you
25 will see that at some points we may be in

1 consultation during a drafting phase of a certain
2 set of regulations and we may be consulting on
3 another set of proposed rule making at that same
4 meeting.

5 So there's going to be a lot of moving
6 parts, but there is going to be consultations, in
7 both the drafting session and the notice of proposed
8 rule making session.

9 And then finally, final rule is that, if
10 we get there then there would be an approximately
11 forty-five day written comment period we try to
12 submit it.

13 There are five groups of regulation. As
14 you have seen in the notice of regulatory schedule,
15 or agenda. There's five groups of regulations and
16 we have grouped them together, not out of priority
17 necessarily, but we considered a number of factors,
18 including sort of the subject matter, the comments
19 that we received from tribes about priorities,
20 estimated time and resources that we are going to
21 need to extend to put together those regulations.

22 So it was really just a matter of
23 throwing the balls up in the air and then figuring
24 out how they best came together. And hopefully,
25 this is the right grouping. We will see as we move

1 forward but I just want to clarify that. Just
2 because this is Group One doesn't mean that this is
3 sort of the highest priority level. It just might
4 be -- it just seemed like an appropriate way to sort
5 of kick this process off.

6 Again, these are preliminary discussion
7 drafts. They are just working drafts. So I want to
8 make sure that that's clear. This meeting is being
9 transcribed, and so Mr. Harjo is over here listening
10 very closely and we want to make sure that the
11 transcripts are accurate so when you do have
12 comments, if you have questions, et cetera, please,
13 if you're in the back, again, move forward so that
14 he can hear. We do have a bit of a logistic problem
15 with only one microphone so bear with us.

16 Any written comments that are submitted,
17 again, you can submit them by mail, you can e-mail
18 them to reg.review@nigc.gov. You can scribble on
19 something and hand it to me. Whatever we get we
20 will put it on the website.

21 And the transcripts, again, as soon as
22 they are available they will also be posted on the
23 website so everyone can see what the comments were
24 being made.

25 The commitment by the Commissioners is

1 that every comment received is going to be reviewed
2 and considered. We read everything. Steffani will
3 put herself to sleep by reading the comments on the
4 notice of inquiry. We value your input and we are
5 considering carefully every comment that is
6 received.

7 Any proposed or final rule will contain a
8 summary, much like the notice of inquiry and the
9 notice of regulatory agenda, contain a summary of
10 the comments that we receive. And the Commission is
11 committed to a clear and transparent process.

12 Everything is going to be on the website.

13 Decision-making, reasons for taking a position or
14 not taking a position will be explained in those
15 summaries.

16 So sort of the stuff you're all here to
17 talk about, Group One, and this is just sort of the
18 order that -- this is just numerical basically, so I
19 am going to be walking through this during the
20 PowerPoint.

21 So Part 514, this is the fee section. We
22 have Mr. White here. Chris is here from -- he's the
23 comptroller for the NIGC, so we brought him out here
24 in case some of your questions escaped me.

25 I am a lawyer. I don't do math, that's

1 why I went to law school. So we brought Chris out
2 here to help us with that. So, if you have
3 questions, you know, Chris will be answering some.
4 And, hopefully, we have the staff here that can
5 answer questions as they come up.

6 So if you look in your packet, your
7 purposed rule, I am just going to kind of walk
8 through from the beginning to the end and hitting
9 the high points of the proposed changes.

10 The proposed rule does contain the fee
11 calculation to be made based on the gaming
12 operations' fiscal year rather than calendar year.

13 That doesn't mean that if you have -- if
14 your fiscal year is a calendar year that you have to
15 change that. It just means that whatever your
16 fiscal year is, if it's September to September, if
17 it's December to December, whatever that is, that
18 fee calculation is going to be made based on your
19 fiscal year.

20 The fee rate will be published on March
21 1st rather than February 1st. This allows the
22 Commission time to review the audited financial
23 statements and make a preliminary fee proposal or
24 put out the preliminary fee rate for the year based
25 on more accurate -- we are not guessing -- we

1 receive most of the audited financials by then and
2 we can make a more accurate projection.

3 Removing the word "amortization" from the
4 Section 514(b)(2)(i), to reflect existing practices.

5 We are moving from -- the agency was -- a
6 couple of years ago we changed to a bi-annual
7 submission of fees. We are moving back to what IGRA
8 says or to more reflective of what IGRA says to a
9 quarterly system.

10 Financially, for the agency it makes more
11 sense. It certainly helps us, you know, instead of
12 being five, we had some concerns about when the fees
13 are coming in and so we are moving back to that
14 system.

15 Some tribes have been, carried on with
16 quarterly submissions and other times went to
17 bi-annual. But we are moving back to quarterly
18 payments, at least in the proposed draft.

19 Clarification. This is somewhat
20 technical and it was very hard even to figure out in
21 the PowerPoint how to phrase this. But the
22 regulation, if you point back to the actual section
23 of the regulation that said what the calculation was
24 for determining accessible gross revenues for the
25 previous fiscal year. So it's just a clarification

1 point. This section will reference you back to what
2 the formula is for coming up with that accessible
3 gross revenues.

4 The proposal also contains a notification
5 period, so if a tribe moves from a calendar year
6 fiscal year to a September fiscal year, it just
7 provides -- just tells us how to get there, how you
8 notify us.

9 New sections. One of the things that the
10 notice of inquiry asked about was whether or not it
11 was more appropriate to implement a late fee or a
12 late payment system before you issue a notice of
13 violation for -- or NOV for submitting a late fee.

14 Tribes are very supportive of this. In
15 fact, I think we had -- if I can find my notes here.
16 We had, out of the 74 respondents: 62 of the tribes
17 that responded were in favor of this sort of
18 process. And we heard -- we heard on the road that
19 this was something tribes really favored, and so we
20 included it in the draft's rule.

21 And it includes an appeal option. It
22 defines a late payment as a payment made within 90
23 days of the end of the tribe's fiscal year, and the
24 failure to pay annual fees as payments made after 91
25 days of the end of the fiscal year.

1 And what it does is it makes a
2 distinction so if you have a late payment then you
3 will have to, you will end up having to pay some
4 sort of fee to the NIGC, much like a ticket. You
5 know, you don't pay a parking ticket in time, you're
6 assessed a fee. Something like that.

7 If there's a failure to pay an annual
8 fee, which is any payment made after 91 days, then
9 that could result in a notice of violation, possible
10 closure order. So we tried to make a distinction
11 between what is sort of a late payment for, you
12 know, personnel changes or anything that could
13 happen at a gaming operation, versus a failure to
14 actually pay the fee.

15 We also added the fingerprint processing
16 fee section, which clarifies how we collect the
17 fees.

18 And also, the fee rate will be published
19 bi-annually on the same calendar date as the fee
20 rates.

21 We had a couple of questions come up when
22 we were putting together the draft. And something
23 that we really would like to hear from you, the
24 current regulation uses the term "admission fee"
25 when it's talking about a poker tournament or other

1 tournaments. And our staff's recommendation would
2 be that we change that to be more consistent with
3 industry standards and use the term "entry fee."

4 The staff doesn't think that that's a
5 substantive change. We didn't include it in this
6 preliminary draft because, frankly, we didn't bring
7 it up during the notice of inquiry, but it is
8 something that it's an industry term, it's a term of
9 art, "entry fee," and it's less confusing.

10 We had some comments, apparently, come up
11 from various tribes, who would, you know, like say
12 you have an admission fee for like a MMA fight or a
13 concert, and there was some confusion about whether
14 or not that admission fee was included in the
15 calculations of fees, or included when you're
16 putting together that calculation.

17 So that's something that we would like to
18 hear from tribes. If it's a non-substantive change
19 and it's more consistent with the industry standards
20 and terminology, then that might be something we
21 would consider changing in the regulation.

22 Again, and then the question underneath,
23 should tournament fees be included in examples of
24 "admission" or "entry" fee?

25 So you remove the term "entry" fee -- or

1 you change the term "admission" fee to "entry" fee
2 and then include in part of that definition
3 tournament fees.

4 The other thing, the other issue that
5 kind of come up, the notice of inquiry asked whether
6 or not we should change the definition of gross
7 gaming revenue to be consistent with GAAP, Generally
8 Accepted Accounting Principles, for the purpose of
9 calculating the fees.

10 You will see in the draft we didn't make
11 that change. We didn't make that change for a
12 number of reasons, including the fact that the
13 new -- the new GAAP definitions are not consistent,
14 or the new GAAP -- they are putting together this
15 big guidance on gaming and the GAAP definition of
16 net gaming -- gross gaming revenue was not
17 consistent with IGRA. And that was a point that was
18 made by a number of tribes who commented.

19 But there is concern at the agency from
20 the staff as we are calculating the fees, and that
21 concern is that it's less than clear. The
22 definition of gross gaming revenue is somewhat
23 fuzzy. And we have, you know, the definition -- one
24 of the points that staff made is that we could
25 define what "wager" is and what a "payout" is and

1 that might provide some clarity in what the
2 definition of gross gaming revenue is.

3 IGRA is, you know, it's a very basic,
4 gross gaming revenues is wager less payout,
5 basically. And if we need to define "wager" and
6 "payout" to make that more clear, and if that would
7 help tribes when they are making their calculation
8 then we would like to hear that, hear comments on
9 that.

10 Okay. So the next section was Part 523,
11 Review and Approval of Existing Ordinance or
12 Resolution. This is a recommendation that we
13 repealed in part.

14 Currently there are no gaming ordinances
15 that were enacted prior to 1993 that have not been
16 submitted to the chair for review and approval so
17 this section is for all intents and purposes
18 obsolete and we are considering repealing it.

19 Part 559, Facility Licenses. This also
20 contains the Environmental Public Health and Safety
21 section. The question has come up, and in fact in
22 the responses to the Notice of Inquiry, tribes said
23 that this part was enacted without -- that the
24 process used to enact this part was flawed and that
25 we should open it back up to consultation. And so

1 we are opening that back up to consultation. We
2 would love to hear your comments. Again, I
3 anticipate that we will have within the next week or
4 two a draft rule. We will notify you and it will be
5 on the web site, but if you have comments about
6 this, we would really love to hear them.

7 The "Buy Indian Act." This was an issue
8 that we raised in the Notice of Inquiry, whether or
9 not the agencies should implement a regulation that
10 implements the Buy Indian Act at the agency level.

11 Comments from tribes who commented were
12 generally supportive. This allows to us buy Indian.
13 We are here at the Choctaw, lovely Choctaw Resort
14 and Casino. It basically is an issue of federal
15 procurement. It allows an agency, when you're on or
16 near an Indian reservation, to buy Indian goods and
17 services. It's a set-aside under the federal
18 procurement process.

19 I am sure most of you are familiar with
20 it in one form or another, but it is something that
21 the Commission is, you know, somewhat excited about
22 implementing at the agency.

23 It is supported by IGRA; the citation is
24 there. And, again, a draft reg will be coming
25 forward soon. It's going to look very similar to

1 what the BIA does and what Indian Health Services
2 does, what their regulation looks like.

3 And then what has been sort of sucking
4 the air come out of the room in a lot of our
5 meetings, Class III. This is a process question.
6 This is not a substance question just yet. We
7 wanted to take this issue out of the Class II issue,
8 wanted to take it as a standalone issue.

9 And the question is: What do we do with
10 Class III NICS? What do we do with the regulations
11 that we currently have? What structure do we use to
12 implement this? What structure can we use given the
13 California River Indian Tribe -- or Colorado
14 River -- I always say that -- Colorado River Indian
15 Tribe case. What are our limitations?

16 And we need your feedback on this.
17 Tribes are, frankly, all over the board. We have
18 some tribes that say repeal it completely. We have
19 other tribes that say we need it; particularly,
20 tribes in California that included NIGC authority to
21 enforce Class III in their ordinances.

22 So there's a wide variety of thoughts on
23 how we do this. The agency does have its
24 limitations, and so we need to figure out a way to
25 meet the needs the best that we can of all the

1 tribes, given our legal constraints. So we need to
2 hear from tribes.

3 This, again, is a process question. Once
4 a decision has been made about how to deal with this
5 issue, then in the Group 5 section we will begin a
6 drafting phase, notice -- perhaps a notice of
7 proposal making final rule phases to implement it,
8 whether it's, you know, creating advisory
9 guidelines, whether it's changing the fee structure.
10 There's a number of comments out there about ways to
11 deal with this but we need tribal input on this.

12 So, again, in the PowerPoint this
13 contains some of the options. One of the issues,
14 and I think Liz raised this, is addressing this
15 issue through an agency tribal sort of compacting
16 process, which was -- I don't think we had heard
17 before -- tribal ordinances incorporating Part 542
18 with the NIGC. Perhaps we apply a different fee
19 rate to those tribes. It's sort of like pay for
20 services. Other tribes, again, suggesting to
21 maintain Part 542 and convene a tribal advisory
22 committee to update those. And then at the opposite
23 end of this spectrum, repealing 542 altogether.

24 So this is sort of the 30,000-foot view
25 of these Group One regulations. If you have

1 questions, comments, the floor is now yours. And I
2 hope we have a good dialogue here.

3 VICE-CHAIRWOMAN CHOCHRAN: Thank you,
4 Lael.

5 I have decided, in addition to being a
6 lawyer, she should be a juggler because this woman
7 really does keep all of our balls in the air for us,
8 and she's just begun this process.

9 So, yes, we do want to turn it over now.
10 We are here to listen, we are here to engage in a
11 dialogue with the tribes, not to do the talking at
12 you. And I know, because I know many of you sitting
13 here, you have comments, so I am going to turn it
14 over to anyone who's ready to talk.

15 We have got tribal leadership sitting
16 here. If you want to start here at the table, you
17 can certainly do that. If you'd like to defer to
18 your experts for comments, we can certainly do it
19 that way as well.

20 LAEL ECHO-HAWK: If you do have comments,
21 please, again, come forward so that -- I believe
22 Mr. Harjo has some microphones here. There's one
23 here. Looks like there's one by President
24 Patterson.

25 If you could, please state your name and

1 what tribe you're with. That's just so that when we
2 transcribe this we know who made the comment and we
3 can allocate it appropriately.

4 BARBARA COLLIER: Barbara Collier, Quapaw
5 Tribe, will defer to our legal counsel.

6 ELIZABETH HOMER: Thank you, Barbara.
7 And Madam Vice-Chair, Counselor Echo-Hawk, thank you
8 very much for your presentation. We are so happy to
9 have you in Oklahoma and we are so happy about the
10 process that you all instituted at the NIGC. I
11 think that this level of outreach is long, long
12 awaited and deeply appreciated.

13 Having said that, I want to put my two
14 cents in on a couple of things. One would be on the
15 Environment Public Health and Safety aspect of the
16 licensing, the facility licensing regulation. And I
17 do believe that it's very important to open that
18 process up for review and to have a tribal advisory
19 committee take a look at that.

20 I think that there are some things that
21 are in the regulations that are problematic and, you
22 know, just require a lot of extra steps that perhaps
23 are needed so it could be streamlined more.

24 I don't think anyone argues with the fact
25 that we need to have a process for facility

1 licensing. We all -- it's in the statute. We know
2 we need to do that. I think it's more in the nature
3 of how is the oversight of the public health and
4 safety aspects of that, you know, really going to be
5 workable given the limitations on the NIGC staff,
6 the level of expertise and those kinds of things.

7 And I think that putting our heads
8 together we can really come up with something that's
9 very workable but is kind of less top heavy and more
10 proactive at the tribal level. So I think that
11 there's a lot of good ideas out there to explore, so
12 I encourage that.

13 The other issue, of course, is the
14 Class II or the Class -- yeah, the Class III MICS.
15 What are we going to go do about the Class III MICS?
16 You know, in Oklahoma we have bought into the Class
17 III MICS? We have adopted that in our gaming
18 compact and so if that were to vanish that could
19 prove problematic to us.

20 I know that in California it's been
21 problematic because it has made the state want to
22 get more involved in implementing, and executing and
23 enforcing minimum internal control standards. I
24 know that's been a big struggle for the California
25 tribes.

1 I certainly would not want to see that
2 happen to the Oklahoma tribes, especially since this
3 is primarily where I practice law and we don't need
4 those kind of problems. We have got plenty of other
5 things to do here.

6 So I think that -- again, I thank you for
7 predicating with that, Lael. It's been an idea of
8 mine for a long time is that we would do this, to
9 assign kind of a compacting process so that the
10 tribes -- you know, it's sort of like a
11 self-governance compact at the Department of the
12 Interior.

13 This is not a new concept, and I think
14 that, you know, if -- as NIGC moves more towards, to
15 a service mode, we can also add those other kinds of
16 elements, you know, into that kind of compact.

17 So I think that -- I am really glad you
18 guys are mentioning that. I was glad to see it on
19 the board today, and thank you for that.

20 And then just in closing, thank you for
21 making this whole process a lot easier than it used
22 to be. You know, it's nice to be able to say
23 supportive things and not have to be a ranter, so I
24 appreciate that. Thank you very much.

25 LAEL ECHO-HAWK: So do we.

1 Do you have any comments on the fee rate
2 or are those going to be coming?

3 ELIZABETH HOMER: You know -- you know, I
4 think -- you guys are actually -- when I was looking
5 at your review, you're proposing things that were in
6 my comments originally several years ago, so I am
7 really happy with the changes in the fee regulation.

8 And going back to the quarterly
9 structure, I think that that makes a lot of -- makes
10 a lot of sense. You know, at first we all thought
11 that might be a good thing where we only have to pay
12 twice a year but it's sort of affecting our
13 accounting system. We weren't set up to just -- you
14 know, and when you have a very large, complex
15 accounting system and suddenly you're going to have
16 to change, you know, that whole process, there's a
17 lot more to it than I think that people thought
18 about.

19 I think the intention was good but I
20 think that with proper consultation, if we really
21 talked about these things more, we could have
22 pointed out or could have discovered beforehand some
23 of the problems just moving precipitously from one
24 way of doing business to a completely different one.

25 VICE-CHAIRWOMAN CHOCHRAN: Liz, can I put

1 you on the spot one more time?

2 ELIZABETH HOMER: Of course.

3 VICE-CHAIRWOMAN CHOCHRAN: Do you have
4 any thoughts on the late payment system?

5 ELIZABETH HOMER: I love it. It is -- it
6 makes so much sense. You know, I had -- I think in
7 our consultation in San Diego I had mentioned this.
8 The problem with NIGC, from both the tribal and the
9 NIGC perspective, is the top-heavy nature of the
10 sanctions.

11 You know, it's like all of the power of
12 the United States falls on your head or nothing
13 happens. And, you know, to get an NOV, you know,
14 because there's been an oversight or there's been a
15 screwup with the accounting system or, you know,
16 there's a million reasons why you might be late
17 making a payment that have nothing to do with
18 wanting to stiff the United States of America.

19 And so for that not to turn into an NOV,
20 especially if you're already a stressed operation,
21 is just really a great thing, you know. But it does
22 require a sanction. People need to be paying their
23 fees. So, you know, a hand slap is a lot better
24 than being hit in the head with a sledge hammer.

25 Now, if we get an NOV for stuff like that

1 then it's going to affect our credit, our ability to
2 acquire capital, you know, our reputation for
3 being -- you know, for our integrity, for all of
4 those things. So I think this system makes a lot of
5 sense.

6 VICE-CHAIRWOMAN CHOCHRAN: Do you have
7 any thoughts on -- because I know you have a variety
8 of clients -- do you have any thoughts on whether or
9 not it ought to be a percentage base or a set amount
10 so -- you know, dealing with a range of operators
11 and --

12 ELIZABETH HOMER: You mean on the
13 penalty?

14 VICE-CHAIRWOMAN CHOCHRAN: On the
15 penalty side. Do you have any -- could you give --

16 ELIZABETH HOMER: I think, you know,
17 you're authorized under gaming regs to asses
18 penalties and fines up to \$25,000 per day per
19 violation. I would recommend something less than
20 that \$25,000 per day. But, you know, I think some
21 reasonable daily fee, you know.

22 And you might base that on the size of
23 the enterprise. I mean, those of us that have great
24 big enterprises with highly -- you know, with highly
25 developed infrastructure and those kinds of things,

1 we have a lot less of an excuse. Okay? We need to
2 be doing that, you know, so I think that maybe a
3 sliding scale of -- of fine or civil penalty for
4 that is probably the best way to go.

5 VICE-CHAIRWOMAN CHOCHRAN: Thank you,
6 Liz.

7 President Patterson?

8 DON PATTERSON: What about a simple
9 standard percentage of the amount due? I don't like
10 the idea of looking at the history of somebody, you
11 know, because if you don't like somebody's history
12 you might impose a penalty that might not be fair.

13 If I get -- if I have a -- at home and I
14 have a late fee for my electric bill, it's a
15 standard -- it's a standard percentage of the amount
16 due, and I think that would be more reasonable. If
17 you had a standard percentage of the amount of the
18 payment due, I think would satisfy that end.

19 But I don't like the idea of the chair
20 may, you know, looking at the history of this
21 operation or that one, impose this amount of late
22 fee or that amount. I think that's too arbitrary.

23 What that percentage would be, I don't
24 know. But, just for an example, if the late fee was
25 one percent of the amount of the fee that was due,

1 you see, rather than the chair just having that kind
2 of open-ended, sort of a, you know, indeterminate
3 sentence concept. You see what I am saying?

4 Did that make any sense to you, Liz?

5 ELIZABETH HOMER: Yes. Chairman
6 Patterson, I think that that -- that makes a lot of
7 sense. My only concern would be that you don't want
8 to -- if you're one day late and you're going to be
9 penalized, you don't want to be paying your one
10 percent of what you owe, you know. It should be a
11 -- I think it should -- you know, you might end up
12 paying more than you would if you had a sliding
13 scale and a set fee per day.

14 DON PATTERSON: Have that sliding scale
15 based on the amount of time within that amount --

16 ELIZABETH HOMER: Right. There you go.
17 Yeah.

18 DON PATTERSON: -- up to a percentage,
19 and then that prorated on the number of days late.

20 ELIZABETH HOMER: Right.

21 LAEL ECHO-HAWK: I don't know if this
22 will be helpful but if you look on page five of the
23 draft rule and the proposal, on -- let's see, it's
24 on line 13. It sort of begins the assessment. So
25 it says, "for statements and/or fee payments one to

1 30-day calendar late, the chair may propose a late
2 fee of up to..." -- and we left this blank to either
3 a dollar amount or a percentage, and then that
4 percentage would change.

5 Under this discussion draft, if you're
6 thirty-one to sixty days late, if you're sixty-one
7 to ninety days late, and then over ninety-one days
8 it changes. And so we are looking for input of some
9 type about whether or not that should be a set
10 dollar amount or as President Patterson has
11 suggested a percentage of the amount due.

12 Additionally, on line five, we tried to
13 put in a process where the chair would -- you know,
14 once the tribe -- the tribe knows -- you know if
15 you're late, right? You know when you're supposed
16 to submit your fee and you know when you're late.
17 And if we were to send a notice out to allow the
18 tribe to say, "Hey, look, my CPA had to have open
19 heart surgery and was unable to complete this in a
20 timely manner." We tried to build in some -- some
21 flexibility there so that the chair can consider
22 that when assessing those fees. Because those were
23 stories that we did hear. Literally, "My CPA had to
24 go have heart surgery and so our fees were late."
25 And so we want to be aware of that and provide a

1 mechanism where a tribe can talk to the agency and
2 say, Hey, look, not intentional, you know,
3 extenuating circumstances.

4 So page five is where the bulk of that
5 proposal is.

6 JILL PETERS: Jill Peters, Comanche
7 Nation. While we are discussing fees, I would like
8 to ask the NIGC to consider whenever a tribe prepays
9 for an entire year, that that quarterly worksheet is
10 not due, because you still have the wording in here
11 that you may issue a proposed fine or penalty for
12 not submitting that quarterly fee worksheet.

13 CHRIS WHITE: Just to be clear, you're
14 saying if we go back to a quarterly system and a
15 tribe or gaming operation pays their full amount for
16 the year in that first quarter, they are not -- you
17 don't want them to be required to submit those fee
18 statements for the subsequent quarters?

19 JILL PETERS: Correct.

20 VICE-CHAIRWOMAN CHOCHRAN: There were a
21 number of -- not a large number but a number of
22 tribes who in the comment period on the NOI, asked
23 if they could be given the option to either pay on a
24 quarterly or a -- excuse me, not quarterly -- a
25 fiscal or a calendar year.

1 Is there any thoughts or anybody willing
2 to share their thoughts on: Does this make sense or
3 is it going to cause more chaos within your
4 accounting systems to base it on your fiscal year's
5 calendar?

6 BARBARA COLLIER: Barbara Collier, Quapaw
7 Tribe. I appreciate the fact that it is per
8 quarter, that per quarter, because I felt like that
9 that did cause some accounting problems when it was
10 changed twice a year because of the fiscal year
11 dates, because some tribes, such as ours, have an
12 offset time. And so I think that will assist some
13 tribes in breaking it down more easily and adapt --
14 more adaptable.

15 My question -- my concern, too, would be
16 when you get to the end of the year, whichever year
17 it is, calendar or fiscal, if you're not submitting
18 the quarterly report form, then if you had to adjust
19 one way or the other at the end of whichever your
20 year is, how would you do that if you didn't submit
21 the form? At least the final form.

22 VICE-CHAIRWOMAN CHOCHRAN: Do you have
23 any thoughts on that, Jill?

24 JILL PETERS: How would it change,
25 because isn't it based on pretty much the fiscal

1 year? How would you change for the quarter in that,
2 you know, that secondary year you're paying. You're
3 paying for the previous year; correct?

4 CHRIS WHITE: That's correct. Yes.

5 BARBARA COLLIER: I guess maybe we had
6 adjustments when maybe other people have not.

7 CHRIS WHITE: I mean, yeah. In reviewing
8 audited financials, and looking at the timeline for
9 payments versus on a quarterly system, let's say, if
10 a gaming operation has a December 31st fiscal year
11 end, their audited financials aren't due until the
12 end of April, 120 days from the end of the fiscal
13 year.

14 Under the proposed reg, though, they
15 would have a payment due on March 31st that would
16 require them to assess fees based on that previous
17 fiscal year.

18 So there is the possibility that that
19 statement submitted in March would reflect
20 assessable gross revenues that were then adjusted to
21 the audit. So I can see the possibility of there
22 being a change.

23 From a regulatory standpoint, there's no
24 reason that my office needs subsequent fee
25 statements if nothing has changed. The problem

1 rises though if we don't require those statements
2 how do we know if there's been a change? And so
3 there's some questions I have with sort of not
4 requiring subsequent fee statements even if the
5 operation's been paid up in full. But it is a good
6 discussion to have.

7 VICE-CHAIRWOMAN CHOCHRAN: Lael pointed
8 out in her PowerPoint presentation the concept of
9 changing the terminology from "admission fee" to
10 "entry fee." Although not included in our draft,
11 it's something that was discussed internally with
12 us. I'd like to see if anybody has any thoughts on
13 that.

14 I know we have got lots of commissioners
15 here. Does it reflect industry terminology issue
16 usage? Does it make sense then?

17 Mr. Morgan, I am not going to let you off
18 the hook. You were late to class today.

19 MATTHEW MORGAN: Madam Vice-Chairman, I
20 was here prior to 9 a.m.

21 Matthew Morgan, Chickasaw Nation Gaming
22 Commissioner.

23 On behalf of Governor Anoatubby, thank
24 you for coming to Oklahoma. We appreciate your time
25 and efforts in this endeavor. And what an endeavor

1 it is.

2 To speak specifically to your question,
3 you know, we always -- at least at my place, always
4 like to standardize definitions whenever we can to
5 make the clarification easier for both our
6 operational folks and our regulatory folks that come
7 in afterwards so there's not confusion. If
8 confusion exists over calculations of what should be
9 included in the calculations when you're charging
10 fees and this clarifies that, you know, that makes
11 it simpler, at least in my mind, that that would be
12 a very simple change to do.

13 I did have one additional question kind
14 of back to you guys. Anytime my staff or a couple
15 of boards may submit proposals to me, I always ask
16 them back, you know, if you're going to make these
17 changes, is this going to increase staff
18 requirements on your side to keep track of, you
19 know, if you're going to allow a quarterly -- I am
20 sorry -- a fiscal versus annualized?

21 Right now annualized, everybody submits
22 everything at the same time. With different
23 statements coming in, depending on a tribe's ending
24 of their fiscal year, what is the increased workload
25 going to be back on your agency?

1 Is that going to increase head count? Is
2 that going to require an increase in IT resources or
3 software upgrades?

4 VICE-CHAIRWOMAN CHOCHRAN: I am going to
5 let Mr. White handle that because he's in charge of
6 this department.

7 CHRIS WHITE: Yes and no. Yes, we have
8 considered that. And no, we don't anticipate a need
9 for increased, certainly not increased personnel.

10 The finance section is running very
11 smoothly lately and the people we have in place to
12 process payments and record fees, I don't anticipate
13 that they'll have a problem with the increased
14 workload.

15 In fact, it's really spreading it out.
16 Right now, you know, we collect the bulk of our
17 payments twice a year. And so for a couple of weeks
18 in July and a couple of weeks in December, January,
19 you know, there's this volume of payments and
20 statements coming in. So this would actually spread
21 that out, which, both returning to a quarterly
22 system and then allowing, you know, payments based
23 on fiscal year, would spread it out even further.

24 MATTHEW MORGAN: I would like to add, on
25 any changes made to fees -- and I will take this

1 back to our accounting staff and get specific
2 answers and be responding accordingly -- but I would
3 ask that we be cognizant of the timing if we are
4 going to make changes from a regulatory perspective,
5 the timing issue of when we are going to make those
6 changes, because I think that will have a big impact
7 on our operational staff and our accounting staff.
8 If they are changing processes, once again, how are
9 we going to have time to incorporate those changes
10 and make sure that we are correct, especially that
11 very first year after that transition?

12 VICE-CHAIRWOMAN CHOCHRAN: That's an
13 excellent point and one that we did give some
14 consideration. The draft does anticipate that we
15 would make the changeover in December, I believe, is
16 what the recommendation is.

17 And -- yeah, in December, not this
18 December but a December time frame.

19 But, certainly, we want to make sure that
20 whatever change is made that it has minimal impact
21 or the least intrusive impact we can have on your
22 accounting departments and your systems in place.

23 We can adjust accordingly for us but we
24 need you all to be ready to do that. So absolutely,
25 that's an ongoing dialogue we will continue to have.

1 MATTHEW MORGAN: Thank you.

2 VICE-CHAIRWOMAN CHOCHRAN: All right. I
3 have one more question I would like to throw out
4 there and see if there's any thoughts on it before
5 we take our break, and it has to do with the
6 definition of gross gaming revenue.

7 There was a lot of discussion in the NOI
8 comments about the GAAP definition and about us
9 making a change to that, and I haven't heard
10 anything mentioned this morning so I wanted to throw
11 that out for discussion.

12 We haven't defined it yet and we have
13 explained a little bit of what our thoughts were on
14 why we chose not to offer it in our draft. Doesn't
15 mean we have taken a firm position. We wouldn't do
16 that. It's just we are not ready to do that.

17 Is there any tribe that prefers or has an
18 opinion, that prefers or doesn't prefer that we make
19 that change?

20 JILL PETERS: Jill Peters again. I do
21 have one comment on the definition of net gaming
22 revenue, or gross. Is there any way that we can put
23 in there that you do not calculate free play into
24 that?

25 We are kind of having a problem with our

1 state here on that free play calculation. It's kind
2 of like double charging the tribes on that, on your
3 own money.

4 LAEL ECHO-HAWK: Yes. And that is
5 something that we actually did at the agency. We
6 did sort of a fee 101, like how do you calculate
7 gross gaming revenue? And that is something that
8 was, if you have those questions, you know, number
9 one, first of all, our staff is really great about
10 helping figure that out.

11 Number two, when it comes to free play,
12 it is not typically something that's included in
13 because it's -- basically, it's playing with the
14 casino's money. That's the way that the audit
15 department explained it.

16 JILL PETERS: But I think by maybe
17 putting that into this definition, that would help
18 us with our state compact, the way they are
19 interpreting it.

20 LAEL ECHO-HAWK: I see. Yeah. Okay.
21 Well, we will take that comment back. Yeah. Thank
22 you.

23 That might be -- and that goes I guess to
24 the question of whether or not we define "wager" and
25 "payout." You know, whether or not free play is

1 included in the wager or if it's -- the payout is
2 included or if it's included in the payout, so that
3 was a suggestion from staff, would be to further
4 define and refine what wager and payout mean. And
5 that might get to your concern. So if you have
6 additional comments, we would love to have hear
7 them. You can e-mail, write, call, do whatever you
8 need to, whatever, we would appreciate it. Thank
9 you.

10 MATTHEW MORGAN: Madam Vice-Chair, on
11 your question -- Matthew Morgan, Chickasha Nation.

12 On your definition of "gross gaming
13 revenue," not to specifically address your question,
14 but just to reiterate the point, and I know you guys
15 are, but just to make sure that it is emphasized, I
16 would be very sensitive to any change in a
17 definition that unduly impacts IGRA in giving any
18 member of Congress an excuse to look at reopening
19 IGRA, is my concern with touching definitions that
20 are called for within the Act itself.

21 VICE-CHAIRWOMAN CHOCHRAN: That is a very
22 valid point and one that we were constantly putting
23 out on the table when we were having our
24 discussions. We are not interested in running to
25 Capitol Hill right now either. We have got plenty

1 on our plate. So thank you. We agree.

2 All right. Is there any other comments?
3 I don't want to cut anybody short. I know you've
4 got a lot on your plate.

5 All right. Why don't we take a 15-minute
6 break. Let you stretch your legs, get something to
7 drink and we will reconvene.

8 (Break.)

9 VICE-CHAIRWOMAN CHOCHRAN: Tom, if we
10 could encourage people to come back in and go ahead
11 and get started.

12 All right. We are going to get started
13 again so that we can try to stay on schedule and not
14 interrupt anybody's either lunch plans or travel
15 plans.

16 I would like to turn our attention now, I
17 think we have exhausted the comments, unless there's
18 any other comments on the fees. I think I would
19 like to turn our discussion to the facility
20 licensing section.

21 I am going to turn it back over to Lael
22 just give one more quick summary as we wait for any
23 final people to come back into the room.

24 LAEL ECHO-HAWK: Okay. Most of you are
25 familiar with the Facility Licensing. IGRA requires

1 a Tri-issue facility license. That provision was
2 used in creating a Facility Licensing regulation,
3 Part 559, that was enacted in 2008.

4 The current regulation is in your handout
5 but, again, I am sure that most of you know the
6 content.

7 We received a number of responses. Out
8 of 74 letters, tribal commenters, 66 tribes did
9 comment on the Facility Licensing regulation.

10 Ten percent of those commenters said that
11 this, agreed that we should reopen the regulation
12 for consultation because of the process that was
13 used to create the regulation in the first place was
14 flawed.

15 Forty-five percent said that the NIGC
16 exceeded its authority in enacting the licensing
17 Regulations.

18 Thirty-eight percent of the people, of
19 the comments said that the environmental public
20 health and safety matters and facility licensing are
21 proper exercises of tribal sovereignty and should be
22 left to the jurisdiction of tribes.

23 You know, comments were made about
24 Facility Licensing being also within with the
25 purview of state compacts. Also that EPA and IHS

1 has jurisdiction and authority over that.

2 The Indian land issue that's addressed in
3 Facility Licensing, the submission of, you know,
4 some of the documentation, tribes commented that
5 that was duplicative and that that was unnecessary
6 because the Bureau of Indian Affairs already has
7 that information.

8 Additionally in some of the things that
9 we would like to hear about is the 120-day
10 requirement. There was a number of comments
11 indicated that there should be some flexibility in
12 that 120-day time frame.

13 One of the primary purposes of the
14 Facility Licensing regulation is to make that Indian
15 lands determination, to make sure that the facility
16 is actually being built on land, Indian lands
17 eligible for gaming.

18 Sometimes that's a very easy
19 determination to make, sometimes, given the checker
20 boarding of reservation and fee versus non-fee land
21 that's a difficult determination to make and may
22 require some more time.

23 Within the agency, we have considered,
24 you know, how do we work that time frame so that
25 there's enough time at the agency level to make a

1 review? Often times, we have to work, particularly
2 lately, you know, we are seeing a number of Indian
3 land determination requests come through from tribes
4 who may be newly recognized, they have a Restoration
5 Act, and it gets very complicated when we have to
6 work with Department of Interior to make those
7 determinations so it can take a little more time.
8 But then you have large land-based tribes like, say,
9 Navajo, where it may be much easier to make that
10 determination.

11 When it comes to opening an operation,
12 you know, obviously your financiers want to make
13 sure that the location is actually Indian land
14 eligible for gaming before they, you know, begin
15 writing checks. So that's a lot of practical
16 implications that, frankly, at the agency level we
17 just don't fully appreciate and we need your input
18 on that. And if there needs to be some flexibility
19 built in those time frames, what does that look
20 like? How can we help you meet the needs of your
21 operation in terms of financing of those other
22 things? And how can we make sure that we also have
23 enough time when it comes to those more difficult
24 Indian land determinations, when we have to make
25 those decisions, making sure that we have enough

1 time.

2 So those were some of the primary
3 concerns that we heard from the comments. So just
4 again open the floor, if you have any comments on
5 that.

6 YVONNE WILSON: Yvonne Wilson,
7 Cheyenne-Arapaho Tribe.

8 At one time NIGC required us to have
9 documents from -- to describe our tribal land, and
10 we did so.

11 Do we have to do it every year or what?

12 LAEL ECHO-HAWK: Well, to that, that's an
13 issue that's raised, that we are thinking about.
14 The current regulation requires the facility license
15 to be renewed every year. Is that necessary?

16 Is it, you know, for tribes to send us
17 that documentation again, is that necessary or is
18 the initial land determination that's made the first
19 time the facility licensing is open, is that
20 necessary?

21 These are all things that we need, you
22 know, we need to hear about because those comments
23 are things that -- you know, speaking for myself, I
24 worked at a --

25 Did I say three years?

1 Oh, okay. So some licensing is required
2 to be made every three years.

3 When this regulation came out at -- I was
4 working as in-house counsel at a tribe in Washington
5 state, and I remember looking at that and thinking,
6 that's lot of stuff that we have got to put together
7 every three years. It's already at the BIA, why do
8 we have to do it again?

9 And those are comments that we heard, you
10 know, from tribes that felt if that is a concern,
11 then, you know, what's reasonable?

12 We do have to make the Indian land
13 determination but, you know, like I said, is the
14 initial Indian land determination sufficient? I
15 mean, if it's not, are you going to pick up the
16 building and move it to different location?
17 Probably not.

18 You know, so is it -- your question, I
19 think is well taken and that is, once we have made
20 the determination do we need to see your facility
21 licensing again?

22 If it's licensed again, does the
23 regulation -- should there be a renewal requirement?
24 And if there is, what is a reasonable amount of
25 time? And if there is renewal, should that have to

1 be resubmitted to the agency?

2 These are all questions that we have and
3 we would like to hear from tribes. So if you have a
4 position on that, that would be helpful.

5 YVONNE WILSON: I think most of the
6 tribes, NIGC can require that we send immediately
7 what was in trust for our tribe, but we never did
8 get no response back. This was long ago.

9 VICE-CHAIRWOMAN CHOCHRAN: Thank you.
10 I think follow up on that same point is,
11 we do have a staff member that is specifically
12 appointed to preparing an Indian land database so
13 that we as an agency have recorded and kept in our
14 files the information that is being sent in. And
15 it's my understanding that she's gotten through
16 about three-quarters of the tribes that we have
17 gotten information come in. And I would assume that
18 that database will be used to offset the burden upon
19 a tribe of resubmitting documentation for the same
20 information, you know, whatever is ultimately
21 decided on, if it's renewed every three years or
22 five years.

23 That doesn't get to the harder questions,
24 I think, which is what happens if the structure is
25 moved, if it's a temporary structure and it's moved,

1 or it's expanded upon, or -- and those are some of
2 the more difficult issues, of course, that we would
3 like to hear from tribes.

4 You know, would that be a triggering
5 point? Maybe, again, looking for ideas. Rather
6 than saying it's every three years on the same
7 facility, maybe we look to triggering mechanisms, to
8 say, If you do this, it triggers.

9 Tom.

10 TOM CHOQUETTE: I think one of the things
11 that Ms. Wilson was addressing was, a lot of times
12 different tribes have in their gaming wanting to
13 issue a license and it may not require a rule. Some
14 tribes renew them every year, some do it every three
15 years. And I know in the regional offices, we would
16 try to make sure if they do renew them every year,
17 is that we had a current copy of the renewed
18 license, so, and maybe the tribes can provide some
19 input as to what would work best for them so that
20 our database is up to date.

21 YVONNE WILSON: I would like to comment
22 too that all this information that you are giving
23 us, why all of a sudden the change? How is it going
24 to improve what we already have?

25 It scares me, like the Chickasaws were

1 talking, the Congressmen can see this and they say,
2 You might want to look into see what these Indians
3 are doing now. But that's the big concern of mine.

4 VICE-CHAIRWOMAN CHOCHRAN: I hear what
5 you're saying and I would also make sure it's clear.
6 Part of what we are doing in looking at these is
7 what the response from the tribes has been, and it
8 is I think our collective opinion in the agency that
9 the existing regulation is burdensome on the tribes,
10 and so the review is to look at ways to improve that
11 process so that we take the burden away, still meet
12 the statutory objectives and requirements that are
13 placed upon the agency that eliminates some of the
14 burden. So that's the intent, is coming from being
15 responsive to the tribes.

16 YVONNE WILSON: You know, I know it's
17 probably good for you and probably good for the
18 attorneys because, you know, they get more money.

19 VICE-CHAIRWOMAN CHOCHRAN: Right.

20 YVONNE WILSON: But how is it good for
21 us?

22 VICE-CHAIRWOMAN CHOCHRAN: Right. Well,
23 if we -- the result is to eliminate the burden, that
24 of course is a benefit to the tribe. And we also
25 have a -- the chairwoman has made a very firm

1 commitment to congress that we will engage in
2 reviewing our regulations so that they're -- we
3 remove duplications, we remove redundancies, we
4 remove unnecessary burdens upon the industry, which
5 is our ultimate objective as well. So that's the
6 goal, is to reduce those redundances, those burdens
7 upon you.

8 YVONNE WILSON: Thank you.

9 VICE-CHAIRWOMAN CHOCHRAN: I am looking
10 at Liz. She's sitting on the front row.

11 Liz, I know you have be involved in this;
12 many, many years reviewed some of the work product
13 that came out of your time. Did you have anything
14 you wanted to offer to the discussion? I know you
15 made some earlier comments. Did you want to revisit
16 anything you said? You don't have to but I am just
17 asking. I see you.

18 ELIZABETH HOMER: Well, you know, in a
19 sense I have kind of mixed feelings about the
20 Facility Licensing regulation because for those of
21 my clients that are gaming commissioners, I think
22 that having the regulation in place has kind of, you
23 know, facilitated the ability of the gaming
24 commission to really effect a good Facility
25 Licensing program. Which I think is the objective,

1 you know, or should be the objective of good
2 regulations, to facilitate as opposed to kind of
3 come down on everybody's head with a hammer.

4 My major objection has always been to any
5 NIGC regulation that requires the enactment of law
6 by a tribal legislature. I just -- you know, if the
7 NIGC can't even promulgate, you know, minimum
8 control standards as a matter of law then where do
9 you find the authority to put in an affirmative
10 burden on a tribal legislature to enact law? And so
11 that has always been my major problem with this, and
12 a couple of the other late regulations from the
13 prior administration that put these affirmative
14 burdens. You know, and I think to the credit of the
15 agency, I am not just being critical of the former
16 administration for the fun of it but I think what
17 happened is the previous chairman saw a lot of
18 things that needed fixing and, you know, felt
19 compelled to try to fix them regardless of this
20 authority question.

21 I guess what wasn't appreciated is all of
22 us deal with these. We struggle with these same
23 issues in an up close and very personal way and
24 that, you know, there are ways to -- you know, there
25 are all these different ways to accomplish. You

1 know, I mean, it would be a substantial violation of
2 the Indian Gaming Regulatory Act for any tribe to
3 engage in gaming that is not on Indian land, you
4 know, that doesn't have a facility license issued by
5 the tribe or some entity of tribe when, you know,
6 the real question here -- I mean, because one -- and
7 here's another thing. If the NIGC can write a five
8 page clarification of what their regulation means,
9 you know, then there's something wrong that
10 regulation, you know. And this comes up all the
11 time. People will call me and say, Oh, my God, our
12 facility license is coming due, what do we need to
13 do? And, you know, there's this like fear that, oh,
14 we have missed that 120 days. Well, that 120 days
15 really only applies to new facilities. It doesn't
16 apply to renewal. The package for renewal is much
17 simpler. You know, it's sort of, like, you know,
18 list the laws that, you know, that apply. Those
19 kinds of things. So, you know, in a sense it's
20 really just a notice requirement, you know.

21 But that needs to be clear in the
22 regulation. I mean, I am a lawyer so I spotted that
23 word "new," you know, and I realized you don't have
24 to, you know, keep repeating all of these things
25 over and over again. But not everybody, you know,

1 not everybody read it that way so it required some
2 additional guidance.

3 I think, one, your initial guidance is
4 like a nice place to start, you know, in terms of
5 reforming, you know, the regulations. It's a lot
6 simpler to understand and it's a lot -- you know,
7 it's a lot clearer.

8 You know, this issue that we all have to
9 adopt, you know, our tribal councils have to adopt,
10 you know, the full plant of construction,
11 engineering and building standards and all of those
12 kinds of things in order to comply with this, I
13 think is problematic. You know, it's just not that
14 easy to get statutes, you know, enacted. And to
15 have a good building code, you know, might take you
16 some considerable period of time.

17 And that was the other major concern, was
18 when this -- when this came out it was like this
19 very, you know, immediate compliance with that, you
20 know.

21 My tribe, the Osage Nation, our congress
22 meets in session twice a year, so when I have to,
23 you know, figure out how to get, you know, this
24 building, engineering, water, sewer, all of these --
25 you know, all of these standards enacted, that's a

1 huge -- that's a huge problem.

2 I think that a lot of things could be
3 solved through tribal regulations. You know, and in
4 fact the regulations, all of my clients have
5 regulations that establish what the building code,
6 the building standards, the engineering, the
7 construction, all of those kinds of things. So it
8 doesn't have to be by ordinance because most
9 everybody is basically either applying the model
10 codes or the -- or the state's, you know,
11 construction and health standards, so, you know,
12 everyone is pretty much doing that.

13 I think that this regulation is
14 problematic because I think it creates liability for
15 the NIGC, that the NIGC can ill afford. You know,
16 it is assuming a degree of responsibility on the
17 part of the federal government that the federal
18 government need not assume, which is, you know, we
19 are responsible for that. You know, if you look at
20 Indian law and Indian policy, the most protected
21 area of tribal sovereignty is in the area of
22 environment, public health and safety. So I think
23 deferring to the tribal gaming regulatory agencies
24 or the other entities -- the Chickasaw Nation has a
25 whole, you know, health department. You know, I

1 mean, there are governmental structures set up and
2 it's not reflected in these kinds of regulations and
3 it needs to be.

4 VICE-CHAIRWOMAN CHOCHRAN: Thank you,
5 Liz.

6 ELIZABETH HOMER: Oh, just to add to
7 that. You know, my point is, by making the public
8 health in taking care of the applicable casinos by
9 regulation, allowing that to be done by regulation
10 as opposed to ordinance, tribal ordinances is -- you
11 know when a tribal government makes law, you know,
12 they are not just looking at the casino. It's a
13 whole nation. You know, it's a whole nation. If I
14 am going to have building codes and building
15 standards, it's for the entire nation. And that's a
16 much more difficult project than coming up with a
17 set of regulations that apply just to the casino
18 properties.

19 GRANTHUM STEVENS: Granthum Stevens,
20 Pawnee Nation, Gaming Commissioner.

21 Like Elizabeth said, we have gone through
22 that route. Pawnee Nation has not been around to
23 where we built -- we built all these codes because
24 of the facilities, and what we experienced the first
25 year was, we had tremendous growing pains. And a

1 lot of it came down to who had the authority
2 underneath it? Because, I mean, when you look at
3 the regulation it said that the gaming commission
4 shall have the authority to enforce all this.
5 Underneath tribal law, underneath ours was, it came
6 back to the Gaming Commission. However, when we
7 actually looked at the enacted by the council itself
8 it was actually given to somewhere -- to a different
9 department. And when I actually went out and took a
10 facility license, and Marci knows because I called
11 her basically every day for two weeks and she put a
12 block on my phone so -- so I retorted to emailing
13 her. But I mean basically she became my vent -- my
14 venting because I had to explain to her, because we
15 went beyond our period. And it was -- came down to
16 the fact that when we actually looked at who had the
17 authority to enforce everything, it was out of the
18 Gaming Commission's hands. And we found -- what I
19 found out though is when I went to the department
20 that actually had it was, they had no clue that they
21 had it. I had a food inspector and I asked him, I
22 said, "Do you guys go out and look at your facility
23 for food?" And he had no clue that he had the
24 authority to go out there and look at it. He's not
25 a food inspector, he's a microbiologist, but because

1 he had all the training they just gave it to him.
2 So that was some of our problems that we had.

3 And as far as the criteria that we have
4 to do it, we are on a yearly basis for our facility
5 license and we have to go through this process every
6 year. And it -- I know it comes down to, I like the
7 triggering effect that you had talked about. I
8 think if it's a new expansion, that, yeah, you are
9 going to be required to go all the way through it.
10 We have implemented some sort of checklist now that
11 we are going back to. We utilize the NIGC's
12 checklist in some areas to help us cover this. But,
13 I mean, as far as what they are saying, I mean, it
14 was okay for the council to come in and enact this
15 because NIGC required it right off the bat. And
16 that's the way that it was presented by RAG, was, we
17 needed to have of this in place. We accommodate it
18 the first year, and this is basically our
19 one-and-a-half year at this point and we are still
20 in a growing pain on who has the authority to go
21 under who. So that's the basis of our ability to
22 say, yeah, it's become a problematic regulation that
23 should be cleared up somehow. So that's my concern.

24 VICE-CHAIRWOMAN CHOCHRAN: Thank you.

25 Yes.

1 MATTHEW MORGAN: Matthew Morgan,
2 Chickasha Nation.

3 Just to add on to the comments on
4 facility license. I agree it has become problematic
5 when we look at it at an operational level. You
6 know, on the operation side they love to look at how
7 many facilities we have. Only the regulatory side
8 that becomes an issue. I currently license eighteen
9 separate locations. You know, when I am looking at
10 eighteen separate locations, of how that works and
11 as Liz pointed out, I have a health department
12 within our division of commerce. I have OEA, which
13 is with our division of health that I work with on
14 these issues and trying to coordinate those two
15 inspections, along with NIGC coming in from time to
16 time wanting to look at that, it becomes problematic
17 on our inspections, it becomes problematic because I
18 have a separate tribal entity, a utility authority
19 that actually does a lot of building and utility
20 codes, so, you know, there's lots of issues
21 intra-tribal that we have to sort out, when suddenly
22 the NIGC places the authority at my office level,
23 when before I wasn't there.

24 It hurt me in a way because the way the
25 definitions and the way the regulation was written,

1 it seems to indicate that my authority is now
2 limited to the facility only. In the past our, or
3 the way that we have always judged our operations, I
4 license a property. If it happens on that property,
5 it falls to me. Our statute is wrote that way.
6 Which is our gaming ordinance.

7 This now puts into question exactly where
8 my line is versus where some other office's
9 jurisdiction comes in on the issues, so I guess, you
10 know, and I know you brought up earlier financing on
11 some of our issues of making sure a property is
12 licensed. There's a lot of detail on new or
13 renewals. There's not a lot of details on remodels,
14 expansions and so we have had to go in and try to
15 clarify that for ourselves, to make sure that our
16 operations are clear because I get confusion all the
17 time. When am I supposed to give you a notice? Is
18 it 120 days every time? If I am, you know, redoing
19 the general manager's office, is that 120 days
20 notice? There's issues on here about closings and
21 openings. You know, if I close a small facility to
22 redo the carpet, do I got to give you notice because
23 it's closed for 24 hours? Or what triggers those
24 notices and those time frames? So I really think
25 this is an issue that is right to reopen and a

1 tribal advisory committee would be very appropriate
2 here to grasp comments to try to rework this,
3 because I agree with Liz on this.

4 In ways it has helped my office, you
5 know, and it has helped us as a nation to try to
6 clarify some of those outstanding issues but it
7 brought a lot of other problems to the forefront and
8 didn't really solve those, it just added layers of
9 -- I think my operations falls into total
10 bureaucracy, to them trying to operate, so, you
11 know, we are very cognitive trying to not interrupt,
12 impede our operations anymore than necessary.

13 VICE-CHAIRWOMAN CHOCHRAN: Thank you.

14 I often hear the Chairwoman describe,
15 when we are looking at the big picture, how the
16 Agency is conducting itself, staying within our
17 lane, and this sounds like it's a regulation that
18 we've got a lane, which is good, because the
19 alterative is we're off on the shoulder.

20 But we've got a lane that maybe we're not
21 completely within our lane, or maybe we need to
22 redefine our lane a little bit to make sure it is in
23 conformance, because we certainly don't want to take
24 actions that have a negative consequence on tribes.

25 If there's benefits here, we want to

1 preserve those and improve upon things that perhaps
2 had consequences that either weren't foreseen or
3 weren't part of the discussion back when all of this
4 was revised last.

5 All right. Are there any other comments?

6 All right.

7 The next topic I would like to take us
8 to, and I'm not sure that there will be a lot of
9 discussion but it might be the right conversation
10 before hunch, is the Buy Indian Act regulation.

11 And, again, I'm going to turn it back over to Lael
12 one more time just to -- because we have a few new
13 people that have come in -- just to summarize kind
14 of where we are at on this issue.

15 LAEL ECHO-HAWK: As I sort of went over
16 earlier, the Agency in the Notice of Inquiries asked
17 tribes if it was something that, if creating a Buy
18 Indian Act or Buy Indian Act regulations to
19 implement the Act at the agency level would be
20 appropriate.

21 And just to clarify, because there was
22 some confusion at some of the consultations, was
23 that this would be a responsibility placed fully on
24 the Agency. So when the Agency goes to make
25 purchases and goods and services on your Indian

1 reservation, instead of going to the Embassy Suites,
2 we would come here, or et cetera, so that we are
3 putting -- you know, one of the issues that the
4 Commission has talked about is putting, you know,
5 Indian money back into Indian country, and so
6 that's -- we can do that through the Buy Indian
7 regulations.

8 The Buy Indian Act, as most of you know,
9 is an act -- it's 25 USC 47. It's very, very --
10 it's a fairly old piece of legislation and it's
11 utilized by the BIA and IHS in this same way.

12 Now, we don't make nearly the amount of
13 purchases in goods and services. Primarily it would
14 be, you know, using facilities and those kind of
15 things, but it is something that was important to
16 the Commission to reach out and ask tribes if it was
17 something that you would like to see us implement.

18 And 90 -- we received 39 comments on
19 this, and 80 percent of those all agreed that we
20 should implement the Act.

21 Some commenters suggested that instead of
22 doing it through regulation that we do it by NHR
23 policy. And we considered that. The issue is that
24 these regulations implement a federal set aside in
25 procurement. Federal procurement is enormous and

1 it's very complicated, but there are certain set
2 asides; for example, small minority-owned
3 businesses; you know, veteran-owned businesses,
4 Native-owned businesses, and in order to do this and
5 actually meet those requirements for the set aside,
6 we need to do this through a regulation.

7 So we seek lots of favorable comments.
8 This would, again, only place the burden on the
9 Agency to make those purchases in Indian country.
10 And, you know, there may not be a lot of comment
11 about it but it is something that we want to open up
12 for comment.

13 VICE-CHAIRWOMAN CHOCHRAN: One of the
14 broader comments that came out of our discussions
15 that I really found intriguing and enticing about
16 taking this action is, this Commission is very
17 committed to taking these that we gain from gaming
18 operations and injecting them back into tribal
19 communities, and that the majority of time is going
20 to be a tribal gaming community because of where we
21 spend our time, obviously, but not necessarily.

22 It is going to also allow us to go out
23 and purchase from tribes, from tribally-owned
24 businesses, that injects money back into Indian
25 country in general, and those may be non-gaming

1 tribes. So I hadn't thought that broadly of it, but
2 it really appealed to me at that level as well, to
3 make sure that we're putting as much fees back into
4 Indian country as we can possibly do as a federal
5 agency.

6 ELIZABETH HOMER: I think that you can
7 take our silence as kind of an attaboy. You know,
8 usually here in our part of the world we -- we sit
9 quietly until we have something to complain about,
10 you know.

11 VICE-CHAIRWOMAN CHOCHRAN: Well, I do
12 think it's a good thing, and we're working very
13 closely with our finance staff to make sure that we
14 do things in a matter that don't disrupt the
15 Agency's operations but also make sense, because it
16 is involving the federal procurement process. And
17 that's one of the reasons, like Lael said, we need
18 to put it to regulatory format.

19 ELIZABETH HOMER: Well, that also makes
20 it not subject to an easy revocation, you know, when
21 and if the administration or an agency policy
22 changes.

23 VICE-CHAIRWOMAN CHOCHRAN: Well, we
24 should have a draft out -- take one other question.

25 For those of you that have experience

1 with existing federal agencies that are involved in
2 this -- IHS, BIA -- does anybody have any thoughts?
3 We'd be looking to their systems as models.
4 Obviously, they've got a reg in place. But to do
5 that, I want to make sure we're not buying into
6 something that we are not foreseeing.

7 Is there anybody that deals with the BIA
8 or IHS under their regulation that would say this is
9 good or this isn't working so well?

10 And we're going to get the draft out. I
11 mean, there's been plenty of time to look at it more
12 closely but we'll get the draft out. Okay.

13 I'm not used to this much quiet. You're
14 making me nervous.

15 BARBARA COLLIER: At this point, taking
16 into consideration, if it's according to how the
17 other agencies work, like the Department of the
18 Interior, the Bureau, the Buy Indian Act, oftentimes
19 we find in our small facility that we buy -- our
20 bang for the buck, you might say, is better spent
21 when we allow the casinos, say, to buy items such as
22 paper or something like that, which might not
23 necessarily be addressed, but just whatever item it
24 is, because they can get it because they buy so much
25 versus what our little department of the world would

1 purchase, somewhere that would not -- they purchased
2 it under the Buy Indian Act.

3 So I don't know if these kinds of issues
4 would be addressed in how that overall -- you know,
5 I'm just wondering how that would work under the
6 umbrella that we have to, you know, make our dollars
7 stretch.

8 CHRIS WHITE: We, from a procurement
9 standpoint at NIGC, we have the advantage of being a
10 federal agency and we're able to purchase supplies,
11 for instance, through contracts that are negotiated
12 for the entire federal government, generally through
13 the General Services Administration and other
14 agencies. So incorporating Buy Indian into, say,
15 the procurement of supplies, is that what you're --

16 BARBARA COLLIER: For whatever.

17 CHRIS WHITE: Or whatever. That's
18 probably one of the -- probably demonstrates the
19 need -- why we need a regulation that would address
20 that issue.

21 Procurement, federal procurement is very
22 complicated, but it goes under the golden rule of
23 the least cost to the government wins. And there
24 are written into that exceptions to that rule; for
25 minority-owned businesses, for example, for

1 veteran-owned businesses and through Buy Indian
2 Native-owned businesses, so I would like to have a
3 regulation in place that I can take to my
4 procurement people, and so we're not dealing with
5 the burden of procurement regulations when we're
6 trying to procure from Native-owned businesses.

7 I can just, you know, put the regulation
8 out there and say, you know, go do it. But
9 that's -- that's where -- you know, where we're
10 coming from on this, is that if we have a
11 regulation, it makes our job easier and it makes it
12 easier to procure from Native businesses rather than
13 a matter of policy.

14 VICE-CHAIRWOMAN CHOCHRAN: And if I
15 understand, the way the reg would also play out is,
16 it would allow us to incorporate being fiscally
17 responsible. We still have an obligation to spend
18 fees in the most fiscally responsible way that we
19 can. So if we get a situation where, you know, we
20 do use our regulations to purchase from Native-owned
21 business, for example, that will always be
22 counter-balanced.

23 If it's outrageously -- you know, if the
24 difference is outrageous, that would be absolutely a
25 factor that would still be in the back of our mind.

1 We've seen that come up a little bit, I will point
2 out, in our consultations as we go around looking.
3 You know, Where can we go within Indian country to
4 come talk to you? And we're learning, you know,
5 that there are -- every tribe has its own set of
6 rules and its own pricing points, and that that
7 plays into. Can we do that? Can we even, if it's a
8 travel facility, is it still -- is it fiscally
9 responsible for us to hold it here or would it be
10 more fiscally responsible to be somewhere else? And
11 so it's -- I assume that that analysis will continue
12 to play out for us.

13 BARBARA COLLIER: But just like Matthew
14 mentioned earlier, you know, as long as it doesn't
15 create more problems, I think we -- we
16 necessarily -- you know, we definitely would want to
17 support that, but if it would create, you know, more
18 problems, probably not.

19 VICE-CHAIRWOMAN CHOCHRAN: All right.
20 Are there any other comments?

21 Well, it's been proposed, and I think
22 it's a great idea, to go ahead and break a little
23 bit early for lunch. And we really only have one
24 other topic to cover when we come back. So why
25 don't we -- I know the agenda says come back at

1 1:30, but why don't we come back at one, if that's
2 acceptable, begin our discussion and we may have an
3 early afternoon.

4 We're here for as long as you need us to
5 be here, obviously, but if we can let you go earlier
6 we'd like to do that so we'll see you back at one
7 o'clock.

8 (Lunch recess.)

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1 VICE-CHAIRWOMAN COCHRAN: All right.

2 Good afternoon. I hope everybody had a
3 good lunch. I did. I found my catfish and my hush
4 puppies, I can go back to D.C. a happy woman now.

5 Thank you for coming back. We don't have
6 a lot left on our agenda to discuss so I appreciate
7 you spending some more time with us this afternoon,
8 and we'll go at the pace that you're most
9 comfortable doing.

10 And, also, we wanted to make sure that we
11 haven't failed to listen to any other comments, even
12 if they don't neatly fit into our agenda. You know,
13 I want to make sure that we give you the opportunity
14 to speak because I know some of you have traveled a
15 long way and your time is valuable.

16 So with that, I'm going to give it back
17 do Lael again as she is so good at summarizing, to
18 take up the last topic that we wanted to bring to
19 the table to discuss today, which is the Class III
20 MICS regulation process issue. So we'll turn it
21 over to her and we'll look forward to hearing from
22 you.

23 LAEL ECHO-HAWK: Thanks, Stephanie. I'm
24 sort of in a post-lunch coma so I'll try to be
25 concise here, but I did want to kind of go over

1 again what we're discussing with the Class II MICS,
2 and that is just the process. Nothing substantive
3 at this time in terms of, you know, what they're
4 going to look like but how do we get there? How do
5 we address the Class III issue in the way it impacts
6 tribes all over the country.

7 So these are the suggestions that we've
8 heard throughout the course of the previous
9 consultations and I kind of want to comment on some
10 of the comments that we also received, and you can
11 see again on our web site the letters and the
12 transcript.

13 We sort of had an even split between
14 tribes that said repeal the MICS, Class III MICS, in
15 its entirety. And then we had others who said --
16 about the same percentage that said keep the MICS.

17 But there's this mixture of the two that,
18 you know, that some people say repeal them entirely
19 but issue them as advisory guidelines in some
20 format.

21 Some of the tribes that said keep the
22 MICS also said keep them but you don't have to be in
23 regulation, they can be in an advisory bulletin-type
24 format. So that is an option.

25 Again, we are operating under some legal

1 constraints and the court decision that impacts what
2 our ability to do that is.

3 We have some tribes that they don't use
4 any of our money to do anything with Class III
5 because you don't have any authority to do that.
6 And I see Mr. Green nodding his head. So that's an
7 issue.

8 And one of the ways that some other
9 comments addressed that concern was by when a tribe
10 does want to have the NIGC keep enforcement
11 authority, as so much of what the California tribes
12 have done, and perhaps even Oklahoma tribes have
13 done, is there is some provision for the NIGC to
14 provide those services and enforcements and there'd
15 be a different fee rate for those tribes so that
16 they're paying their share of that, you know, fee
17 for services, basically, and other tribes aren't
18 having to pick up that slack.

19 Again, Liz brought up perhaps addressing
20 this through an agency tribal compact, compacting
21 almost a fee-for-service-type agreement. That's
22 been an option that's been put out on the table.

23 And then, you know, other tribes say keep
24 it and put the tribal advisory committee back
25 together and work on it. And then the other tribes

1 say absolutely repeal it.

2 So we need to figure out -- this has been
3 pending. This issue has been pending and my -- when
4 I first went on the Commission, internally and
5 externally, it's a position we need to resolve. We
6 need to figure out a way to address it that
7 addresses the concerns of all the tribes around the
8 country, make sure that we still comply with the
9 Act, with the court's decision and the CRID, and
10 that we're not -- an added consequence is that we
11 end up in Congress reopening the Act. So how do we
12 do that?

13 And that's really the question that's
14 before you now and will be over the next five
15 meetings. So if you have any comments on that,
16 please, we need -- we don't just want to hear them,
17 we need to hear them because we need to come to a
18 good decision on this.

19 And if you have comments, please remember
20 to restate your name so that we can get it into the
21 transcript.

22 JESS GREEN: I do not have a microphone.
23 Can I be heard without one?

24 LAEL ECHO-HAWK: Is that okay?

25 COURT REPORTER: If you'll just speak up,

1 I can hear you.

2 JESS GREEN: Again, you have just
3 increased our fees 20 percent. I have asked and
4 make several comments about that point. I
5 understand you're basically just treading water and
6 keeping the current people paid.

7 I have also written a letter and pointed
8 out to your legal staff that in your announcements
9 you have consistently said that 25 U.S.C. 2706(B)
10 states that you have authority to make regulations
11 for the Act.

12 I hope that's just a carryover from
13 Chairman Hogan and is something that you will
14 correct in the near future, because 2706(B) does not
15 reference the Act, it references the chapter and is
16 making reference to Class II gaming. And CRID even
17 points that out. And CRID is exceptionally pointed
18 that you don't have any Class III jurisdiction. And
19 if you look at what the Class III regulations that
20 are currently postured, that are out there have done
21 and what they're doing, you will find a number of
22 compacts that endorse those regulations in the year
23 the compact was entered.

24 And so whatever change you make to the
25 Class III regulations will not necessarily affect

1 those places anywhere at all. So regardless of what
2 Congress would do about Class III MICS, in Oklahoma
3 the compact says, We're going to use the MICS that
4 was in effect in 2004, in November, when the state
5 passed the statute that we're forced to sign onto.

6 I mean, it is not negotiated. It's a
7 matter of Oklahoma statutory law. And it has been
8 approved by the Secretary of Interior, who didn't
9 take your input, he just stamped right off on it or
10 passed it in some other fashion.

11 And we're not the only state that has
12 that endorsement. I understand there are tribes
13 that feel it would be helpful for them to have a
14 newer MICS for Class III, but I don't see that the
15 tribes in Oklahoma ought to have to pay for it.

16 And I -- you know, we're locked with the
17 MICS that are from 2004 regardless of what you pass.
18 What you now approve does not affect the fact of
19 what our compact says. And while we might even get
20 permission from the state SCA to use a newer MICS as
21 modified, I see no justification in using our money
22 to pay for it.

23 Now, I appreciate that Ms. Homer has made
24 some suggestions about how it could otherwise be
25 paid for. And I have no objection if you want to

1 utilize your time and find another means to pay for
2 it. But I think the record needs to be abundantly
3 clear that here in Oklahoma our compact says we
4 endorse the 2004 November MICS when we entered the
5 compact. That's what we're going to use for Class
6 III.

7 And the compact doesn't say as may be
8 later updated by time as it does for other statutes
9 later, that are elsewhere in the compact. It simply
10 says that -- that MICS.

11 And I would certainly direct that you
12 might want to relook at your publications about
13 2706(B), because it does authorize you to make regs,
14 but I believe it only authorizes it, and I think
15 that's what CRID said, as it pertains to Class II.
16 Thank you.

17 VICE-CHAIRWOMAN COCHRAN: Jess, thank
18 you. As to your second point -- I think I got the
19 right order, first one was the fee, second point --
20 you're absolutely correct on our language, our
21 choice of language and that will be corrected, so --

22 JESS GREEN: Now I have got to find
23 another point.

24 VICE-CHAIRWOMAN COCHRAN: No, we've
25 already discussed that and your point is very well

1 taken. And, yes, I do think it's true, the language
2 just wasn't caught the first time around as it
3 should have been perhaps.

4 So, now, your Class III point, and I
5 appreciate your candor, and I think that your
6 views -- and I'll be interested to hear from some
7 other people that are present -- are probably
8 reflective of many tribes in the state, and that's
9 why I appreciate hearing it.

10 It is a complex issue that we do have to
11 find a solution to. So I'm going to open it up. I
12 still want to hear from tribes on this, or any part
13 of Class III, in the sense of the process, how to
14 approach it in the process manner.

15 ELIZABETH HOMER: I'll talk.

16 VICE-CHAIRWOMAN COCHRAN: We can wait you
17 out. I'm Chickasaw, I'm stubborn.

18 YVONNE WILSON: Okay. I just wanted to
19 say, What brought all this -- Yvonne Wilson,
20 Cheyenne-Arapaho tribe.

21 Why get into this Class III MICS with
22 NIGC? What brought that on?

23 LAEL ECHO-HAWK: The Colorado River
24 Indian Tribe decision. Several years ago, there was
25 a -- the court case. In that case the court said

1 that the NIGC doesn't have the authority to enforce
2 or promulgate Class III regulations. Since then,
3 it's been sort of pending.

4 There was an effort by the agency, also a
5 couple of years ago, to update the Class III MICS,
6 and I think tribes came to the table and said
7 absolutely not, you don't have the authority to do
8 that, and since then we've just been sort of
9 waiting.

10 But this is an issue that we have to
11 address because we currently have Class III MICS
12 regulations, and if CRID says we don't have the
13 authority to enforce or promulgate, what do we do
14 with those regulations? What do we do with the
15 tribes that have given the NIGC the authority in
16 their compacts or in their ordinances to come in and
17 enforce Class III MICS? It's an issue that, as a
18 result of the court case, has been pending and
19 unresolved and the agency has to resolve it somehow.

20 So it's just been kind of an elephant in
21 the room for a number of years. The previous
22 administration, I think, made a couple of attempts
23 to deal with it in a variety of ways, and we're just
24 coming back to the table and talking to the tribes
25 about which direction should this administration go.

1 YVONNE WILSON: Well, the reason why I
2 asked, because I have been gone a few years, but,
3 one, CRID; two, the tribes -- you know; three, you
4 know, why are you bringing it back up? I mean, you
5 know, it just don't make sense to me. The State of
6 Oklahoma, we do have our own compact.

7 ELIZABETH HOMER: Well, as a threshold
8 matter -- Elizabeth Homer.

9 As a threshold matter, you know, the
10 reason why I was suggesting the compacting approach
11 is very much for the reason that, you know, as Jess
12 has stated and because of the case law in the
13 Colorado River decision.

14 You know, I think the MICS are a good
15 thing. Okay? I have always been a supporter of the
16 MICS themselves. The tribes initiated the process
17 of developing MICS in the first place. And, you
18 know, there's no question that we need to have MICS.
19 MICS are important, and the NIGC can play a role in
20 helping us to have good standards and guidelines to
21 follow.

22 You know, the question is: Who enforces
23 the MICS? And, what is the nature of the NIGC's
24 authority to promulgate a regulation in this regard?
25 But -- and we've got the answers to that out of the

1 CRID decision. And, you know, so where does that
2 leave us and what role can NIGC play?

3 You know, tribes can consent to
4 oversight. You know, there's a difference between
5 having a legislative regulation that directs and
6 compels versus a voluntary regulation to which there
7 is tribal consent, you know, and that's the big
8 difference.

9 I mean, it really is based on the idea of
10 consent too. If we want to have Class III gaming,
11 then we consent to having the state play a
12 regulatory role in that regard, you know.

13 But this concept of consent is -- you
14 know, is, in my view, the best possible way around
15 this question, because if I had to choose between
16 state and federal oversight -- no -- no disrespect
17 to any state government -- but I would prefer to
18 have federal oversight. You know?

19 States play games sometimes, you know,
20 when they have authority in tribal affairs, and I
21 think that we tend to get a better treatment when
22 we're dealing with a federal agency that is more
23 objective and is farther away.

24 I think it's important for the NIGC to
25 play a role, but I think that as a matter of tribal

1 sovereignty, shaping the contours of that
2 relationship is something that needs to be done in a
3 mutually agreed upon fashion.

4 And then we can address all of these
5 other kinds of issues; you know, fees and, you know,
6 what are the parameters? What is the proper
7 protocol for -- you know, for raising issues, you
8 know, problems that occur, that may come to the
9 attention of the NIGC?

10 You know, the NIGC -- it's not the NIGC,
11 it's all of us. The best thing we have going for us
12 is we have tribal gaming regulatory agencies.
13 They're the primary regulators. They're the
14 day-to-day regulators. You know, kind of developing
15 the contours of that relationship between the tribal
16 regulator and the federal regulatory oversight
17 agency is really the challenge that awaits. And I
18 think it has to be a consensual, not a prescriptive
19 or a legislature approach, for figuring it out.

20 And I thought about this issue for a
21 long, long, long time. You know? I mean, when I
22 was on the commission we did the first revision of
23 the -- of the MICS. They had been promulgated by
24 the prior administration and everyone hated them and
25 impelled the NIGC to revisit, and we did. You know,

1 that's where we built in the chairing structure and
2 those kinds of things.

3 But the arguments have not gone away and,
4 of course, have vindicated the tribal point of view
5 on that. And so now the question is: What is the
6 appropriate role? And I think that it's that
7 government -- the answer is somewhere in that
8 government-to-government relationship, that
9 consensual relationship between tribal and federal
10 government.

11 VICE-CHAIRWOMAN COCHRAN: Thank you, Liz.

12 Let me throw out a question that I know
13 we were hoping we'd hear some comment on, if anybody
14 wishes to comment. What impact, if any, might be
15 envisioned if we just repealed the Class III?
16 Didn't replace it. Didn't -- what impact might it
17 have on your compacts on how you do business here?

18 Go ahead. Ladies first, please.

19 ELIZABETH HOMER: Well, I think that -- I
20 think that for those of us in Oklahoma, assuming
21 Jess is correct, you know, that those MICS are what
22 we have to live with forever and ever, Amen,
23 regardless of whether you repeal it or not, we
24 probably are still under those MICS forever and
25 ever, Amen. You know, so I'm not -- I'm not sure

1 that under that theory that there would be much of a
2 change for those of us in Oklahoma.

3 The problem with that, though, is we've
4 got this static instrument and we have an evolving
5 industry. So I think that, you know, repealing Part
6 542 is not necessarily going to be the end of the
7 world, but there could be a counter argument that it
8 would be, because if there's no more federal
9 regulation, then we're going to be having a big gap
10 in our agreement with the state of Oklahoma. So
11 that's the other alternative. That's the other --
12 you know, that's the other concern. And that's the
13 one that concerns me the most because that's going
14 to change the dynamic.

15 VICE-CHAIRWOMAN COCHRAN: Thank you.

16 Mr. Green.

17 JESS GREEN: My suggestion is that you
18 not repeal the MICS. You leave it. If Congress
19 asks you about the MICS application, you say it has
20 application. It has application in Oklahoma by
21 virtue of the secretarial endorsement and the
22 tribes' endorsement. It has application in
23 California where those tribes have made it a part of
24 their game ordinance. It can have application if
25 the states and the tribes want it to.

1 Now, insofar as what you do in the
2 future, if you have consent or other people pay, I
3 would suggest you make a MICS guideline.

4 Again, I would not -- CRID says the
5 precedential value of the regulation and the
6 enforcement value of the regulation does not exist.
7 It can't undo the fact that you've adopted it. It
8 can't undo the fact that these states have -- and
9 tribes and Indian nations and governments have
10 endorsed it at a particular point in time.

11 And if you don't repeal it or throw it
12 away when Congress asks you, well, what about the
13 MICS, you are able to say the current MICS has
14 application by consent.

15 And if you do MICS by -- by
16 recommendation -- and, again, get sources to pay for
17 it from elsewhere, I think you will, the next time,
18 be able to point out to Congress that there is a new
19 and improved version which we are not able to
20 enforce by virtue of compact and CRID. But we have
21 this many tribes signed up and state governments in
22 agreement that this is what we're going to use from
23 now on.

24 And so I think you're there able to
25 provide yourself with a much better defense to

1 Congress when they say there's a void that needs to
2 be filled. And you say, oh, no, these old ones have
3 endorsement by the tribes and the states that see
4 value in it, by the tribes individually that see
5 value in it, and we've figured out a way to build
6 some new ones that are very modern, that tribes are
7 signing on to, and, you know, as guidelines. And so
8 I think you're able then to deflect any argument
9 that there is a void that needs filling, which is
10 what the tribes have said all along. It's not that
11 we didn't want your guidance, we just didn't want
12 your enforcement in an area where we felt like we
13 had reached concurrence with the states.

14 And had Oklahoma not had your MICS
15 guideline to adopt, I am confident they would simply
16 have selected some other vocation. So I think there
17 is value in still leaving what we have there and
18 not, quote, repealing it, because it is, in fact,
19 endorsed by tribes and states.

20 And, by the way, my name is Jess Green.

21 VICE-CHAIRWOMAN COCHRAN: Thank you,
22 Jess.

23 ELIZABETH HOMER: And I would be very
24 concerned about your repealing it because I do
25 believe -- you know, sometimes -- let me set this

1 down so I don't waive it around.

2 But I am very concerned about that in the
3 big -- in the largest sense of the word, because if
4 the Congress of the United States begins to think
5 that the NIGC is deregulating Indian gaming -- and
6 it's really easy when you repeal a major regulation
7 to jump to that conclusion when you don't -- if you
8 don't know the facts. And, believe me, we're
9 dealing with folks in the Congress that don't
10 necessarily know very much about Indian gaming at
11 all and they see a repeal of a major part of the
12 agency's regulation, the first thing that jumps into
13 mind is, Oh, my God, they're deregulating Indian
14 gaming.

15 You know, we're not deregulating Indian
16 gaming. All we're doing is taking steps to get
17 consistent with the statutory law that Congress
18 enacted. What we don't want, though, is Congress
19 coming back now and opening the statute and God
20 knows what will happen.

21 You know, what could be put into IGRA
22 once it were reopened? And so I frankly feel that
23 repealing it altogether is -- is not the right
24 option.

25 VICE-CHAIRWOMAN COCHRAN: Thank you, Liz.

1 Yes.

2 GRANTHUM STEVENS: Granthum Stevens,
3 Pawnee Nation.

4 I think it really comes down to the same
5 as probably all feel, that if 542 does leave there's
6 going to leave that void and Congress on hill is
7 just going to open it back up. And we're all in the
8 same boat that we don't want Congress to reopen
9 anything.

10 We just got to the point to where we're
11 comfortable and a lot of new tribes have gone into
12 gaming at this point, compared to other tribes, is,
13 we've just gotten a feel for what the MISC is.
14 We're just taking a baby step compared to what other
15 people have done.

16 I mean, there are some tribes that have
17 been involved in this situation for -- the beginning
18 of IGRA, that have set up this boundary. I know,
19 coming from my nation, I ain't the most experienced
20 person in gaming. And I'll honestly say that.
21 However, I have grown up to this point in learning
22 the MICS and learning how our internal controls have
23 worked. And I think at this point if we do repeal
24 it, it's going to come back down to the point to
25 where we don't have any legs to stand on. We're

1 going to be turning around saying, all right.

2 But I do like the idea that we are
3 getting together and we do network a lot in
4 Oklahoma. It's one of the best. I mean, we hear
5 Jess Green basically 24/7, in one's sleep, Jess
6 Green's words.

7 VICE-CHAIRWOMAN COCHRAN: I'm so sorry.

8 GRANTHUM STEVENS: But, I mean, we tend
9 to look at people that have the true experience. I
10 know there's been certain situations to where, if I
11 have a question I will call NIGC. And if it's a
12 Class III situation or anywhere else, I end up
13 calling the state of Nevada or the state of New
14 Jersey because their regulation comes from that
15 state, and they go through an extensive training
16 process. So I call them and ask them, What do you
17 exactly look for? How do you look at it? And the
18 first question I get from them is: "Are you a
19 Native American tribe?"

20 And I'm like, "Yeah."

21 "Well, you got to go back to the MICS."

22 My answer is, their MICS is exactly
23 written in your law. Your regulation is exactly the
24 same as theirs. I'm just asking you since you have
25 more training in this area, what exactly do you look

1 for?

2 Now I'm not saying that we don't have
3 enough training over here, it's just they deal with
4 the whole state issue. I'm able to get a state's
5 perspective on how they look at something.

6 Oklahoma is really unique, coming from
7 Arizona, coming from California, in that, yeah, I
8 can see where 543 is very valuable to California.
9 And it came down to Mr. Schwarzenegger saying, hey,
10 we have this void, we need to fill the void.

11 I can see where the previous commission
12 also said the same thing, we have a void, we need to
13 fill it. And I like the idea that it's golden for
14 guidance to say, hey, if you want to follow Class
15 III, here's the guidance that will be available for
16 you guys. And I think that it really affects the
17 people on the West Coast.

18 So as far as repealing 542, I think it
19 would be a very, very big void and a hardship for
20 us. And like I said, if -- like Liz has said, if
21 Congress will look at it as deregulating and it's
22 going to pop up that question and throw a red flag
23 to say, we need to reinvestigate this, we need to
24 reopen it. And that's what I think a lot of us are
25 trying to avoid at this point, is, we don't want

1 them to reopen it, we don't want them to look at it.

2 So my biggest thing is that we still need
3 542 and we still would like to see the encouragement
4 for 573. And I think it really comes down to, like
5 CRID said, How does your guidance come into play?
6 You won't have the authority over there but we'd
7 just like to see it like in an advisory. That's it.

8 VICE-CHAIRWOMAN COCHRAN: Thank you.

9 Any other thoughts?

10 Let me open up the floor just to anything
11 that didn't get said earlier. If you had thoughts
12 over lunch, I know many of you were having
13 discussions. If you had additional thoughts since
14 then you want to offer up on things we talked about
15 before lunch.

16 My obligation, my responsibility, my
17 privilege is to sit here and listen to what you have
18 to say so I want to make sure that we have the
19 conversation. Please.

20 UNIDENTIFIED SPEAKER: Maybe more than a
21 question than anything, following up what these
22 three folks just said, it's pretty clear that 542 --
23 we're kind of back to that legally void.

24 My question to you all is in defending
25 yourself in front of Congress, has there been an

1 analysis of all the compacts nationwide so that we
2 know which ones to apply what -- I'm sorry.

3 Is it easier to do it this way?

4 My question is: Have we done an analysis
5 so that we know when Congress comes back and says --

6 VICE-CHAIRWOMAN COCHRAN: I think if you
7 just speak --

8 COURT REPORTER: If you'd just come up
9 front and speak.

10 UNIDENTIFIED SPEAKER: Okay. Is that
11 better?

12 COURT REPORTER: Why don't you just come
13 up front and speak?

14 UNIDENTIFIED SPEAKER: Okay. I can do
15 that.

16 My question is: Have we done an analysis
17 to see where the holes are in all the compacts?
18 Because a lot of these are going to be kind of new.
19 I think Wisconsin may be the only perpetual compact.
20 And a lot of these are going to be coming up so the
21 states can re-examine the way they did in Oklahoma.
22 So that we can defend ourselves in front of Congress
23 when they say, Well, how is this getting dealt with
24 in the future? That's all. And are we doing that
25 or how are we looking forward to that?

1 VICE-CHAIRWOMAN COCHRAN: That's an
2 excellent question. The Chairwoman again in her --
3 both appearances before Congress in talking about
4 CRID, committed to doing the analysis and it is
5 underway.

6 I don't know, I'm thinking if we talked
7 about in terms of time frames, and I'm not sure that
8 we have. But if it -- I anticipate we'll find
9 ourselves before Congress at some point in time,
10 this year perhaps, even for an oversight-type
11 hearing or something of that nature, and, like I
12 said, we will be prepared at that point, so we'll
13 come to a conclusion, that it is absolutely on our
14 mind. And I know that we have done some fundamental
15 factual analysis on what compacts require what when
16 they come up, the kind of basics. We've been trying
17 to get the analysis done, overall what it means,
18 because I do think that we need to be prepared for
19 it.

20 Matt?

21 MATTHEW MORGAN: Matthew Morgan,
22 Chickasha Nation.

23 I have a procedural question, and
24 probably falls to Ms. Echo-Hawk.

25 As you go through your consultation on

1 your groups, are you going to start writing
2 discussion drafts and releasing those? Or is it
3 something you're going to save up till the end of
4 some of these consultations and then start releasing
5 them? As you go around the country and your
6 conversations maybe driving this discussion in new
7 ways, you know, how are we supposed to keep up with
8 the conversations if we can't attend?

9 LAEL ECHO-HAWK: That is a great question
10 and one that we're trying very hard to address. We
11 will be putting forward preliminary drafts, sort of
12 as we can. For example, the information that we
13 received from our Notice of Inquiry has kind of
14 given us enough information to put together a
15 preliminary fee regulation draft, discussion draft.

16 I think that, also, the facility
17 licensing draft as it comes forward will be based on
18 that. As things come forward, then, yes, we're
19 going to be trying to be putting out draft language.

20 All that stuff will be on the website.
21 Everything that we put out will be on the website.
22 You can go there.

23 We tried -- last week when -- on Friday,
24 we had the -- we finalized the draft regulation and
25 we called our RDs, and called the regional, national

1 associations, but we wanted to make sure that we
2 met -- we contacted not just the associations but
3 the tribes, through the regional staff, to let
4 people know that that information is out. It's new.
5 It's on the website. And we plan on continuing that
6 so that there's this continual outreach. You know,
7 that things are coming down the pike. You know,
8 these will change, obviously, as we get information.

9 Will the draft deregulation be the same
10 as it is right now if and when it goes into notice
11 and rule? You know, maybe. Maybe not. We'll need
12 to -- we'll take another look at that. But, again,
13 we need -- you know, we need a place to start from.
14 And so we're going to put together some discussion
15 draft and, again, it's discussion only.

16 You know, we're just as new. And this
17 allows us to figure out a way that, hopefully, will
18 get the things done we need to get done, keeping the
19 ball moving. I know that in our consultation on
20 consultation -- only in the federal government would
21 you say that. Consultation on consultation. One of
22 the comments was: How do we know that if we can't
23 attend a meeting and you don't see my tribal
24 leader's face, how do I know that my written
25 comments are actually going to be reviewed and

1 considered? And, again, the commitment from the
2 Commission is that every comment is going to be
3 reviewed and considered. Oral testimony in a
4 consultation like this, any written comments, I
5 personally read all of that. Our attorneys, they
6 read it. The Commission read all the comments from
7 the Notice of Inquiry. So we're going to be doing
8 our best on our part to make sure that you're
9 informed when these things come out. And then, you
10 know, as your comments come in, please, you know, be
11 assured that we will be reading and considering
12 those as well.

13 And, you know, as we go back out, we take
14 the comments back out with us and say, okay, well,
15 you know, we heard that percentage rate. For
16 example, President Patterson indicated a percentage
17 rate, felt some kind of fee might look better than
18 just a set dollar amount. And so we take those with
19 us as we move along. We've got processes in place
20 to take this meeting to the next meeting, and so
21 we're kind of, you know, gadget, moving parts and
22 wheels. But you know, if you have suggestions and
23 we're not doing what needs to be done to communicate
24 with you, please, please, let us know and we'll make
25 the adjustments if we can. But this is -- you know,

1 it's new to the agency. I think it's new to Indian
2 country. And, hopefully, whatever process we come
3 up with will make the end result better.

4 That was a very long answer, I apologize,
5 but I am a lawyer.

6 ELIZABETH HOMER: Well, let me just say
7 as a general matter that I have been following you
8 guys around the country, as you know. And, you
9 know, here we are in Oklahoma, and I just want to
10 say to you and everyone else that these discussions
11 have been the ideal dialogue process that we've
12 been, you know, asking for and kind of demanding for
13 years now.

14 You know, to be able to have a
15 discussion, to be able to see your perspective and
16 have -- you know, it's as important to me to hear
17 your perspective on things because then I can shape
18 my perspective on things and vice versa, so now that
19 it's a bilateral discussion, you know, well done.
20 Thank you all so much. Really appreciate it.

21 VICE-CHAIRWOMAN COCHRAN: Thank you, Liz.

22 We've made a -- the Commissioner has made
23 a very firm commitment to putting balance back into
24 how decisions are made within the Agency, and a
25 large part of that is process. We knew that. So

1 thank you for your thoughts.

2 JESS GREEN: They won't know how to
3 behave if I complement them one meeting and you
4 complement them the next.

5 BARBARA COLLIER: Barbara Collier, Quapaw
6 Tribe.

7 I was just sitting here thinking almost
8 simultaneously what Liz was just saying. I
9 appreciate the fact that you all are taking a
10 totally different outlook on consultation. Not that
11 some of our own personal complications weren't very
12 exciting but they didn't get very much accomplished
13 oftentimes, so...

14 ELIZABETH HOMER: We got the picture. We
15 always got the picture.

16 BARBARA COLLIER: But, anyway, to say
17 that I do appreciate -- I think that this is very
18 effective. I just wish that others -- Jasons and
19 some of these others would be more comfortable
20 perhaps. Brett, you know, we were talking about
21 that. And people aren't secure enough in, you know,
22 maybe publicly making a comment that might not be
23 something that they think might not be acceptable.
24 But you are trying to make everyone feel comfortable
25 and I think that's a big plus in your favor.

1 I, again, appreciate the fact that you
2 are taking a different -- a whole different avenue.
3 I think it's going to be positive. I just wish that
4 others would, too, step up and make their comments.

5 You know, I was taught my whole life
6 there's no stupid question, and I believe that. I
7 think if you don't know, you know, you just -- you
8 can't know unless you ask.

9 But the Jesses and Elizabeths and some of
10 them are very wise and do go back quite a ways, as I
11 do, in gaming, and we appreciate the fact that --
12 and I think that's been known -- made known to you
13 that we appreciate the fact that you're doing this.

14 One thing I was thinking was, when we
15 were talking about -- Richard and I were talking
16 about, it's not going to be long until we have to
17 take a relook in Oklahoma at these compacts. I
18 mean, time flies. And so this will make a
19 difference. I know the MICS and what is done with
20 that will probably, definitely be -- you know, need
21 to be something that's well-ingrained in us, and the
22 decision be made as to having effects on the
23 compacts when we have to go and renegotiate.

24 And so, please, you know, consider all
25 aspects so it will make it so it will be much -- of

1 much benefit to us, hopefully, when we go forward
2 and do that. But thank you. Thank you for being
3 here.

4 VICE-CHAIRWOMAN COCHRAN: Well, thank you
5 for your comments and your kind words. There's a
6 couple of areas in the country that are going to be
7 similarly situated on the compacts. And it kind of
8 reminds me of looking to the successive generations
9 in this case, really kind of looking further out and
10 trying to do the best we can to foresee how our
11 actions will impact twenty or thirty years down the
12 road and that's definitely in the forefront of our
13 mind as we think about it.

14 I appreciate your comments about some of
15 the other people who are present who may not have
16 offered something to say. I know this is a
17 different format than some of you may be comfortable
18 with or familiar with, or just it's new. It is. I
19 know all three of the commissioners are very much
20 dedicated to hearing what the tribes have to say.
21 And if you're not comfortable in a group setting and
22 you want to convey it on paper or, you know, do a
23 one-on-one meeting, let us know. I certainly
24 respect that. I respect different comfort levels
25 and speaking styles and ideas and concerns. I mean,

1 you know, we never want to make a tribe feel that
2 they cannot speak because of the forum at that
3 particular time if it's not the most comfortable
4 forum for them. So it just takes one. I can tell
5 you, we sit in meetings as we go through drafts and
6 we talk about the issues and we talk about the
7 comments from the inner and -- you know, what about
8 this? And usually one tribe might have said it but
9 I still get it out on the table for discussion. So
10 you never know. You may think your thoughts aren't
11 relevant or perhaps aren't an intelligent thought.
12 That may be the furthest thing from the case. As
13 far as I'm concerned, when a tribe speaks, I need to
14 listen and I need to be responsive.

15 So, all right. I'm going to let Lael
16 give you some final thoughts.

17 LAEL ECHO-HAWK: Just wanted, you know,
18 also in response to that point, please, if you have
19 comments and, you know, you've heard some things and
20 you write them down, you want to get them to us,
21 reg.review -- easy to remember -- @nigc.gov. Those
22 will be coming in, they will be posted on the
23 website. You know, take a look at our website. Use
24 it as a resource. If you have questions, we are --
25 you know, like I said, we need your input.

1 I have the, you know, the kind of -- I
2 had a very -- I was very fortunate to go from law
3 school to spending six years as in-house counsel at
4 a tribe, and I know there's a lot that happens at
5 the operational level that we don't appreciate at
6 the agency level simply because we don't have that
7 experience and so we really need to hear from you.
8 We don't just want to, we need to. In order to make
9 these regulations better and to respond to the
10 industry needs, we've got to have your input. So in
11 whatever format you need. We can do one on one,
12 send me an e-mail, give us a call. We really look
13 forward to hearing from you in whatever -- by
14 whatever means necessary, so...

15 VICE-CHAIRWOMAN COCHRAN: All right.
16 Last call.

17 Well, I want to thank you for your time
18 today. Again, I know many of you have extremely
19 busy schedules. Thank you for getting your tribal
20 leadership here today as well. It's important that
21 we also reach out to them wherever we can. I look
22 forward to -- Liz, I'll see you somewhere. But
23 thank you again for giving me the honor of being
24 here today and back home, to start off a very long
25 process in Oklahoma. You've given us some great

1 thoughts that are going to be immediately passed on
2 as we begin through the agenda. I think the next
3 place the commission is headed to is Palm Springs
4 next week, so we're out there before the California
5 tribes, and so I appreciate your time. I wish you
6 safe travels and look forward to talking to you
7 soon.(Applause.)

8 (Adjourned.)

9 Written statement submitted:

10 Facility License

11 All our facilities are on trust property.

12 Requirement of Laws and Building Codes

13 Our commissioner can't force the Business
14 Committee of the Nation to enact law or adopt EPHS
15 codes

16 I agree with our attorney, Liz Homer's
17 comments. Our Commissioner has had to issue
18 facility licenses without any Sac & Fox EPHS laws.

19 I worked with NIGC in 2008 when facility
20 license changes first came out. I had to work hard
21 to gather everything required so that a facility
22 license could be issued on May 1, 2008.

23 NIGC told me all was okay and I could
24 issue the license.

25 After working hard and gathering all the

1 volumes of information to get facility license
2 issued, I only sent in a certification letter. I
3 was shocked that NIGC was not going to review all
4 the work and information gathered -- volumes of
5 information.

6 I have since issued three more licenses
7 and continue to require the casinos to complete a
8 detailed facility application.

9 We utilize IHS to assist in inspecting
10 and have received EPHS certification in several
11 areas for our staff so we can do our own inspecting.

12 My tribe still has no environmental laws
13 and has not adopted state or federal codes. The
14 casino builds using federal codes voluntarily.

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Murial Wheeler

Sac & Fox

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Executive Director

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C E R T I F I C A T E

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I, David Harjo, Certified Shorthand Reporter, do hereby certify that the above-named proceedings was by me taken in shorthand and thereafter transcribed; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 5th day of May 2011.

David Harjo, CSR RPR

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