

NATIONAL INDIAN GAMING COMMISSION
REGULATORY REVIEW

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PRIOR LAKE, MINNESOTA

Taken by: Dana S. Anderson-Linnell

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1 APPEARANCES:

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10 JOHN GUERBER, NIGC REGION DIRECTOR

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12 LINDA DURBIN, NIGC FIELD INVESTIGATOR

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18 EDMORE GREEN

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20 EUGENE "RIBS" WHITEBIRD, LEECH LAKE TRIBE

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22 ALAN SHIVELY, COMMISSION CHAIRPERSON, LAC VIEUX
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12 THOMAS DECORA, CHIEF COMPLIANCE OFFICER, WINNEBAGO
13 TRIBE OF NEBRASKA

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15 LOU FRILLMAN

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17 ED HANSON, GENERAL MANAGER, WHITE EARTH BAND OF
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20 CHRISTIE HAVERKAMP, SPECIAL PROJECT DIVISION,
21 WHITE EARTH BAND OF MINNESOTA CHIPPEWA TRIBE

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8 GAMING, MILLE LACS BAND OF MINNESOTA CHIPPEWA TRIBE

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19 DAMON PAYER, VICE-CHAIRMAN, WINNEBAGO TRIBE OF
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9 LORRIANE ROUSSEAU, GAMING COMMISSION CHAIRPERSON,
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P R O C E E D I N G S

CHAIRWOMAN STEVENS: Good morning.

Good morning. Can everyone hear me okay? Thank you. If everyone can take a seat, we'll go ahead and get started. We just wanted to make sure that all the folks that were out registering had the opportunity to come in and grab something to eat and sit down.

And to begin, first I'd like to turn over the microphone to Vice Chairman Glynn Crooks of the Shakopee Mdewakanton Sioux community. And with him is Leonard Wabasha.

MR. CROOKS: I've been asked to come over and say a few words of welcome, and it will be a very few words of welcome. Unlike most of your politicians who can stand up here all day long, that's not going to be me. A lot of times I don't really like to give welcomes here over at the casino, because if you lost the night before, they're going to look to me to get your money back. But the good news is you are not getting your money back.

(Laughter.)

MR. CROOKS: But on behalf of my fellow

1 business counsel and officers, Chairman Stanley
2 Crooks, secretary/treasurer, Keith Anderson and
3 myself, I'd like to welcome all of you to our
4 community. If you get a chance to go out by the
5 hotel entrance, there's a little calorie [ph.]
6 there, and there is a whole stuffed buffalo in
7 there that you might take a look at. That used to
8 be in my house. And I got tired of feeding it, so
9 I got it over here.

10 But I'm not going to take up too much of
11 your time, because I know you have a lot of things
12 to do today. And unfortunately, Tracie has to
13 catch a plane this afternoon, so we want to make
14 sure she gets all the things she needs told to you
15 while she is here, because she doesn't get out here
16 much, because she is always in Washington keeping
17 very busy for the people. And we appreciate all
18 the hard work she does.

19 So welcome, everybody. And now I'd like to
20 also introduce to you Leonard Wabasha, our cultural
21 resources director from the Lower Sioux community
22 to say a prayer for you today. So would everybody
23 please rise.

24 (Prayer said by Mr. Wabasha in Native
25 language.)

1 CHAIRWOMAN STEVENS: Thank you, Vice
2 Chairman. My name is Tracie Stevens. I'm a member
3 of the Tulalip Tribes in Washington. I'm the
4 Chairwoman of the National Indian Gaming
5 Commission.

6 I want to also recognize the staff that we
7 have here today. We have a regional director,
8 John Guerber, many of you know and work with John.
9 He's in the back of the room there. We also have
10 our field investigators, Linda Durbin, who is
11 sitting right over here. And Shawna Ellis right
12 back there. She's new to our team. And many of
13 you will get to know her as well. To my left is
14 our comptroller from Washington, D.C., Chris White.
15 And to my right is counselor to the Chairwoman,
16 Lael Echo-Hawk.

17 I appreciate everybody attending today. As
18 many of you know, we are in the process of
19 reviewing our regulations. And this process really
20 began when I took office and the three
21 commissioners sat down and strategized really on
22 what we would do with our term. And it is one of
23 our major -- four major priorities that we've
24 undertaken. We thought to improve our consultation
25 process, which we feel that we have done well by

1 changing the format, changing when we involve
2 tribes and giving adequate notice. And we also
3 have a consultation draft policy out that's on our
4 website that will become -- you know, when we
5 receive comments from tribes -- a new policy for
6 us.

7 The second thing we're doing is trying to
8 improve our technical assistance and training.
9 That's under the direction of our vice chairman,
10 Steffani Cochran. And we are revamping that
11 process and we've done some outreach to all of you
12 on how we can improve our training and technical
13 assistance opportunities for tribes.

14 The other thing we are doing is agency
15 operations review, which is really taking a look at
16 how the Agency itself operates in terms of
17 management and organization. And that's something
18 that is being overseen by a commissioner Dan
19 Little. And, you know, we just believe that we
20 should be just as concerned about how we run our
21 operations as we are with how you run yours. We
22 all come from tribal communities. And we have all
23 gone through the gauntlet of running tribal
24 organizations or being some part of a tribal
25 government or tribal casino operation. And good

1 management and good organization affects the output
2 that we provide to tribes. So that's three of the
3 major initiatives, but what we're here for today is
4 a regulatory review process.

5 Many of us have -- and most of us have
6 actually with the commission and our senior staff
7 worked for tribes or worked at casinos and had for
8 a long time sat where you all are sitting
9 representing either our own tribe or another tribe
10 with regard to draft regulations. So we've
11 undertaken this -- we started last fall with a
12 Notice of Inquiry. We asked for priorities from
13 tribes. And we did hear back now, and Lael will
14 talk more specifically about what we're here to
15 talk about and how we've laid out this regulatory
16 review process. And we'll start on that in a
17 moment.

18 So I really appreciate everybody taking the
19 time to be here today. We have many more of these.
20 This is number 4 of 33; 4 of 33. So we have a long
21 way to go. You'll see there's only one
22 commissioner here. What we're trying to do -- and
23 I was telling Vice Chairman Crooks that we want to
24 be very careful with our resources. So we're
25 tag-teaming. Each of the commissioners are taking

1 turns going out to each of these just to conserve
2 or budget, but also not to wear ourselves out. The
3 same thing as with the staff that will be
4 attending, we're just doing this so we don't burn
5 out and we don't burn through money. So you'll see
6 if you -- as time goes by, you'll see different
7 commissioners, you'll see the different senior
8 staff. But we all are prepared to talk openly
9 about any of the draft policies, draft regulations
10 that are out there, hear your input. Because what
11 this is really about today is you telling us about
12 the -- your concerns with regulations, how we might
13 improve them, what your views are or what we've
14 proposed, how it will affect your tribe.

15 What we've found as we've gone through the
16 Notice of Inquiry a few months ago is that what
17 works for one tribe in one part of the country may
18 not work for another tribe in another part of the
19 country based on their Compact, based on the games
20 that are allowed. And sitting in this open forum
21 allows all of you to hear what effect any proposed
22 regulation or concerns or questions you might have,
23 how one tribe may view something and how it may
24 affect your tribe or a proposal from another tribe
25 in open forum.

1 So what we would like to do is go around
2 the table and also into the audience so that we can
3 get everybody's name and proper introductions. I'd
4 also invite any tribal leaders to come to the
5 table. We've reserved the table for tribal leaders
6 or their designees. So I would be happy if anyone
7 would like to move up to the table to please feel
8 free.

9 We'll start to the right and we're going to
10 go through the room and if you state their name and
11 the tribe that they represent, that would be great.

12 (Introductions of those present off the
13 record.)

14 CHAIRWOMAN STEVENS: Thank you, John,
15 for taking the microphone. So let's jump right on
16 in. I'm going to turn over the microphone to
17 Lael Echo-Hawk. She's counselor to the Chairwoman,
18 and she'll go through where we are at in this
19 process on regulatory review, what the topics of
20 discussion are. And as you'll see from the agenda,
21 most of the day is for you. We'll briefly explain
22 the process, where we're at, what's to come and
23 then open the floor for comments on any of these
24 parts. So right now, Lael Echo-Hawk.

25 MS. ECHO-HAWK: Good morning. My name

1 is Lael Echo-Hawk. I'm a member of the Kitkehahki
2 Band of the Pawnee Nation of Oklahoma. I'm very
3 honored to be here and appreciate the welcome this
4 morning. I'm counselor to Chairwoman Stevens. And
5 one of my primary tasks has been this regulation --
6 regulatory review. I know we see -- we saw some of
7 you in Rapid City this -- earlier this year. It
8 was much, much colder than it is today. So we're
9 enjoying the weather right now. And so I'm just
10 going to get right into this.

11 The PowerPoint that you are going to see
12 today is very much a 30,000-level-foot approach.
13 Can everyone see behind us? Should we move? Is
14 everyone good? If you can't hear, just let us
15 know. Also just some logistics, and I'll reiterate
16 this at the end of the presentation, and that is
17 that we need -- anyone who speaks, please introduce
18 yourself, state your name. This is very important.
19 We need to make sure that the transcript is
20 correct. And Dana over there is going to jump up
21 and down and yell at us to stop if we don't get
22 that information. So it's very important. We want
23 to make sure that the transcript is accurate and
24 that -- A, that she can hear, and B, that we
25 attribute the comments to the correct person. So

1 we'll remind you of that periodically throughout
2 the day as well.

3 So this process is the -- is the regulation
4 review. It's also part of the consultation -- the
5 commitment to consultation and improving the
6 relationship between tribes as outlined by the
7 Commission. Executive Order 13,175, the
8 Consultation and Coordination with Indian Tribal
9 Governments. Executive order is -- the Commission
10 is taking the spirit and intent of that very
11 seriously. And this process is -- follows along
12 those lines, particularly Section 3(c), which is
13 underlined here. That is in determining whether to
14 establish federal standards, that the Commission
15 consult or the agencies consult with tribal
16 officials before we draft and put forward any
17 standards. And that's what we're doing today. We
18 are in the drafting phase of one of three phases in
19 this rulemaking process. And we'll talk about that
20 a little more. But this is really the
21 consultation, talking to tribes about these
22 proposed standards before they're actually proposed
23 and if they are registered notice, these are just
24 discussion drafts. What you see on our website is
25 discussion draft only and that nothing is written

1 in stone. We're here to hear your comments on
2 those discussion drafts and take those comments
3 seriously when we consider whether or not to
4 promulgate or to put forward a proposed reg or even
5 a final reg.

6 So most of you know this. We go over this
7 just in case you don't. The process that the
8 Commission has outlined is sort of a three-phase
9 approach. There is a preliminary drafting phase
10 where we'll have consultations, meetings such as
11 this and written comments to be submitted. Then if
12 we -- once we get through that particular phase and
13 we find that there is perhaps a need to amend a
14 rule, to put forward a new rule, we enter it in the
15 Notice of Proposed Rulemaking phase, which is an --
16 approximately, at a minimum, 60-days comment
17 period, and that also will involve some
18 consultation meetings like this and written
19 comments.

20 Finally, if there is a final rule put
21 forward, then there is a 45 -- minimum 45-day
22 written comment period. Could be more, could be --
23 it kind of depends on the rule.

24 And then -- but there are no consultation
25 meetings set for those -- for that particular

1 phase. All the consultations, these meetings that
2 we're having today like this happen during the
3 first two phases.

4 There are five groups of regulations. If
5 you looked at the Notice of Inquiry, you'll see
6 that we have clumped the regulations into groups.
7 These group numbers do not indicate priority at
8 all. They were developed after we considered a
9 number of factors including subject matter, the
10 comments that were received during the Notice of
11 Inquiry period and the amount of time and resources
12 that might be needed to address certain regulations
13 versus others. There are a number of regulations,
14 some of which we'll talk about today that appear to
15 be sort of looking -- things that we can get out of
16 the way, it's not going to require a huge amount of
17 resources. So we've tried to balance those with
18 other regulations that might require more. So
19 we've got that question. We've received that
20 question a number of times about whether or not
21 these group numbers indicate priority. And they do
22 not at all. It's just a way for us to sort of
23 juggle all the balls.

24 We have -- as you can see in your handouts
25 and on the website, there are preliminary

1 discussion drafts. These are initial working
2 drafts only. There's nothing, again, set in stone.
3 We are asking for comments on these. And if we
4 need to refine them, revise them, scrap them and
5 start over, that's what we're here to hear about.

6 This meeting is being transcribed. All
7 written comments and the transcripts of these
8 meetings will be posted on the website under the
9 tribal consultation button. There is a button on
10 the left-hand side that says Tribal Consultation.
11 If you go there you can see all the transcripts and
12 written comments as they come in. So again, it's
13 very important that you state your name. And you
14 may have to spell it. Little bit like being in
15 court, we apologize, but we do want to make sure
16 that the transcripts are accurate.

17 The commitment by the Commission has been
18 and continues to be that every comment received
19 will be considered and reviewed. I know that all
20 the commissioners personally read every one of the
21 70-odd comments that came in during the Notice of
22 Inquiry. We had giant binders that we were hauling
23 around with us. But everything that you send in we
24 do consider. Any proposed or final rule will
25 include a summary of the comments that were

1 received, much like the Notice of Inquiry. The
2 Notice of Regulatory Review agenda, it summarized
3 the comments that we received from the Notice of
4 Inquiry process and the Commission is committed to
5 a clear and transparent process. There's also been
6 a mandate by the President, and the Commission is
7 taking that very seriously.

8 So this is the meat of why we're here.
9 These are the -- we're going to talk about the
10 group 1. And then today is the beginning -- the
11 first consultation for group 2, which we'll talk
12 about towards the end of the PowerPoint. But
13 again, this is a very 30,000-level-foot discussion,
14 just an overview for those of you who might not be
15 as into regs as I am and you might not have read
16 them all -- or the discussion draft as thoroughly
17 as we all have. The group 1, we're looking at the
18 Fee Regulation, which is part 514. Possible repeal
19 of review and approval of existing ordinance or
20 resolutions, this is part 523.

21 Part 559, Facility Licensing. And then
22 proposed regs, which is the Buy Indian Act type of
23 regulation.

24 Finally, the Minimum Internal Control
25 Standards for Class III Gaming, this is a process

1 question. The four other regulations are potential
2 regulations or revisions. The Minimum Internal
3 Control Standards for Class III Gaming, what we're
4 talking about here is what do we do with this
5 issue. And I'll talk a little bit more about that
6 in a minute.

7 THE COURT REPORTER: Lael, could you
8 please slow down a little bit.

9 MS. ECHO-HAWK: So in your packets you
10 should have received a discussion draft regulation
11 for part 515, the fee regulation. And the section
12 numbers on the PowerPoint are also -- they are in
13 your -- obviously they are listed in the
14 regulations, so might help you follow along. But
15 here's the very -- here's a summary of the changes.

16 The fee calculation is proposed to be made
17 based on a gaming operation's fiscal year rather
18 on -- fiscal year rather than on the calendar year.
19 The current regulation -- the basis of fees on a
20 calendar year, well, I know a number -- great
21 number of gaming operations operate on a different
22 fiscal year than they do on a calendar year. And
23 in order to help with the calculation and ensure
24 its accuracy, the Commission -- and we heard
25 comments that -- basing the fee calculation on the

1 gaming operation's fiscal year was a better way to
2 come up with a more accurate number. And so that
3 has been proposed in the draft regulation.

4 The fee rate is scheduled in the draft reg
5 will be published on March 1st rather than on
6 February 1st to allow more time to come up with an
7 accurate preliminary fee rate. This gives the
8 Commission a month to consider to, A, get all the
9 statements in, make sure that we've got accurate
10 numbers to base the fee rate on so that we won't
11 have to adjust it, or the idea is that we will not
12 have to adjust it. And if we do, it's a smaller
13 adjustment when the final fee rate comes out.

14 Remove amortization from
15 Section 514 (b)(2)(ii) to reflect existing
16 practices. This is more of a housekeeping change.
17 It's -- amortization isn't -- where it's placed in
18 there in that term is not a term that should be
19 used in that particular section. So we're cleaning
20 that up.

21 Quarterly payments. We went from quarterly
22 payments to biannual payments, now going back to
23 quarterly payments. We've heard from tribes that
24 this is going to be very helpful in terms of their
25 accounting practices. And so we're moving back to

1 that. And the proposed draft proposed to move back
2 to quarterly payments instead of biannual.

3 This dis -- was very difficult to word, but
4 we're -- the second change on this slide is
5 clarifying that when computing fees, that the
6 gaming operation uses the actual calculation. This
7 is housekeeping. It points the reader back to the
8 section of the regulation that actually defines
9 what that calculation is. It's difficult to
10 summarize in a PowerPoint slide, but basically
11 we're just pointing the reader back to the formula
12 for calculating the gross -- assessable gross
13 revenues.

14 There is also a -- we inserted a section
15 that provides for the gaming operation to notify us
16 when they change their fiscal years. So if you
17 move from a September fiscal year to a December
18 fiscal year, then you notify us so that we can make
19 the appropriate changes that we need to make.

20 This next section is a new section and
21 something that we asked tribes about and received
22 an overwhelmingly favorable response. And that is
23 creating a late payment system prior to Notice of
24 Violation for when fees are submitted late. This
25 is something that was proposed in the Notice of

1 Inquiry. We asked tribes if this was something
2 that they would like to see or something similar so
3 that when a tribe submits its payments late, that
4 they are not penalized to the point of a Notice of
5 Violation, that there should be some -- we heard
6 from tribes that there should be a lower level
7 before you get to this Notice of Violation, and
8 that's what's been proposed here. This is new
9 Proposed Section 514(c). And what it does is it
10 defines what a late payment is versus a failure to
11 pay your annual fee. So if you merely make a late
12 payment and this is a payment submitted to the NIGC
13 within 91 days of the end of your fiscal year, then
14 that's just a late payment. And for that, you
15 would get sort of this ticket. If you look in the
16 regulation, you'll see that we've proposed that
17 as -- the later you are, the higher your percentage
18 or the dollar amount of this fine that you would
19 receive. And that's for payments that are made up
20 until 91 days from the end of your fiscal year.

21 A failure to pay an annual fee or for
22 payments made after 91 days of the fiscal year, and
23 that is identified as a substantial violation that
24 could result in a Notice of Violation and possible
25 closure order.

1 So we try to distinguish it to -- we try to
2 give the flexibility for a tribe when things
3 happen. I think in Rapid City we heard someone
4 tell us their CPA had to go and have major heart
5 surgery, and so they were unable to complete --
6 finish their financials and do everything they
7 needed to do to get their fine then to us. They
8 received a Notice of Violation, because they were
9 late submitting their fees. And so we don't -- you
10 know, we obviously -- the NIGC is funded by these
11 fees, so we need to make sure that they are in and
12 that they're in on time but also provide that
13 leeway for tribes so that if situations were to
14 come up that they need to submit it late, that
15 there is a mechanism in there that you are not
16 automatically hit with a Notice of Violation, which
17 is a substantial -- can cause a substantial
18 negative impact to a gaming operation.

19 Another new section, this is the
20 fingerprint processing fee section. It clarifies
21 the NIGC's process for collecting the fees and
22 states that the NIGC will publish the fee amount
23 biannually. We have a couple questions that we
24 need some help with. Actually, let me just back up
25 a little bit. The late payment system, one of the

1 questions that's asked in that regulation is: What
2 is the dollar amount? So when we -- when a tribe
3 is late at certain periods of time, do we base the
4 fine on a percentage of the amount that's owed? Is
5 there a set dollar amount? It's just automatic for
6 every tribe? We left that number blank. And we
7 are really looking for some input on what that
8 number should be. That is in -- if you look in
9 your handout, it's on page 5 from lines 9 to 20.
10 That's where you can see we left some blanks and we
11 need some input from tribes on that.

12 Additionally we've asked whether or not the
13 term "admission fee" in Section 514(b) should be
14 changed to "entry fee." That is what we view to be
15 housekeeping, changing the terminology that's used
16 in the regulation to be more of an industry
17 standard. So for example, when you have a poker
18 tournament, typically those -- the entry fees are
19 the fees that a player pays to join are called
20 entry fees, not admission fees. And we've received
21 questions back at the Agency about whether or not
22 admission fee for, say, a concert is to be included
23 in this -- in the calculation. And we wanted -- so
24 we wanted to clarify this, perhaps change the
25 terminology to be more consistent with industry

1 standards. That is not in the proposed regulation,
2 but it is something that we'd like to hear from
3 tribes about; and similarly whether or not
4 tournament fees should be included in the examples
5 of this entry fee or admission fees. Again, trying
6 to just use industry terminology to perhaps clarify
7 some questions that we receive at the Agency.

8 The Notice of Inquiry asks if we should
9 consider -- or if the Agency should change the
10 term -- change the definition of "gross gaming
11 revenue" to be consistent with GAAP, the Generally
12 Accepted Accounting Principles for the purposes of
13 calculating fees. We didn't make this change in
14 the draft regulation. And the reason for that was
15 that as we looked more into GAAP, we learned that
16 that definition is inconsistent with the definition
17 of IGRA, the gross gaming revenue defined by IGRA
18 which is basically wager less payout, very
19 generically, and that the terms that are used in
20 GAAP are different than are used in the Act and we
21 have to remain obviously consistent with the
22 statutory definition. We also heard that feedback
23 from tribes in response to the Notice of Inquiry,
24 so we didn't make that change in the draft. But
25 that we do have a number of -- I guess pretty

1 consistently we have tribes asking us: What does
2 wager mean? Can I deduct, you know, a match play
3 from the calculation? How do I calculate a win if
4 we've issued a match play, and how do I deduct that
5 from the calculation of gross gaming revenue?

6 And so the other question that came up and
7 what we want to propose to tribes is whether or not
8 the Commission should define what a wager is and
9 what a payout is. We didn't make those changes in
10 the draft. We think that that might help clarify
11 what -- how you calculate gross gaming revenue, but
12 we do need to hear from tribes on that.

13 The written comment period for the draft
14 regulation closes on May 31st. You can send that
15 to "reg.review@nigc.gov." That will be up on the
16 slide later. You can mail them to us, you can fax
17 them to us. All those comments will be posted
18 online. If you are interested in seeing what other
19 tribe's comments are, you can go and look on the
20 website as well.

21 Then moving on. Part 523, which is the
22 Review and Approval of Existing Ordinance Or
23 Resolutions, this was something that was put in
24 place when the Agency first came into sort of its
25 own and began enacting regulations. It applies

1 only to gaming ordinances enacted by tribes prior
2 to January 22, 1993 that weren't also submitted to
3 the Chairperson for review and approval. This is
4 obsolete. We don't have any more of these gaming
5 ordinances or resolutions, and the recommendation
6 has been that we should repeal it. And so that
7 question is out there for tribes.

8 So moving on to Part 559, which is the
9 facility licensing regulation. Most of you know,
10 and I apologize it's not in the handout, but there
11 is a discussion draft regulation on our website.
12 It's in the new section on the very first page. It
13 is also in the group 1 tab of the Tribal
14 Consultation section of the website. The
15 discussion draft was sent out last Thursday
16 evening, was put on the website and distributed.

17 So the Notice of Inquiry asked if --
18 Part 559 -- facility licensing regulation should be
19 revised. We heard many, many comments on this; and
20 not only in consultation, but in tribal letters
21 that were sent in. And they all supported -- the
22 majority of them supported reopening this
23 particular part for review. There was a number of
24 concerns about the process by which the part was
25 adopted and some concerns about the NIGC's

1 authority over EPHS issues because they are also
2 covered by other federal agencies, and a lot of the
3 comments said this was an encroachment on tribal
4 sovereignty.

5 So what does a discussion draft do? This
6 again comes primarily from what we've heard from
7 tribal comments in response to the Notice of
8 Inquiry. And these are the proposed changes to
9 that draft regulation: It changes the time frame
10 for tribes to submit Notice of the Facility License
11 from 120 to 60 days with a one-time 60-day
12 extension at the Chair's election, if the Chair
13 decides that we need additional time.

14 A number of the comments that were received
15 from tribes said that this 120-day period was
16 arbitrary, sort of plucked out of the air and it
17 doesn't make a lot of sense that tribes need a more
18 expedited process. We threw this number out there.
19 If you have concerns about the 60-day --
20 plus-60-day process, please let us know. This is
21 in Section 559.2.

22 The -- there's also sort of a -- kind of a
23 savings clause, and that is that the Chair shall
24 expedite the process for this verification when
25 circumstances permit. So if at all possible, the

1 Chair can expedite the process, make sure that
2 the -- you get the information that you need from
3 the Agency as quickly as possible. But again, if
4 you have concerns about this time frame, please let
5 us know.

6 So we've also changed 559.3 so the tribe
7 just sends us -- just -- it's a notification, will
8 send us newly issued or renewed facility licensing,
9 facility license within 30 days of issuance. And
10 it includes an attestation certifying that the
11 tribe has determined the construction and
12 maintenance of the gaming facility and operation of
13 gaming is conducted in a manner which adequately
14 protects the environment and public health and
15 safety. This is verbatim from the Act. This is
16 all that that will require. A number of the
17 comments that were received from tribes said that:
18 We shouldn't have to go through this data
19 collecting, and are you going to tell us whether or
20 not our laws are correct or, you know, are enough?
21 This is areas covered by other federal agencies and
22 the -- that the NIGC didn't really have a role or
23 the expertise in this particular area. So we tried
24 to address those concerns here.

25 The proposed rule has a Notice of Facility

1 Licensing sent to the Chair within 30 days of when
2 the license is terminated or expires or if the
3 gaming operation facility location closes or
4 reopens.

5 We also tried to clarify what a
6 closure/reopening is. And if you look on the draft
7 rule, it's 559.5. And the draft rule states that a
8 tribe doesn't need to provide notification of a
9 seasonal closure or a temporary closure with a
10 duration of less than fill-in-the-blank days. We
11 didn't put in a number of days. But the comments
12 that we heard were: Do we have to notify you if we
13 close our operation for -- you know, to replace the
14 carpets? If we close our operation three days out
15 of the week, do we have to send you a notification
16 for that? So we need to hear from you about when
17 is it reasonable for the tribe to send us a
18 notification that they have closed, what is that
19 number of days. And we've left that blank. And it
20 is a question that's out there, and we need to hear
21 input from tribes.

22 We also changed the rate in I think a
23 pretty significant way. And that is by instead of
24 requiring all this information and documentation to
25 be sent in every time a facility license is sent in

1 or the first time at a minimum, that the Indian
2 lands and environmental public health and safety
3 documentation would be provided only if the Chair
4 requests.

5 And then finally to move us into the 21st
6 Century, 20th Century depending on where you're at
7 for us is electronic submissions are going to be
8 accepted as well. We're figuring out a mechanism
9 for that. Email, we may set up an email box or
10 something. I know that that was something that
11 tribes asked: Do we have to send you in, you know,
12 hard copies? We're trying to move our agency
13 forward in technology.

14 This comment period for the preliminary
15 draft closes on June 17th. And again, you can send
16 your comments to "reg.review@nigc.gov" by email or
17 by mail, fax, et cetera. And again, all of those
18 comments will be posted.

19 The next proposed reg is this Buy Indian
20 Act or buy Indian type of regulation. We've
21 received a number of comments from tribes, and they
22 were all generally supportive of this proposed
23 regulation. It would allow the NIGC to utilize
24 federal set-asides for qualified Indian-owned
25 businesses when purchasing goods, services and

1 property on an Indian reservation. So for example,
2 we're coming out to Indian Country to hold a
3 meeting, we could use -- we can use this regulation
4 to be precisely where we are today, we can purchase
5 a room, food, those kind of things at an
6 Indian-owned operation or hotel. And we intend to
7 distribute a draft regulation soon. We're still
8 working on that. That should come out within the
9 next couple of weeks.

10 So finally, in the group 1 section here, we
11 have this question about: What do we do with the
12 class III MICS? This has been a topic that has
13 been pending since the pre-decision in 2006. What
14 does the Agency do with its current regulations,
15 Part 542? We've heard a range of options. What
16 structure do we use to address this issue? We know
17 that it affects what the Chairwoman said earlier.
18 This affects every tribe differently and regions
19 differently, states differently. And we need to
20 come up with a way to deal with this issue that is
21 equitable and addresses the needs and concerns in
22 the industry.

23 Once we sort of resolve that issue, which
24 we hope to do during this group 1 process, group 5
25 we anticipate will be implementing whatever that

1 decision is. So we do need to hear your input on
2 that. And it -- we need to figure out what we're
3 going to be doing.

4 The structures is: How do we do this? So
5 we've heard a number of things from tribes. We've
6 heard replace Part 542 with recommended guidelines.
7 We've heard that we could address this through sort
8 of an agency tribal compacting process; utilizing a
9 different fee rate for those tribes that -- there
10 is a number of tribes in California that have
11 incorporated Part 542 and authorized NIGC
12 enforcement authority, and for tribes that do that,
13 perhaps utilizing a different fee rate so that they
14 are paying for the services.

15 And then we've also heard: Maintain
16 Part 542, convene a tribal advisory committee to
17 update the current regulation. And on the
18 completely opposite end of the spectrum we've heard
19 repeal Part 542 entirely. We've got this giant
20 range of options and processes that have been
21 suggested by tribes. And we are looking for more
22 input about how we actually do that.

23 So moving on into group 2, which this is
24 the first consultation for group 2. Again,
25 discussion drafts will be distributed soon, within

1 the next couple weeks as well. And you'll find all
2 of that on our website. We put it on the front
3 page of the news section as it's released, and we
4 try to notify regional associations. Our regional
5 directors reach out into -- talk to the gaming
6 commissions and the tribes to make sure that you
7 know when these -- the new draft regs are put up on
8 the website so you have time to review them.

9 Group 2 is about -- looks at the
10 enforcement regulations and the regulations
11 concerning proceedings before the Commission.

12 The Notice of Inquiry requested comments on
13 whether or not the NIGC should promulgate a
14 regulation authorizing the withdrawal of an NOV
15 after it's been issued. Comments -- we received a
16 number of comments on this. Some said this was
17 unnecessary to put in a regulation because there
18 was no prohibition on the withdrawal. Other
19 comments said that a specific regulation outlining
20 the process and the circumstances for withdrawal of
21 a Notice of Violation would be appropriate. And
22 others indicated that they thought only the
23 Commission should be able to withdraw a Notice of
24 Violation.

25 We also heard that perhaps we should

1 consider having a process where a Notice of
2 Violation can be expunged after a certain number of
3 years or the noncompliance issue has been resolved,
4 much like -- I guess it's sort of the -- how a
5 criminal charge or criminal conviction can be
6 expunged after you meet a certain time frame and
7 meet the requirements for that, something similar
8 that was -- has been proposed by tribes for a
9 Notice of Violation.

10 We've also received requests to have any
11 NOVs that are posted on the website to have the
12 identifying information removed. Number of
13 comments. And, you know, I know that it's been a
14 commitment by the Commission that a Notice of
15 Violation should never be a surprise, so having a
16 voluntary compliance utilizing the ACE -- the
17 ACE -- what do we call that?

18 CHAIRWOMAN STEVENS: Assistance
19 Compliance --

20 MS. ECHO-HAWK: Yeah, Assistance
21 Compliance Enforcement. It's an idea put forward
22 by the Commission. And I don't know what's up with
23 federal agencies, but we like acronyms. So ACE,
24 utilizing ACE to make sure that an NOI is never a
25 surprise, that the legion folks, enforcement folks

1 are working with you to make sure that if at all
2 possible, we can bring you into compliance or bring
3 the issue -- resolve the issue so that a Notice of
4 Violation is not needed.

5 We heard that an agency policy for
6 withdrawal of a Notice of Violation or this
7 voluntary compliance is sufficient. And then we've
8 heard that if the NIGC and the tribe had been in
9 discussions and compliance was -- the tribe was
10 unable to come into compliance, then an NOV should
11 be issued. And if an NOV is actually issued, then
12 no withdrawal is necessary.

13 So again, we've got this wide range of
14 ideas and options and something that we'd like to
15 hear back from tribes on.

16 We also asked whether or not the rules for
17 proceedings before Commission should be reviewed.
18 Now, this is something -- we've had a couple of
19 meetings internally on this. Some of the
20 non-attorneys in the room, their ears were just
21 bleeding, because we were talking about, you know,
22 the civil procedure and how many days before this
23 and motions and all this stuff that lawyers really
24 like, but it's very process-oriented and might be
25 boring for other folks. But the comments that we

1 received were that we needed to make sure -- and
2 this has been a concern at the Agency, is that
3 there is not set time frames. And without set time
4 frames for appeals and hearing back from the
5 Commission, that things can sort of get lost in the
6 shuffle, and that a tribe is waiting for a long
7 time for a response to something that is very
8 urgent to that tribe. And so how can we ensure
9 that there is better process -- better due process
10 given during the appeals process or during a
11 process where there are proceedings before the
12 Commission.

13 We heard concerns that if we did do this,
14 than that more formal process might be more costly,
15 it might cost the tribes a lot, have to hire more
16 attorneys to figure out what these processes are
17 and it might slow the process down. We also heard
18 that we should consolidate all those regulations
19 regarding these proceedings into a single
20 regulation and put them in one place so it was
21 easier to follow.

22 So the written comment period for the
23 preliminary fee draft regulation closes on
24 May 31st. The written comment period for the
25 facility licensing regulation again closes on

1 June 17th. We anticipate having some discussion
2 drafts in the Buy Indian regulation out shortly as
3 well as for the enforcement proceedings and the
4 proceedings before the Commission. So you'll see
5 those on the website shortly. Hopefully our region
6 people will reach out to your tribe to make sure
7 that you know when those -- when those go up so
8 that you can take a look at them for the next time
9 you come to one of our consultations.

10 So that is it for us in terms of this very
11 30,000-level-foot overview of what we have going
12 on. And I'll turn it back over to Chairwoman
13 Stevens.

14 CHAIRWOMAN STEVENS: Thank you, Lael.
15 And I appreciate everyone's patience in sitting
16 through the presentation here. This was -- this is
17 designed to just inform and get everyone up to
18 speed if anyone didn't have the opportunity to read
19 some of the material prior to coming here or if
20 this is the first consultation that you've been to.
21 So I appreciate your patience. That's the part --
22 this is just the part where we do our talking and
23 sort of get it out of the way.

24 What we would like to do at this point
25 is -- also a reminder if there are any tribal

1 leaders here, we've reserved the tables for tribal
2 leaders or their designees, whoever that might be.
3 So feel free; if there is anyone who would like to
4 come sit at the table, please join us. Otherwise
5 we're opening the floor right now for comments.
6 And we might take a few and then take a break,
7 because I know we've been in here for almost an
8 hour going through a number of several -- a number
9 of regulations and the drafts that we have.

10 So with that, I'd like to open the floor
11 for any comments on any of these parts. We've got
12 several in group 1 for fees, the Buy Indian,
13 facility licensing, the repeal, which is pretty
14 simple.

15 And then group 2 on enforcement proceedings
16 and the Class III, what you all here would like the
17 process to be to address the Class III, Minimum
18 Internal Control Standards, MICS.

19 So the floor is open. If anyone would like
20 to step up to a microphone or we can have a
21 microphone delivered to you. If you have any
22 questions, need clarification on the substance on
23 the drafts, on the process.

24 Yes, sir, at the end of table. If you
25 could state your name and the tribe you're with.

1 MR. LITTLEJOHN: Yes. Greg Littlejohn,
2 Ho-Chunk Nation of Wisconsin. I was just thinking
3 as you were giving your presentation, you were
4 talking about earlier, burnout. We just went
5 through our budgetary process which concluded last
6 Friday. The comment -- the question I have really
7 is on the regulatory -- the annual fee itself.
8 We'd all love a reduction, but then you have your
9 bills to pay.

10 Is this regulatory fee similar to any other
11 group in the United States, in other words, we
12 tribes subsidize you because you are
13 native-friendly, but is it fashioned after any
14 other regulatory agency?

15 CHAIRWOMAN STEVENS: I'm thinking the
16 other agencies that --

17 MR. LITTLEJOHN: In other words, OMB
18 provides the funding for other regulatory agencies.
19 Do you get my question?

20 CHAIRWOMAN STEVENS: Well, yes, I think
21 I do. We don't get federal appropriations from
22 Congress. That's very different -- trying to think
23 of agencies that you all deal with, BIA, IHS.
24 There is federal appropriations that come from
25 Congress every budget cycle that -- the President

1 puts forward their budget for all of his agencies
2 and then Congress negotiates and passes a budget
3 and then you all learn what the budget is for BIA
4 or IHS or other entities from which tribes will get
5 money or that agency that deals with tribes will
6 receive money.

7 We are not that way. Ours is completely
8 based on a fee system that is set up by the
9 Commission against gross gaming revenue. We get no
10 federal appropriations at all. There used to be a
11 cap on the amount of fees that we could obtain
12 or -- but that was removed in 2006, I believe, with
13 the technical correction to the Act. And that's
14 what we're operating on.

15 I think the other agency is the FCC -- SEC
16 -- SEC?

17 MS. ECHO-HAWK: SEC.

18 CHAIRWOMAN STEVENS: SEC. They charge
19 back against those they regulate. Chris, are there
20 others?

21 MR. CHRIS WHITE: [Unintelligible.]

22 THE COURT REPORTER: I'm sorry, I can't
23 hear him.

24 MR. CHRIS WHITE: It's -- I'm not an
25 expert by any means in regulatory structure, the

1 rest of the federal government. What I do know, it
2 is becoming common practice to have regulatory
3 bodies be funded by the industries that they
4 regulate. The two that come to my mind are the SEC
5 that's funded through filing fees for companies
6 going into the public financial sector and the
7 Nuclear Regulatory Commission, which I'm almost
8 sure is -- I believe it's 100 percent funded by
9 that -- by the nuclear industry.

10 So it does occur. Obviously we're -- we
11 operate under the framework put forth by IGRA. And
12 I wasn't around when this Commission was founded
13 and when they originally wrote the fee regs, but I
14 do know that every effort was made to stick to the
15 framework set forth by the Congress.

16 CHAIRWOMAN STEVENS: Mr. Littlejohn,
17 does that answer your question?

18 MR. LITTLEJOHN: Yes. Thank you.

19 CHAIRWOMAN STEVENS: Great. Other
20 comments?

21 Yes, sir, if I could have your name and
22 tribe.

23 MR. WHITEBIRD: Ribs Whitebird, Leech
24 Lake Tribal Council, northern Minnesota.

25 I noticed out of your Buy Indian Act it

1 said comments [unintelligible] were generally
2 supportive of --

3 THE COURT REPORTER: I'm sorry. I'm
4 having a hard time hearing you.

5 MR. WHITEBIRD: Would you do a draft
6 resolution on the Buy Indian Act, because us at the
7 Midwest tribes, we would want that seen, and I
8 haven't heard anything on this except for today.
9 We would like to have it in -- probably all over
10 Indian country. And we as the Midwest tribes would
11 like to put it in -- into a resolution.

12 CHAIRWOMAN STEVENS: Thank you, sir.
13 We have not drafted a regulation. And I do want to
14 make sure clear that this would only be applied to
15 the NIGC in its operations. We don't mean to or
16 give the appearance that we are mandating this upon
17 tribes to buy Indian. This is mandating upon us,
18 the Commission and the Agency, that when we conduct
19 business and we go through our procurement process,
20 that we follow the Buy Indian Act, which is
21 permitted under the Buy Indian Act. But it's also
22 permitted under IGRA. And right now there is no
23 internal policy nor are there regulations for the
24 Agency. There are for the Department of Interior
25 for BIA for HHS and IHS, but there is none for us.

1 And that's what we're looking to do is impose this
2 upon the NIGC so that when we buy goods when we
3 hold meetings, that we can, by law, go to Indian
4 businesses first. But we don't have a draft out
5 yet. We're still looking at what Department of
6 Interior has, what Health and Human Services has
7 and making sure that we're clear on our
8 authorities. But when we do have a draft, which
9 will be very similar to HHS and DOI, we will put it
10 up on the website. We don't want to stray too far
11 from what they've done in their regulations.

12 Does that answer your question?

13 MR. WHITEBIRD: [Unintelligible.]

14 THE COURT REPORTER: I didn't hear what
15 you said.

16 MR. WHITEBIRD: I said good enough for
17 now. You know [unintelligible] just
18 [unintelligible] about this here. Take all the
19 [unintelligible] Indian hotel [unintelligible] the
20 Indian [unintelligible] developments all over
21 Indian country. I do believe we need this on board
22 and as soon as possible. That was my comment
23 [unintelligible] speed it up, the process, look at
24 it as a commission here or a, you know, I
25 understand that -- sounds like you are just on top

1 of it now.

2 We've been talking about this for a long
3 time around at the NCAI mass meetings and
4 [unintelligible] Buy Indian Act, it would help out
5 a lot of the tribes all over Indian country and
6 like I say, you know, you know, what's the process
7 you want us to do, through the HHS, Bureau of
8 Indian Affairs or through this Commission, because
9 I was asked by some of the other tribes to bring
10 this up. And you know, we're all going to go
11 forward with it one way or another, because, you
12 know, we're helping one another partner up. And I
13 think it's a good idea for everybody here.

14 CHAIRWOMAN STEVENS: Thank you. And
15 again, I do want to make clear that this regulation
16 will only be applied to the NIGC. We're not going
17 to apply this to tribes. However, certainly tribes
18 are free to enact whatever policies or laws that
19 they want with regard to buying from Indian-owned
20 businesses and certainly individual tribal
21 sovereign decision to apply Buy Indian to their own
22 businesses. Again, I just want to clarify that
23 we're only putting this regulation together for the
24 NIGC and its purchases and its business only. I
25 want to make sure I'm not trying to tell you all

1 what you need to do. I'm trying to make sure that
2 we seek out Indian businesses and the fees and
3 really encourage economic diversification and
4 support economies in Indian Country as a federal
5 agency.

6 MR. WHITEBIRD: [Unintelligible.]

7 CHAIRWOMAN STEVENS: I'm sorry, say
8 that again.

9 MR. WHITEBIRD: I guess the only thing
10 that we would ask for is leverage from the
11 Commissioner.

12 CHAIRWOMAN STEVENS: I'm not sure what
13 you mean by "leverage."

14 MR. WHITEBIRD: By helping the other
15 tribes [unintelligible] asking for the Commission
16 to leverage, partnership with us on...

17 CHAIRWOMAN STEVENS: Okay. Again, I
18 would say it's up to each individual tribe to enact
19 whatever policies or laws that they feel is
20 appropriate around Buy Indian. And those -- that
21 kind of leverage would be up to each individual
22 tribe. We're not going to mandate it to you.
23 We're just going to mandate it to ourselves.

24 Other comments on any of the other
25 regulations on this particular subject, any

1 questions?

2 MR. NEUMANN: My name is John Neumann.
3 I'm a general manager for the Lac Vieux Desert
4 tribe. And I have some comments on the fees.
5 Obviously the GMs have a responsibility to their
6 bottom line. And I feel that because of -- you are
7 calling it match play, but in reality it's free
8 play that the tribes typically give to a volume
9 players. And I believe we're paying fees on top of
10 our own money at all of our casinos. And seems to
11 me that there should be a mechanism to at least
12 take that free play out of the gross revenue.
13 Typically when you give away \$100 of free play,
14 93 percent of that actually goes back to the
15 player, you know, after 10 million handle-pulls or
16 whatever. But that's money that's going back into
17 the machine continually. That's money that's
18 really being taxed twice. So I think the NIGC
19 should take a better look at that and to at least
20 take that free play out of that calculation.

21 Thank you.

22 CHAIRWOMAN STEVENS: That's a good
23 observation. This isn't the first time that we've
24 heard that. We've heard that from some other
25 folks. I heard someone else say the same thing as

1 you were saying it. That's why we're here, so we
2 can get your comments on that.

3 MS. ECHO-HAWK: Thank you. And it is
4 not the first time we've heard that. In fact,
5 leading up to this process, we sort of did a fee --
6 sort of 101 internally, and Chris in our audit
7 department was there. And this was an issue that
8 came up. And we do have some trainings on that on
9 how you can calculate the fee. These trainings are
10 free. We will bring them to you so that you can
11 figure out how we do this. But it is a very
12 complicated. And that's why, again, we ask the
13 question: Should we define with greater detail
14 what a wager is and what a payout is and whether or
15 not a match play is part of the wager or part of
16 the payout? How do you make -- it gets very
17 complicated on how you make those deductions.

18 But I know that from the Agency's
19 perspective is that you shouldn't have to be taxed
20 on your money. So if it is a match play, then --
21 but how do you make that calculation? I know it
22 is -- it's beyond me. I'm a lawyer. I went to law
23 school. I don't like math. It is complicated.
24 But there might be a way to get to that by
25 making -- better defining wager and payout. That's

1 one of the issues that we have in front of you so
2 we can make this less complicated and make sure
3 that you are not being taxed two times on what is
4 your money.

5 CHAIRWOMAN STEVENS: Other comments? I
6 might, in the absence of volunteers, maybe ask some
7 questions. We have -- speaking of fees, we've made
8 some changes to the regulations from biannual to
9 quarterly. You know, we've heard from tribes that
10 that actually works better with -- along the lines
11 of other quarterly payments that are due of tribes.
12 Any comments on going from a fiscal year or a
13 calendar year to a fiscal year; which actually
14 makes it easier on us and on you? Because you can
15 already use your audited financial statements. It
16 reduces the fee audit. We have our audit team that
17 spends a lot of time on that. If a tribe's fiscal
18 year is different than a calendar year, it's
19 double-duty for tribes whose fiscal year does not
20 fall on the calendar year.

21 Chris, do you have any questions about the
22 transition period and the effective dates on this
23 maybe to draw up some questions?

24 MR. CHRIS WHITE: Well, yes, something
25 we're really curious about is if the Commission

1 went forward and promulgated this regulation that's
2 written in regards to calculating fees based on
3 fiscal year, is how -- what issues in
4 implementation are going to affect the tribes? In
5 other words, I can tell the Commission how it's
6 going to affect our end as a federal agency and as
7 we plan out our budget. But I'm very curious as to
8 what kind of implementation is going to be required
9 of tribes and casinos. And so any comments to that
10 issue would be greatly appreciated. And if you
11 don't want to comment today, you know, take the
12 draft back to your controllers at the casino and
13 ask them: How are you going to do this and how
14 much time do you need to do it?

15 CHAIRWOMAN STEVENS: Thanks, Chris.
16 Some of the other questions on 514 on fees, as
17 we've mentioned on page 5 of the draft, lines 13
18 through 20, we've left an open question on how a
19 late fee would be calculated based on a percentage
20 or just a -- sort of a hard, fast number for each
21 phase of -- of the late fee section; one to 31 days
22 is a certain amount, either a percentage or a hard
23 number, 31 days to 60 and so on up to 91 days.

24 What is the -- what's sort of the feel out
25 there on whether that should be a percentage-based

1 late fee or just a cold, hard, fast number for each
2 step? Some of the comments that we received on
3 this section with regard to percentage versus
4 dollar amounts, that a -- a percentage would be a
5 little more fair based on the gross gaming revenue
6 of a tribe. So, you know, the percentage would go
7 across whatever the gross gaming revenue is. So if
8 you are a small operation, the fee certainly would
9 be smaller, you know, a late fee would be smaller,
10 and it would seem more fair if -- and I believe
11 those were most of the comments, were generally
12 tribes were supporting the percentage late fee
13 system as opposed to a -- if there is just a hard
14 dollar amount, if you are a small operation, you
15 know, you are getting hit with the same fee, same
16 amount as somebody who is a really large operation.
17 And then a percentage-based system, a
18 percentage-based late system would be more fair
19 process based on how large or small the operation
20 is. And it's not overly burdensome on the smaller
21 operations.

22 We're at 10:30 now. We've been here for
23 been about an hour and a half. Why don't we get up
24 and take a break if that's okay with the group.
25 Stretch your legs. There is some food and coffee

1 back there. We'll be back at 10:45. And maybe
2 perhaps we'll have some more opportunity to discuss
3 during the break comments. We'd like to hear
4 comments when we come back at 10:45.

5 (Recess.)

6 CHAIRWOMAN STEVENS: Let's go ahead and
7 resume. Did we have any other folks that wanted to
8 make some comments?

9 MR. NANOMANTUBE: Hi. My name is
10 Robert Nanomantube. I'm with the Sac and Fox
11 Nation in Missouri and Kansas and Nebraska, and I
12 wanted to provide the following testimony and
13 comments in regards to 25 CFR, Minimum Internal
14 Control Standards; 25 CFR 523, Revision and
15 Approval of Existing Ordinances and Resolutions
16 25 CFR Part 14, Fees.

17 The Sac and Fox Nation would like to
18 express our thanks for being provided the
19 opportunity to offer our tribe's comments in regard
20 to the issues identified. The Sac and Fox Nation
21 would also like to express our thanks for the
22 approach that the NIGC has undertaken in
23 relationship to seeking comment and input from the
24 tribes on a regular and transparent basis.

25 The following comments are based upon our

1 tribe's experiences and its familiarity with said
2 issues. Hopefully the Sac and Fox's experiences
3 will assist with the formulation of revised and/or
4 amendment to the NIGC's regulations and will
5 encourage an enhanced review of the regulations
6 from a day-to-day regulatory perspective.

7 MICS and Technical Standards, Part 542,
8 Class III Minimum Internal Control Standards, this
9 particular area is a primary concern to the Sac and
10 Fox. The Sac and Fox recognizes that internal
11 control standards are extremely important to the
12 Indian gaming industry and make more -- and more
13 particularly to our tribe. Due to its intent to
14 provide the protection of tribal assets as well as
15 providing for the integrity of the tribe's gaming
16 operations. In addition, Sac and Fox also
17 recognizes that there needs to be consistency in
18 the auditing process of internal control standards
19 in Indian gaming.

20 Experience has shown that many tribes that
21 offer Class III Gaming have used the NIGC's
22 bulletins as clear direction to follow certain
23 guidelines and have used said bulletins as primary
24 guidelines for purposes of regulating Indian
25 gaming. Sac and Fox believe that tribes that offer

1 gaming are as technically knowledgeable and
2 professional as commercial gaming entities and are
3 aware that if they did not develop and institute
4 their own tribal internal controls, that they would
5 in effect be opening itself up to illegal activity.

6 Sac and Fox looks to industry standards in
7 the gaming area, and if it does not have the
8 expertise or technical ability in various gaming
9 areas, it retains someone -- it retains someone or
10 some entity to carry out what is needed to protect
11 its gaming operation for the benefit of its
12 members. It is my tribe's belief that it performs
13 the due diligence required in relation to following
14 industry standards whether or not a regulation
15 requires it. Should Part 542 Class III MICS be
16 eliminated and replaced with guidelines, it is the
17 Sac and Fox's opinion that the tribe will continue
18 to institute industry standard internal controls in
19 the area of Class III.

20 As to those tribes who have incorporated
21 542 Class III MICS in their ordinance or it is a
22 part of their Compact, there may be resulting
23 challenges. But we believe that most tribes have
24 appropriate internal controls in place and that the
25 internal control guidelines would be used to

1 supplant what is in previously adopted ordinances.

2 In summary, the Sac and Fox would recommend
3 that said internal control standards be issued as
4 guidelines and that they would be provided to the
5 tribes in a bulletin format and be updated on a
6 regular basis as technology changes. Technology is
7 changing so quickly that a government notice and
8 rulemaking process is not only too slow to keep up
9 with said changes but may prove to be more costly
10 in the long run. Possibly internal control
11 standards could be addressed in recommended changes
12 to tribal ordinances.

13 Part 522, Submission of Gaming Ordinances
14 or Resolution. Sac and Fox believes that this
15 section does not need revision, but that perhaps a
16 bulletin could be issued that addresses recommended
17 changes in an ordinance if a tribe chooses to
18 update their ordinance. For instance, the issue of
19 internal control standards could be identified.

20 25 CFR Part 514, Fees. The Sac and Fox
21 Nation is of the opinion that the revised draft
22 language relating to fees is clearly an improvement
23 upon the present regulation. The specificity
24 protects the tribes in the event an alleged
25 violation is found in relation to late payment of

1 fees and/or failure to pay fees. The process
2 outlined in the draft language indicates that the
3 due process for a tribe has been considered and
4 that our tribe's previous comments were taken under
5 consideration.

6 I'd like to thank you for this opportunity.
7 And if you have any questions, please contact
8 Sac and Fox Gaming Commission. Thank you.

9 CHAIRWOMAN STEVENS: Thank you very
10 much. And I know that we have a copy of that. I
11 appreciate your thoughtful testimony there, and
12 we'll take everything that you said into
13 consideration. And we thank you for your kind
14 words.

15 Do we have others that would like to make
16 comment on any of these parts? We've discussed
17 some portions of 514, which are the fees. And
18 some -- we've heard some comment with regard to the
19 Buy Indian Act, some comment with regard to Minimum
20 Internal Control Standards for Class III, which is
21 Part 542. I always thought that was interesting
22 that Class II was 514 and Class III was 542. It's
23 confusing. I would be interested in knowing --
24 speaking of Class III MICS, in this region, how do
25 tribes -- we've just heard from Sac and Fox how

1 that particular section -- they would like to see
2 it go forward in terms of guidelines and bulletins.
3 And we've had a wide range of tribes and how tribes
4 would be affected. There are tribes who have in
5 their ordinance and prefer to have the NIGC use the
6 NIGC regulations and have given authorization to
7 the NIGC to enforce after the decision, which says
8 that we cannot promulgate nor can we enforce
9 Class III Minimum Internal Control Standards. And
10 so some tribes have done that, primarily in
11 California. And there are reasons they have done
12 that.

13 Yet on the other hand, as Sac and Fox has
14 mentioned, they have their own system in place for
15 that, whether that's through their Compact or
16 otherwise, and that there are tribes who have that
17 oversight enforcement between them and their state
18 through the Compacts or some other mechanism. Are
19 there tribes here that can maybe inform us how it
20 works in this particular area or how it works for
21 your tribe?

22 We've heard a lot about it. It's more
23 contentious in some areas than others. I don't
24 want to isolate the discussion just to what I am
25 talking about. I'm certainly open for -- to any

1 comments on any of the parts that we're discussing
2 or the process that we're going through right now.

3 MR. MILHOLLIN: Good morning. Elliott
4 Milhollin, with Hobbs, Straus, Dean and Walker. I
5 have a question about the facility license
6 regulations. A number of our clients will be
7 submitting formal comments on these regulations.
8 Notably I anticipate that many of them will be
9 commending the NIGC for its revisions to the
10 environmental public health and safety provisions
11 which has revised -- appear to track the statute
12 much more closely and were of significant concern
13 to a number of our clients.

14 The question that I have is I would like to
15 get a bit more information or the views of the
16 Commission on what the intention is behind the new
17 requirements in 559.1-A, that the purpose is now to
18 obtain verification in construction maintenance of
19 the gaming facility. The operation of gaming in
20 conducted in a manner which adequately protects
21 the --

22 THE COURT REPORTER: I'm sorry,
23 Elliott, I need you to talk slower.

24 MR. MILHOLLIN: Let me then just skip
25 down to section 559.2-B. There is a new process

1 called for here in which the Chair will expedite a
2 process for verifying a --

3 [Someone coughing.]

4 THE COURT REPORTER: Verifying what?

5 MR. MILHOLLIN: The Indian lands of
6 status of the facility.

7 THE COURT REPORTER: Thank you.

8 MR. MILHOLLIN: And once Indian land
9 status is verified, the Chair shall notify the
10 tribe.

11 I wondered if the Commission could provide
12 perhaps an overview of what the intention is behind
13 that new provision. Thank you.

14 CHAIRWOMAN STEVENS: Thanks, Elliott.
15 I think what we were looking at is -- what's the
16 purpose -- I mean, you move to the back section
17 where we've eliminated the EPHS requirements, then
18 what are we doing. We look at the statute and the
19 statute says that we will -- that tribes will be
20 ensuring the construction maintenance of the gaming
21 facility and the operation of that gaming is
22 conducted in a manner which adequately protects the
23 environment and public health and safety pursuant
24 to the Indian Gaming Regulatory Act. So what's our
25 part in that? I think between these two what we're

1 looking at is some verification and later we ask
2 for an attestation that says the tribe has
3 adequately basically covered their bases on EPHS,
4 especially given the removal of that language,
5 those requirements on facility licenses. I think
6 that's what we were thinking. Just show us and
7 attest that you've got it covered.

8 Your next question.

9 MR. MILHOLLIN: Just a follow-up. In
10 559.2-B, the new regs -- the new language calls for
11 a process of verifying any land assess that is
12 separate and apart from the EPHS attestation
13 requirements. So the question is what --
14 essentially what -- obviously the NIGC has
15 discretion to render Indian land determinations.
16 Is this -- how does this process relate to the
17 NIGC's -- you know, the current regulations which
18 require tribes to provide Indian lands information
19 to the NIGC. This language would appear to call
20 for a process whereby the NIGC would then notify
21 the tribe prior to the issuance of a license.
22 Currently in the IGRA there is no requirement that
23 the -- that a tribe obtain -- obtain approval by
24 the NIGC prior to issuing facility license. And
25 I'm wondering if that's -- you know, what the

1 intention of this provision is.

2 CHAIRWOMAN STEVENS: I think the
3 intention, thank you, Elliott, is to ensure that
4 the gaming is being conducted on land that is
5 eligible. It's not necessarily the Indian land
6 determination we're trying to get through here.
7 I'm thinking: Is it really that different from
8 what's already in the current regulations and it's
9 part of what the current facility license requires?

10 It's -- we have to ensure at some point
11 that if you have a new facility opening up, that it
12 is, in fact, on eligible Indian land for which
13 gaming can be conducted and that it follows along
14 what the statute says with regard to the definition
15 of Indian lands. That's what we were thinking.

16 MS. ECHO-HAWK: I can see what you're
17 saying. If you look at the current reg, it says
18 that the tribe has to send all of this stuff. And
19 it doesn't say anything about what the Chairperson
20 then does with that stuff. "Stuff" is a technical
21 legal term.

22 (Laughter.)

23 MS. ECHO-HAWK: And the new reg the way
24 it's formulated does talk about what the
25 Chairperson does with the stuff. And so it is a

1 little different. And if you have -- the intent
2 was not to change that. The intent of B really is
3 to tell the NIGC to hurry up, because in practice
4 what has happened is tribes send us their
5 information and we let them know whether or not we
6 think the land is -- it's Indian land, that's the
7 practical implication of what the last regulation
8 and, you know, your financiers and other people,
9 they want to know that obviously. But the intent
10 of B really was to tell us to move it along, to
11 expedite that process so that tribes can carry on
12 and do what they need to do. Perhaps we need to
13 rephrase it so that we're not adding -- so that
14 we're just doing what the intent of the statute is,
15 that there is no new process or that the
16 Chairperson isn't adding -- the intent was not to
17 add authority or to increase, you know, expand the
18 authority of the Commission. The intent was just
19 to tell the NIGC to move it along. So perhaps we
20 need to go back and look at the language. And if
21 you have suggested language or your clients do,
22 then please send it.

23 The obtained verification in the 559.1,
24 that obtained verification language is in reference
25 to the attestation verifying that all the EPHS

1 stuff is in compliance, so sort of two different
2 verification language.

3 CHAIRWOMAN STEVENS: While we're on
4 facility licensing, there is another section. And
5 I know you just all received this. We had a bit of
6 a delay in our delivery system for this draft in
7 your hands this morning for which I apologize. But
8 on page 2 between lines 24 and 27, we understand
9 and recognize that there are reasons why facilities
10 close, whether those were seasonal closures or
11 there is a temporary closure due to a flood, due to
12 forest fires around them or just remodeling.

13 We, you know, would be happy to hear from
14 all of you on what is a reasonable time that we
15 specify here when there is a temporary closure
16 that's less than X number of days. That's one of
17 the areas that we're looking at as well that we've
18 left some blanks specifically so that we could hear
19 from you. We know that some seasonal closures are
20 six months, some are three months, you know, a
21 remodel may take, you know, could take a month, it
22 could take a year. There's got to be some sort of
23 limit on how long that would be. You don't provide
24 comment today, we certainly welcome that, knowing
25 that you just received this copy today, on what

1 would be reasonable. And in looking at some of the
2 operators, because you may know more specifically
3 what would be a reasonable time frame for
4 operations to be temporarily closed.

5 With regard to facility licensing and when
6 there are submissions for written comments on this
7 particular preliminary discussion draft, let us
8 know some of your views on not just this draft as
9 it is now but how you all handle your environmental
10 public health and safety. Just general information
11 would be helpful for us to know. We understand
12 that there are some tribes that have this arranged
13 in their Compacts, some tribes handle it within
14 their own tribal law. Some tribes -- own tribal
15 law will defer to federal laws. We would
16 like -- be interested in knowing how tribes have
17 handled -- it varies from tribe to tribe, region to
18 region; just because, you know, from your
19 perspective or at least from your experience how
20 you handle it.

21 I'm going to have Lael talk about the new
22 group. This is all group 1, the Buy Indian Act,
23 the fees, the facility licensing, the repeal, the
24 process on how to approach Class III Minimum
25 Internal Control Standards all are group 1. We've

1 added group 2 today. As we move forward over the
2 next several consultations we'll be discussing
3 enforcement and proceedings before the Commission.

4 So I'm going to hand it over to Lael to
5 talk more about group 2 and what kind of
6 information we're looking for from all of you with
7 regard to those parts.

8 MS. ECHO-HAWK: For the group 2, we've
9 sort of got two parts and that is one is
10 enforcement and one is proceedings before the
11 Commission. In enforcement what we've really sort
12 of focused in on from tribal comments that we heard
13 are a couple of things. One is a voluntary
14 compliance process. What does it look like and
15 what -- what -- should we put informal regulations
16 that outline and process that the NIGA agency goes
17 through before issuing a Notice of Violation.
18 We've looked at Nevada's regulations. We've talked
19 to some -- to the regulatory agency down there.
20 We've looked at New Jersey's. We've looked at
21 other jurisdictions. We've looked at other federal
22 agencies like the FAA to see: What do those
23 agencies -- what do those other regulators do and
24 what is in their formal -- in their regulations,
25 which is their formal process, for ensuring that

1 before you issue a citation or a violation, that
2 the regulators have been in contact, that they've
3 been working with the regulated tribe or whatever,
4 you know, when we're looking at the FAA and the
5 industry, their pilots, et cetera, how do we -- and
6 so we've taken a look at that and we're thinking
7 internally: How do we put that into place? What
8 does that look like? Is it a three-step process?
9 Is it a two-step process? What do tribes think is
10 appropriate? This certainly wouldn't stop what our
11 current practice is, and that is that our
12 enforcement is out there, they are talking to you.
13 If there is a compliance issue, we'll bring the
14 training. We'll do -- utilize the ACE guideline,
15 assistance compliance and then enforce and make
16 sure that we're doing all that we can do before it
17 reaches that formal process that might be a two- or
18 three-step process prior to a Notice of Violation
19 being issued. That's something that we're thinking
20 about at the Agency level, and we're interested in
21 hearing what your thoughts are about that.

22 Another thing we've talked about
23 extensively and internally is this idea of
24 expunging a Notice of Violation from the website,
25 from all of the history. What can we do, you know,

1 that -- tribes had brought that forward that it is
2 sort of a black mark on their record and is there a
3 way that we can institutionalize a process for
4 removing those Notices of Violation, and is that
5 something that tribes would like to see, is that
6 practical -- that will have some practical
7 implications, negative or positive. So that's
8 another thing that we're talking about internally,
9 and we'd like to hear from tribes on it as well.

10 Those are sort of the two major things that
11 we're looking at in terms of the enforcement
12 process or the enforcement regulation.

13 Oh, and then -- and the other thing is
14 after a -- before a Notice of Violation has reached
15 the point where it can be possibly expunged, is
16 there a process that we should put in place to
17 allow either the Chairperson or the Commission
18 itself withdraw a Notice of Violation. And if
19 there is a process like that that should be put in
20 place, is it -- you know, when should that happen?
21 Should it happen before a Notice of Violation
22 goes -- an appeal is filed that would take it in
23 front of the Commission, which then the Chairperson
24 doesn't have any sort of prosecutorial discretion?
25 Is this a process that is necessary if we do sort

1 of the expungement process as well? Should we have
2 both in place? So we're thinking about that. How
3 do we structure that so when necessary, Notice of
4 Violation is issued and the process is gone
5 through, that if a Notice of Violation is issued
6 and the Chairperson or the Commission wants to take
7 a second look at it and say: Okay, we just need to
8 withdraw this Notice of Violation, what does that
9 process look like. And then following that, a
10 Notice of Violation, once it's been issued and then
11 a number of years have passed, should there be a
12 process to expunge that from a tribe's history.

13 So those are the three primary things that
14 we're looking at in the enforcement regulations and
15 is trying to wrap our brains around how this would
16 work, what are the practical implications for
17 tribes and what should the process look like.

18 And so then also in group 2 are the
19 proceedings before the Commission. There are sort
20 of sort two different kinds of proceedings. There
21 are the proceedings before the Commission and there
22 is the proceedings before a presiding officer,
23 presiding official. And we've looked at both of
24 those regulations, and -- part 556 and 558. And
25 we've got a number of things that are duplicated.

1 We've got -- we've got -- we've got -- we're trying
2 to streamline things. One of the mandates by the
3 President has been that agencies look at their
4 regulations, look at their regulatory structure,
5 streamline, create efficiencies, remove
6 duplications. So that's what we're really trying
7 to do while ensuring that there is some due
8 process. We've heard from a number of tribes that
9 there has been major due process concerns about
10 what they do when they are filing an appeal and
11 they are not handling the appeal before a presiding
12 official, they are doing it on a written submission
13 to the Commission. We've seen it, and we've heard
14 it. But oftentimes this can result in incredible
15 delays and it can really have an effect on the
16 tribe. Sometimes a tribe wants to, you know, for a
17 number of reasons perhaps delay or add more to the
18 record or whatever. And those things should be
19 built in. But I think at the Commission level
20 they -- and at the Agency level, we've been trying
21 to implement some time frames, ensure that there is
22 some due process, that some of those due process
23 concerns are identified and resolved.

24 So if you have thoughts about that, if you
25 are a lawyer and you like looking at this stuff and

1 thinking about civil procedure and practice before
2 an agency and what those time frames should look
3 like any additional processes, if we need to
4 identify motion practices. I know that the
5 Commission has been asked to reconsider a number of
6 things, should that be something that's included in
7 these regulations. You know, put your civil
8 procedure hats and administrative EPA laws hats
9 back on and take a look at the regs and offer us
10 suggestions.

11 The other thing that I missed and we missed
12 in the PowerPoint is the -- formalizing the pilot
13 program. I'm getting my groups confused. So
14 that's all group 2. But those are the main things
15 we've been working on -- we've been working on
16 there. And I don't know -- if there are -- if you
17 have experience, that's one of the other things
18 that we -- has been very compelling as we've gone
19 through this process, is hearing the experiences of
20 tribes. If your tribe has filed an appeal, if your
21 tribe has received a Notice of Violation that was a
22 surprise, if there was ways that we could have done
23 that better, we would like to hear that, because
24 that influences the decision-making process. And
25 if we can identify a problem, then perhaps we can

1 figure out a way to resolve that.

2 CHAIRWOMAN STEVENS: I know the tribal
3 leaders have taken some opportunity; certainly open
4 the floor, and it is open to those who represent
5 tribes, especially the attorneys on this process
6 part. Certainly we welcome comments on clarifying
7 these processes. Especially -- maybe even the
8 regulators that are in the room, if you are free to
9 speak or give some thoughts on -- the goal under
10 the enforcement section is to give tribes the
11 opportunity to remedy before we issue an NOV. It's
12 been made very clear to us that NOVs, they -- they
13 are a black mark. And your lenders, the states or
14 whomever you are having to deal with will look at
15 your record in NIGC. And are there feelings or
16 thoughts one way or the other with regard to the
17 prospect of having one, two, three steps or
18 something similar to that that allows the tribe,
19 you know, remedy opportunity so that we can avoid,
20 you know, the black mark.

21 MS. HOUSEMAN: Good morning. Thank you
22 to the Commission for --

23 THE COURT REPORTER: Could you identify
24 yourself, please.

25 MS. HOUSEMAN: Good morning. Thank you

1 for allowing me to speak. My name is Sharon
2 Houseman. I'm an attorney with the Sac and Fox
3 Gaming Commission and a number of other tribes.
4 And this particular issue is extremely important
5 because of the fact that I have had two tribes that
6 were in the situation of the NOV, and it was
7 because they wouldn't listen to me. No, I'm just
8 kidding.

9 (Laughter.)

10 MS. HOUSEMAN: What basically happened
11 is it was so discretionary from the NIGC's
12 perspective that when we got to the point where
13 they said they were going to issue an NOV, we said:
14 Well, we're fixing it right now. And it was almost
15 like: Well, I have to find out from the general
16 counsel if we can allow you not to get an NOV, even
17 if you are going to fix it.

18 In the meantime, as many of the tribal
19 leaders are aware, there is a turnover in
20 commissioners, there is a turnover in counsels on a
21 regular basis. So as a result of that, the issue
22 did not get fixed. And that's -- I mean, that's
23 pretty common when it comes to many of the tribes.
24 Well, what had happened was the second group came
25 in and said: Well, now we're going to fix this.

1 Well, time had gone by and so they didn't get it
2 fixed as quickly as they probably should have. But
3 they were going to be issued an NOV. So the tribe
4 went to the Commission and said: Please do not
5 issue this. We got everything in order now. We
6 have our new people in place, and we're fixing it.
7 And this is how we're fixing it. This is why it
8 didn't get fixed.

9 As a result of that, the NIGC at that
10 particular time said: Well, we still have to issue
11 it, but we'll go back to our general counsel and
12 see if we do. Well, there's nothing in place that
13 says they have to issue an NOV in particular
14 circumstances. So that was one situation where we
15 got -- at that time we were able to convince
16 Phil Hogen to go ahead and allow them to cure the
17 violation, and he did allow that. But it was so
18 discretionary that: What do you appeal? And do we
19 know for sure that when they completely cured the
20 situation, that what would happen with that
21 potential NOV, the potential NOV. We don't even
22 know what happened to that. It might be in some
23 zone. So that's one issue.

24 The other issue was with another tribe,
25 very similar situation, they were going to issue an

1 NOV, and we had a disagreement with them. So we
2 filed an appeal, and they said: Well, no, you are
3 wrong. And we said: No, we're not wrong. Like
4 they could tell us we're wrong.

5 (Laughter.)

6 MS. HOUSEMAN: What ended up happening
7 in that situation was we provided all the
8 information and as you are all also aware, I'm sure
9 that many of the field reps are new in certain
10 areas. And some of the field reps don't have as
11 much experience as the tribes do in regulating
12 gaming. And I'm sure that's been said quite often.
13 So you end up kind of, with all due respect,
14 teaching some of the new people on how to regulate.
15 Again, with all due respect, I just said that.

16 When it comes to NIGC that's what happened
17 was it was explaining to them in detail how the
18 tribe did certain things, how it met Compact
19 requirements and how it met the requirements of the
20 federal laws and regulations. So we went through
21 all that and they said: Well, there is still an
22 NOV at issue. We said: Yes, but here's the
23 explanation as to why this occurred and how we can
24 cure it. If there was a 1, 2, 3 step process, it
25 would take away this discretion. And I know you

1 need to have discretion so you can explain some
2 things, but it was still like it put the tribes in
3 limbo and that NOV is probably still sitting there,
4 and we're still not sure where it's at.

5 For instance, one of the tribes was
6 building a hotel. We don't know if that's going to
7 come up when the bank comes over to deal with their
8 financing. So that's one of the issues that I
9 guess we're concerned about. So putting it into a
10 1, 2, 3 process would really make a difference so
11 that the expectations on all sides are cleared up
12 and that the tribes would know how long is the
13 potential NOV going to be sitting out there and is
14 it going to be withdrawn, how is it going to be
15 withdrawn and if it isn't withdrawn, is there an
16 appeal to have it withdrawn. I guess there is a
17 number of questions when it comes to the NOV.
18 Thank you.

19 CHAIRWOMAN STEVENS: What about a
20 1, 2, 3 process with discretion.

21 MS. HOUSEMAN: If you are able to do
22 it, because there does -- in my opinion, there was
23 too much discretion, and they are saying: No, one
24 of the NIGC people, and it sounds contradictory,
25 but it really isn't, because one of the -- in one

1 of the situations was in this situation in
2 California, they had to issue an NOV, that had been
3 their practice. And the other one was in another
4 state, and it was a different practice. And they
5 said: Well, we'll wait. So I think there needs to
6 be some kind of clarification. And if you put a
7 1, 2, 3, it actually says what the discretionary
8 issues can be taken into consideration.

9 That's where the 1, 2, 3 would be, I
10 believe. Thank you.

11 CHAIRWOMAN STEVENS: Thanks for
12 responding to that. It also brings to attention --
13 our attention the need for consistency in the
14 application of the regulations from within the
15 region. Because, you know, the Chair actually
16 makes the decisions, not the general counsel's
17 office in my administration. And what's brought to
18 my attention is through our enforcement division
19 based on their site visits and their history with
20 the tribe, and certainly they all encourage
21 compliance and try to bring folks into compliance.

22 But you know, another process that we have
23 in place, our internal process through our chief of
24 staff's manual that we're also taking a look at
25 based on what happened in these enforcement regs.

1 And how we modify or change them will certainly
2 affect our chief of staff manual, which covers the
3 enforcement division so that there is some
4 consistency from California to Minnesota or
5 Oklahoma so that it's clear what steps that may be
6 taken. And if discretion is maintained even in a
7 1, 2, 3 or however-many-step process for the Chair
8 to either follow through with that process or if
9 it, you know, between step two and three the tribe
10 was remedied, you know, there is still discretion
11 for the Chair to sort of button that up and be the
12 enforcement division, there is no NOV issued.

13 But also the other thing that we should
14 consider too is that, you know, the discretion goes
15 both ways, to go ahead and maybe in emergent
16 situations, the Chair still has discretion to
17 immediately go to NOV depending on how serious a
18 violation may be occurring like an unknown,
19 unidentified group has now taken over the
20 management of the casino that we don't know about.
21 That's sort of an emergency situation. Still the
22 Chair needs discretion. That's why I am wondering
23 is having more clear steps that are in place that
24 give tribes the opportunity to remedy but also
25 gives the Chair the discretion to, you know, to

1 call it good or move to NOV.

2 What do you think about that, Sharon?

3 MS. HOUSEMAN: I understand what you
4 are saying. And I think that's what we're looking
5 for is more clarification than anything on what's
6 going to happen. And what's extremely helpful is
7 if the Commission or the Chair when you are
8 reviewing the entire situation is that there is
9 clarification on the fact that there's certain
10 areas you would be looking into for one thing.

11 Number 1, has the local gaming commission
12 itself reviewed the situation and took some steps,
13 or was it just left out there to be an -- you know,
14 to be left on its own. Was there some disruption
15 going on within the tribe at that time, because
16 that has happened in the past where there was
17 disruption going on where the Agency itself has
18 been in a situation where it really couldn't do
19 anything. So having a National Indian Gaming
20 Commission and a Chair that understand the tribal
21 politics, you know, on a day-to-day basis I think
22 would make a whole big difference in trying to do
23 the 1, 2, 3 process and having that discretion that
24 we pointed out so that you know if a local
25 commission is coming in and just giving you a

1 story, and it's not really happening. That you
2 have a handle on how some of the politics do
3 operate.

4 So I think that's extremely important.
5 Thank you.

6 CHAIRWOMAN STEVENS: Thank you, Sharon.
7 Henry.

8 MR. BUFFALO: My name is Henry Buffalo,
9 I'm an attorney here in St. Paul. I represent the
10 Fond du Lac band and several other tribes engaged
11 in gaming. And one of the points that I was going
12 to make that Sharon discussed briefly at the end
13 here was what is the role of the local gaming
14 commission, you know, whether it's in the situation
15 she described or I know I did have a client one
16 time in a facilities issue where they wanted to
17 open up a temporary facility, and it would have
18 been seasonal thereafter in order to sort of before
19 the season ended, in order for them to deal with
20 licensing that facility, they couldn't wait the 60
21 days or 30 days for review by NIGC. And then that
22 question comes up is: Well, you know, in those
23 situations where there's a potential dispute over
24 whether or not the NIGC actually has the authority,
25 you have a gaming commission which has regulations,

1 and those regulations provide them the authority to
2 issue the licenses in -- rather than getting into
3 the big dispute over who has got the jurisdiction,
4 if -- what do you see with respect to relying on
5 the local gaming commissions and their powers and
6 authorities for some of these stopgap issues where
7 maybe it's not an emergency in the sense that
8 somebody is taking over, somebody new is managing
9 but when they want to open the facility and they
10 have to do it in the next 30 days?

11 CHAIRWOMAN STEVENS: Well, actually I
12 think those are good points for us to consider.
13 And we would like to hear a little more from you on
14 what -- if we do create this sort of 1, 2, 3,
15 whatever number of process before we take any
16 action on anything, you know, that's a good
17 question. What is the role of the primary
18 regulators who are on the ground and have they
19 taken steps that we don't know about. I would
20 assume that our enforcement division would be --
21 likely would be in regular communication with the
22 local -- the tribal regulators on the ground.

23 From what I am hearing, that should be
24 considered in this process if the TGRAs are already
25 taking action, you know, what is that action? And

1 again, that would be part of our internal sort of
2 procedures for our enforcement division, chief of
3 staff manual, that may be something for us to
4 consider. And should it be in the regs or should
5 that be part of our internal process?

6 I want to hear from you guys. I don't know
7 that I have an answer for you, but it's a good
8 point to make.

9 MR. BUFFALO: Well, back when we were
10 first drafting the Indian Gaming Regulatory Act,
11 one of the visions of the leadership at that time
12 for what the NIGC should do, aside from oversight,
13 you know, whatever that is that was put in the
14 statute, the leadership really felt that training
15 was also an important key and piece to the agency's
16 responsibilities. Whether it was your Chairman
17 Stan Jones from Tulalip or Bill Houle, the original
18 chairman of the NIGA who is from Fond du Lac or
19 Percy Polis [ph.], Josephine Jackson, all of these
20 people felt very strongly that from the onset of
21 the creation of not only the law but of NIGC, it
22 was the tribes who had the expertise because they
23 had already been operating gaming for over ten
24 years before the Indian Gaming Regulatory Act came
25 into place. And we did go through a long process

1 after NIGC was developed and Tony Hope was chairman
2 where the tribes were initially engaged in helping
3 develop the original regulations of the NIGC but
4 then that process was sort of taken away from the
5 tribes.

6 But I -- one of the things I did want to
7 say, and my experience has been that the different
8 chairpersons of the NIGC have had different -- I
9 guess a different focus on what they wanted to do
10 in bringing and implementing the law. And I was
11 glad to hear that part of your focus, the
12 new -- you as Chairwoman and the other
13 Commissioners is to this training aspect of it.
14 Because I think it's not only training but
15 information-sharing.

16 We also thought that being a clearing house
17 of information, whether it be on operations or
18 accounting or surveillance, enforcement, those
19 kinds of things were important to share. And as we
20 know with over 280-some operations, maybe more than
21 that now, they're all different levels of
22 experience, all different levels of need in terms
23 of policing the activity. And as a result of that,
24 I think the sharing of that information becomes
25 even that much more important. I know I've got

1 some clients who are not -- maybe they -- they're
2 in that sort of lower tier market between
3 \$1 million to \$5 million which everybody kind of
4 thinks on the outside that the margins are
5 fantastic when you operate gaming, but they're not.
6 The cost of operations are very high. So you come
7 away from that with very -- margins that are not as
8 great as they could be. And even in this downturn
9 in the economy, even less.

10 But in the challenges the tribes' face then
11 is meeting the regulations that are now 20 years
12 old that cost a lot and have not sort of kept pace
13 with kind of where the tribe's abilities to pay
14 are.

15 So I think that your focus or your focus of
16 your chairperson is good in terms of the training
17 and then sort of looking back at what's the
18 practical needs of each of these different tribes,
19 because they are so different in terms of mandating
20 anything that would pay -- would place a potential
21 cost on operations that would bring those margins
22 even lower.

23 You talked about -- like the GAAP today or
24 you talked about defining gross revenues today. I
25 think that's been a historical complaint of the

1 tribes, that we don't want to be taxed twice on the
2 revenues that we make. I think that for tribes who
3 do revenue-sharing, GAAP has changed over time and
4 there are now expenses that were not recognized
5 before or promotions that were not recognized
6 before as expenses that could be deducted --
7 legitimately deducted that the current definition
8 of -- the NIGC's current definition does not take
9 into consideration. And so I think that probably a
10 number of -- a number of my clients indeed would
11 favor a gross revenue definition that would
12 basically be GAAP, GAAP-defined. Because in the
13 course of those -- those accounting principles
14 evolving, you know, it would be easier to address
15 those changes over -- with respect to those
16 accounting principles than having to come back and
17 do regulations, change regulations every time.

18 With respect to the fees, we talk a lot
19 about the penalties if you are late. But we don't
20 talk a lot about -- and the draft regulations don't
21 talk a lot about what conditions you would consider
22 should there be a request for a waiver of those
23 penalty fees. Even with the IRS we have a long
24 list of regulations that tell us what conditions
25 they will accept that could show good cause for

1 whatever reason the fee may be late. So it may be
2 back into some -- some part of those regulations
3 that could talk about how you are going to address
4 those, or like you said, maybe address those
5 internally as you are dealing with that.

6 The -- you know, the bottom line I think
7 from my experience in this whole stuff over the
8 last 30 years has been -- and it's been pretty
9 good. I think the NIGC could have become a
10 heavy-handed law enforcement agency. And over time
11 I don't think it has proven to be that. I think it
12 informally has sort of accommodated the three steps
13 that we're talking about today.

14 Informally they have accommodated that
15 recognizing that, you know, what's maybe at heart
16 in the problem that needs to be resolved and the
17 violation that exists is not so much, you know, an
18 intention to violate, but it's, you know, it's
19 the -- whether it's an accounting issue or a
20 licensing issue. It's the ability, as Sharon says,
21 changes happen all the time. It's the ability for
22 either the Gaming Commission or the government as
23 owner to respond to each of these things. And I do
24 appreciate that accommodation that has occurred
25 over time, because I think the bottom line for the

1 NIGC is they want to see an operation that is
2 consistent with the Indian Gaming Regulatory Act
3 and the regulations, and that the operation has
4 integrity and it's safe. And I think that's shared
5 by all tribal leaders as owners of these
6 operations.

7 And so I do appreciate the fact that
8 you -- the NIGC historically has worked with tribes
9 and haven't been too heavy-handed. And I
10 understand that that's sort of the focus of this
11 Commission, which I think is much appreciated.
12 Even from the lawyer's standpoint, you know, the
13 tribes have -- don't have a lot of resources, and
14 so they have to figure out where they want to use
15 those resources. And when their lawyers are
16 involved, if we can have a pretty set process that
17 gives us a couple -- gives us the three steps, I
18 think in 99 percent of the cases, the NOV issue
19 will be resolved before the agency has to come to
20 the point of actually sending that out. And you
21 are correct, I think it not only impacts the tribes
22 when they're dealing with their lenders, but it
23 also impacts the tribes when they're dealing with
24 their constituents too, because the constituents
25 understand that the agency does issue these NOVs

1 from time to time. And if one is issued, the
2 constituents get upset about that too because they
3 are thinking there is something wrong in the
4 operation in the activity. When -- and in some
5 cases there is political reasons why they use
6 those, the issuance of those NOV's.

7 So I think that your process proposed with
8 three steps would I think -- at the end of it, if
9 there is still a chance for an NOV, it's going to
10 be a real problem. It's not going to be a problem
11 that was unintentional and maybe have more to do
12 with finances and we're able to address
13 [unintelligible].

14 Procedure, I mean, I -- the process and
15 procedure, I'm in the middle of a dispute with a
16 city agency over whether or not they issue a
17 minority business designation to an entity, and
18 Indian entity. And they denied it, and we have an
19 appeal from that agency. And we would like to
20 educate them a little bit about minority business
21 enterprises designation and the target groups,
22 because they don't have any understanding about
23 sort of the Indians as a target group, because they
24 are requiring that you be an enrolled member.
25 Well, we have a lot of tribal members who own

1 businesses who may for one reason or another not be
2 a tribal member. One of the simplest reasons would
3 be that the enrollment is closed, yet we can show
4 them all kinds of documentation that they for that
5 fact -- other than that fact would be an eligible
6 member, but they're giving us 15 minutes to respond
7 to their denial.

8 So I think when it comes to your procedures
9 of process, I'm sure that as Sac and Fox has
10 indicated changes that you have made already do
11 provide some due process. But I think there really
12 does need to be some opportunity for the tribes to
13 respond, be given an opportunity to respond
14 completely to any of these any of the actions of
15 the agency that would result in them going into an
16 appeal process.

17 CHAIRWOMAN STEVENS: Thank you, Henry
18 there is a few things. Will you be submitting --
19 any of your clients be submitting written comments.

20 MR. BUFFALO: We'll be submitting
21 formal comments.

22 CHAIRWOMAN STEVENS: Okay. Great.
23 Just let us know to what specificity, you know,
24 look at Sharon, do you want us to get into certain
25 steps that might become overburdensome in a

1 regulation, or should the steps in enforcement
2 process, the things that should be considered. We
3 do that now and it's informal. When -- I'm
4 thinking of some instances where, you know, our
5 enforcement division has been working with the
6 tribe -- working with the tribe you get this sort
7 of soup of events that have occurred with turnover
8 in individuals of the Commission, in turnover of
9 leadership and then providing technical assistance
10 and training and still like months and months later
11 there is still no compliance. You know, do we want
12 to get -- we do that now, sort of how much
13 technical assistance training have we provided,
14 what are the dates and when did we do it? How long
15 has this been going on? Are they any closer to
16 remedying this situation and knowing sort of the
17 political turmoil that a tribe might be going
18 through. I don't know if we want to get into that
19 much specificity with regulation or should that
20 be -- I would like to hear what you all or your
21 clients would like to see happen with regard to the
22 specificity. And we have received some comments
23 about making it too -- don't make it too
24 overburdensome. You all cost money. And that we
25 have to be cognizant of that. And we don't want to

1 create an overburdensome system. And I appreciate
2 your comments about technical assistance and
3 training, and that should be part of our
4 calculation. Again, we don't know. Like to hear
5 what you have to say about the specificity of that
6 in the reg or in its internal procedure for the
7 enforcement division. Certainly that -- and if we
8 revamp our -- and we will revamp or technical
9 assistance and training program so that we're
10 hitting our target. If we're providing a bunch of
11 training that doesn't do anybody any good, what's
12 the point. The whole point of technical assistance
13 and training is to maintenance compliance and
14 maintain the integrity, train new people as they
15 come in should they need it and prevent
16 noncompliance. That's really what it's about. So
17 we would like to hear comments about that. And I
18 appreciate your words about that.

19 And submit language -- you know, you had
20 mentioned some things about gross gaming revenue
21 and language that we should consider. So please do
22 let us know what some of that verbiage we should
23 consider with regard to that issue.

24 And also, you know, there is a section in
25 there on the fees that tribes can, within a certain

1 amount of time, submit in writing whatever the
2 circumstances surrounding their late payment was.
3 But as you said, that's not similar to the IRS and
4 their list of things that they will consider as
5 maybe exceptional circumstances. So if you have
6 some comments about that, should that be a part of
7 this or not or should it be left to the discretion
8 of the Chair.

9 And also please do submit -- you've
10 mentioned some concerns about what timelines would
11 be in place. I certainly don't like the idea of
12 processes languishing for an unidentified amount of
13 time where something can potentially sit on a desk
14 for years because the regulation doesn't have a
15 timeline. You know, it happened that in other
16 federal regulations there are timelines. So if you
17 are going through, say, an appeal process through
18 the Bureau of Indian Affairs, there is some
19 timelines that the assistant secretary has to abide
20 by or, you know, within a certain amount of time
21 for the decision there is an appeal process. They
22 all have timelines. So you want to suggest
23 something, anyone, timelines, especially for those
24 who represent tribes in these processes, we're open
25 to hearing what you suggest. Looks like Sharon has

1 some additional comments.

2 MS. HOUSEMAN: We would like exactly
3 120 -- no. Sharon Houseman. What I just wanted to
4 just reiterate, I guess, is when it comes to the
5 tribal regulators, it seems that what's kind of
6 missing, and it's really up to the tribes to do
7 this themselves, but if there is a way to get
8 encouragement for the tribes who set up their
9 commissions with their own internal process as far
10 as if there is an issue that NIGC has, that they
11 have to go through the tribal regulators. I think
12 that's extremely important, and I want to go back
13 to the IGRA itself, because under IGRA, it says
14 that one of -- some of the intent of IGRA was so
15 that the tribes were considered to have the
16 exclusive right to regulate on their reservation or
17 Indian lands. And I think we forget that. For me
18 that's a key issue. I think it's 2701(5) I think
19 it is. But that particular section to me sometimes
20 gets set aside. And it says that tribes have the
21 exclusive authority. It doesn't say that they have
22 concurrent or anything else. It says exclusive,
23 and so long as they are in compliance with this,
24 you know, the particular laws. But I think it's
25 extremely important to NIGC to take a look at that

1 and say: What does that mean and how can we assist
2 the tribes to ensure that they are the exclusive
3 regulators. And yes, it is in our ordinances and
4 in the tribe's regulations at certain places. But
5 I think that's important for NIGC to say: If they
6 have the exclusive right to regulate, then what
7 does that mean? In the simplest form, it would be
8 like encouragement for the tribes themselves to say
9 that any time there is an issue with NIGC, not just
10 the -- they say who -- who's your spokesperson for
11 purposes of regulation? That's extremely
12 important. But not to say just spokesperson, it's
13 that if the tribes are encouraged that they need to
14 have a process set up internally themselves, let's
15 say before anything happens, it goes to the tribal
16 regulators themselves based upon 2701(5).

17 And I know that a lot of tribes say: We
18 want it to come through management -- I mean,
19 through the tribal council itself, et cetera. We
20 know that. But there has to be encouragement.
21 That's just my opinion, because of that section
22 where it says exclusive authority to regulate. I
23 don't know if it's a bulletin. I wouldn't think
24 it's a regulation. You can't tell the tribes you
25 have to do something. But I think it's an

1 encouraging way to proceed with tribes and the
2 tribal regulators themselves to be the first ones
3 to actually hear these issues in either a formal
4 manner which I would like to see when it's dealing
5 with NIGC. Because that's how the CRIT case
6 started. There wasn't anything there. Rumor has
7 it they charged -- the NIGC charged in, but we
8 don't go any further with that. We don't know for
9 sure. Ken Billingsley said that's not what really
10 happened.

11 But if we move on with that, I think that's
12 an extremely important section that I think we have
13 to look at again where it says exclusive and what
14 does that really mean. Thank you.

15 CHAIRWOMAN STEVENS: Before you go
16 anywhere. Let me play Devil's advocate here. I
17 come an area, I come from Washington state, and
18 we're a feisty bunch up there; fight pretty
19 fiercely for the right of the tribes to govern
20 themselves and sovereignty, especially when you
21 start talking about fish. And sometimes that
22 transfers over to other areas like gaming where
23 they're hard-fought laws that were put in place by
24 tribes or hard-fought relationship with the state
25 to sort it out between the tribes and the states.

1 And so to my surprise, when I started in
2 this position there were a lot of tribes where --
3 I'm going to play the devil's advocate here -- who
4 want the NIGC to come in even though they have the
5 exclusive right to regulate gaming in their own
6 lands, there was just -- there has been a shocking
7 number of tribes that want us to come in and be the
8 hammer and not be the hammer themselves, not
9 be -- so how would that factor into what you're
10 suggesting?

11 MS. HOUSEMAN: Okay, but --

12 CHAIRWOMAN STEVENS: You mentioned
13 encouragement.

14 MS. HOUSEMAN: Encouragement, yes. And
15 to factor that in I think is extremely important.
16 That's usually the art -- that's not even the devil
17 that's saying it.

18 CHAIRWOMAN STEVENS: No.

19 MS. HOUSEMAN: But there is a number of
20 tribes. And I think my own tribe, Oneida, that is
21 hard core on it, the tribes have the right to
22 determine if they even ask the NIGC to come in.
23 But in my opinion, that's one of those situations
24 where each tribe has the ability to say the
25 exclusive right to regulate means that we can call

1 in who we need to to assist in regulation. I think
2 that's how I would respond. But it is more of an
3 encouragement that it places the tribe in a
4 situation even if they say we want you to come in,
5 that if we can get the regulatory agencies to hear
6 the gaming issue specifically, that it still
7 fulfills those tribes, their right to govern as
8 well as to place the regulatory -- local regulatory
9 agency in a position of hearing that particular
10 issue. There's nothing precluding that from
11 happening also where the tribe says: Come in. And
12 I won't disagree with that, because my chairman,
13 Rick Hill, will shoot me if I [unintelligible].

14 So I do you understand what you are saying.
15 I think it's important. It's more of an
16 encouragement, not a: You have to do something.

17 CHAIRWOMAN STEVENS: I do want to make
18 clear that my concern is -- is I -- I want to see
19 facilities and tribes in compliance and running
20 safe facilities with integrity. Certainly that's
21 my goal. And who makes sure that happens? You
22 know, most of the time it's the tribal regulators
23 on the ground. And there are certain things that
24 we don't even see that are being managed and
25 handled. But there are certain circumstances that

1 it's -- one or the other is going to do it. Just
2 trying to figure out how that would work when a
3 tribe comes in and says we would really like you to
4 do it, which is fine, just as long as compliance is
5 achieved.

6 MR. BUFFALO: Henry Buffalo. Just a
7 couple of observations. I respect the fact that
8 you described the folks from the northwest as being
9 very aggressive in advocating for their rights.
10 And I think it was not only for the fishing stuff,
11 even when it came to the gaming, it wasn't only
12 arguing aggressively for the government's right to
13 game, but there were several individually-owned
14 casinos up in the northwest that those individuals
15 were arguing very aggressively that they should
16 continue existing as an individually-owned and
17 operated activity on the reservation.

18 The law includes the Indian Gaming
19 Regulatory Act and nobody else in the country -- no
20 other Indian tribe in the country had that
21 situation occurring. Maybe one exception might
22 have been Keweenaw Bay with Fred Dakota's little
23 operation. And so it does -- I think what you say
24 is it does highlight some of the different
25 interests. And I think I remember it being

1 described at one time in one of the NIGA meetings
2 by a representative from the northwest. And I
3 don't know if it was Buzz Gutierrez or somebody else
4 who said that: We oppose socialism and we do not
5 want the government operating businesses -- the
6 tribal government operating businesses on the
7 reservation. But in those discussions up --
8 leading up to the Act it certainly I think was a
9 concern for most of the tribal governments that the
10 activity be owned and operated by the tribe and
11 that the revenues be used to support tribal
12 government.

13 And so it was an anomaly to have a couple
14 of those operations from the northwest that were
15 individually owned. And we put -- there's that
16 piece put in the Act that said they can continue to
17 be individually owned, but they have to pay like
18 60 percent of their revenue to the government.
19 Because again, the purpose of the act is to allow
20 this activity to provide funding from government.

21 I think that that -- that having been said,
22 that we -- we still -- the devil's advocate thing I
23 think is -- or the scenario that you indicate is to
24 me I think a problem that's inherent in the smaller
25 tribes' inability to have the financial capacity to

1 meet the requirements of the law. And our -- you
2 know, the broader concern of tribes in protecting
3 the ability to game in our industry has been to try
4 and make sure that we don't fall prey to the
5 critics who would like to end Indian gaming. And
6 the weakest points that tribes were seeing were
7 those tribes who didn't have their tribal gaming
8 commissions in place or were not following the
9 rules, which then leaves open the potential for a
10 major incident to occur and then the critics to say
11 I told you so.

12 And so my response to your scenario would
13 be pretty much: Well, if the tribe invites you in,
14 that's one thing. But the other assistance you
15 could do in those situations where tribes are
16 concerned about -- and then my only example I can
17 think about is California. In southern California
18 when the larger tribes who are up and gaming and
19 following all the regulations were concerned about
20 these smaller tribes who may not have been, it
21 probably would have been better to have the tribes
22 develop some sort of rapport with them and provide
23 assistance. On top of that, the NIGC to provide
24 assistance to bring those regulatory systems on the
25 reservation up to speed. That to me I think would

1 have been a proper role for the NIGC at the time.
2 Because as I recall sort of the discussion, it was
3 these complaints from the larger more successful
4 tribes about the smaller less successful tribes and
5 whether or not they were going to create an
6 incident that could have impact on the entire
7 industry.

8 So technical assistance would be another
9 answer to your devil's advocate situation.

10 CHAIRWOMAN STEVENS: Thank you. We are
11 past noon. It's ten after 12:00. We're scheduled
12 to come back at 1:30. So unless anyone would like
13 to make a comment before we break because you have
14 to depart, please do so now. We certainly
15 understand that you all are busy, have multiple
16 things going on. We will return here at 1:30.
17 And, you know, certainly we will keep the
18 microphone open for as long as there are attendees
19 and participants here to make comment or ask
20 questions or clarify any of the parts that we've
21 issued. But we'll be back at 1:30. And depending
22 on the attendance, you know, we may or may not
23 close early. Just so you know, that's going to be
24 something that we've been -- we've been noticing
25 that as we move forward. But we'll certainly be

1 here after the lunch hour, that we'll sort of
2 decide depending on participation after the lunch
3 hour how far we go. But if anyone has comments now
4 just because you need to leave, please feel free to
5 step up to the microphone, otherwise we'll see you
6 after lunch.

7 (No response.)

8 CHAIRWOMAN STEVENS: Okay. Let's
9 break.

10 (Lunch break taken at 12:10 p.m.)

11 CHAIRWOMAN STEVENS: Okay. Good
12 afternoon. I hope everybody enjoyed their time and
13 got a good lunch break. So we're going to open the
14 floor again to comments. So far what we've been
15 over, some of you were here during the morning
16 session, over fees on 5.14, on the new regulation
17 for NIGC only, for Buy Indian, that would be for
18 the NIGC to follow, not the tribes, part 559 for
19 facility licensing, process with regard to
20 Class III minimum internal control standards and
21 how do we deal with the range of issues that tribes
22 have presented to us. That's group 1.

23 Group 2, we discussed enforcement actions
24 and processes and also proceedings before the
25 Commission and how we can alter or change those two

1 things. Actually, a lot more discussion on that
2 than I would have thought.

3 We've covered them all today and what we'd
4 like to do is open the floor for additional
5 comments, questions or any clarifications that are
6 needed by anyone in the audience. I see some new
7 faces here from the morning. Mark.

8 MR. FOX: Mark Fox, Three Affiliated
9 Tribes, also coincidentally the treasurer of
10 National Indian Gaming Association. I do have a
11 question. I'm going to raise it on behalf of TAT
12 more than anything else. We talked about Rapid
13 City. I haven't seen anything on the internet. So
14 correct me if I'm wrong in regards to a very
15 important issue, sole proprietorship, the
16 determination and the definition of sole
17 proprietorship, the rules, applicable rules and
18 regulations that are going to apply. Because our
19 example as we used before, we talked about in Rapid
20 City, and I'm going to mention it again so
21 that's -- those of you who are not sure where I'm
22 coming from will understand. But basically a
23 couple of years ago we were in the midst of a
24 contract dispute with an entity in which at some
25 point we referred to -- or deferred to NIGC, we

1 felt at the time to make a decision or express an
2 opinion in regards to whether sole proprietorship
3 was going to be violated. And NIGC, and of course
4 not you specifically, this is before your time, but
5 NIGC made a choice to say: We're not getting into
6 that fight and we're not going to issue an opinion.
7 Which of course the opposing party to the tribe saw
8 that as a great victory and we went through an
9 arbitration process and it cost us a lot of money.
10 Nearly \$8 million. And so that's money that we
11 don't have. All we have is some scraped up ground
12 up there and we had to pay.

13 And then as you're aware back in Rapid City
14 I made some suggestions. Well, maybe what we could
15 do is you could look to tribes, their council
16 tribal members themselves, tribal leadership and
17 ask them what their opinions are. But we need to
18 put something together. So my hope is that other
19 tribes don't find themselves in a like situation.
20 And that's getting burned as well. And I
21 understand it can be a real sensitive area. You
22 don't want to be overbearing and too paternalistic
23 by telling you what constitutes sole
24 proprietorship. But in our case, you know, we
25 needed the help and it wasn't there and it ended up

1 costing us a lot of money. And I wanted to just
2 get your opinion, your ideas and your statements as
3 to where that's at, the process and what you may or
4 may not be able to do.

5 CHAIRWOMAN STEVENS: Thank you, Mark.

6 In the Notice of Regulatory Review that was
7 issued on April 4th, as you know, as we've said
8 earlier, we've broken the regulation -- or the
9 potential regulations into groups, group 1 through
10 5. This was asking Lael which group the discussion
11 on sole proprietary interest would come up. And it
12 is in group 5. We're on group 1 and 2 right now
13 and we'll start to add more groups. And then the
14 beginning groups will start to taper off as we
15 address and deal with the regs in those groups. I
16 think we have copies of the Notice. Or if you
17 don't, if we don't have them here, hard copies, it
18 is on the website.

19 But it has been brought to our attention
20 and it -- you know, tribes brought it to our
21 attention, but we also have observed differing ---
22 in looking back, sort of inconsistent approaches
23 or, you know, inconsistencies when the NIGC would
24 get involved. And then coupled out with what
25 tribes have brought to our attention, that you

1 have, you know, brought to our attention when we
2 were in Rapid City, you know, when do we step in.
3 We have no regulations right now that will give us
4 guidance or give tribes guidance more importantly
5 about sole proprietary interests.

6 And so we've put it on the table to be
7 discussed. We want to hear from tribes about, you
8 know, what it would look like, how it would impact
9 you. You know, certainly would imagine that tribes
10 probably are going to be on different -- different
11 pages. They're not -- tribes are not going to
12 agree about when this sole proprietary interest --
13 when is it exceeded in what circumstances. So when
14 we -- not to say that you can't comment about that
15 now. You certainly can. We welcome it whenever
16 you give us those comments. But we hope that you
17 will participate in some way, whether by in writing
18 or in person at one of the consultations that we
19 will discuss sole proprietary interests. We hope
20 that you will -- and every affiliate was involved.

21 MR. FOX: So when you say it's group 5
22 and there's a schedule to it, can you just briefly
23 explain again what that would mean as far as timing
24 and everything else.

25 CHAIRWOMAN STEVENS: I don't have that

1 right now, but when 5 starts. I want to say in mid
2 July. I think that's where we -- it's out at
3 Northwest Indian Gaming. I think the 11th of July
4 is the meeting that we'll start to open up the
5 discussions to sole proprietary interest.

6 MR. FOX: Okay. So that will be for
7 anybody, any tribes or anybody that works for
8 tribes to do the --

9 CHAIRWOMAN STEVENS: You can be at
10 them, you can write in comments if you're not able
11 to make them. There's probably -- there's got to
12 be at least five meetings where we're going to talk
13 about it if not more.

14 MR. FOX: When I threw out there the
15 experience that we had, not just in the essence of
16 saying we want the NIGC to help us when we have
17 contract disputes, you know, it's very helpful to
18 have some type of concrete understanding of what --
19 baseline minimums of what tribes need to look for
20 as a contract. You know what I'm saying? For our
21 example, when I was in front of our counsel in
22 making decisions about moving forward on this and
23 the issue was raised you might have an issue of
24 sole proprietorship, they turn to two of the
25 lawyers that basically were working for the

1 proposing group to build and they put forth an
2 opinion that -- in their opinion that said there is
3 no sole proprietorship problem here. Everything is
4 cool. Everything is good. And I stood up and
5 said: You know what? You wouldn't make that final
6 decision. The NIGC would. But then at that point
7 in time you turn and say: Well, what does NIGC
8 have on that? See where I'm getting at?

9 Now, we do have July coming up. We
10 appreciate the efforts that you're making now to
11 deal with it. It should have been dealt with many
12 years ago. It would have certainly helped us and
13 maybe avoiding losing \$8 million. But how many
14 other situations are going to arise between now and
15 then are we going to get something in the fall or
16 what have you. It really is a really serious area.
17 We just saw I want to say a similar situation, but
18 I think a year later or a situation where both of
19 them involved a bank, I think Wells Fargo. But the
20 bottom line is that there is a need, there's a need
21 for tribes that represent the negotiation process
22 in developing or expanding or any financing,
23 anything of that nature, when you do that, where
24 are you overstepping your bounds. And everybody
25 refers them to the NIGC and says, you know, we need

1 something. I'm just throwing that out there to
2 understand the process.

3 CHAIRWOMAN STEVENS: We will start on
4 group 5. And there is going to be quite a few
5 meetings for group 5. They're scheduled right up
6 there. There's going to be quite a few meetings on
7 group 5 that will involve a number of other topics
8 as well. But we also understand and appreciate
9 that that issue may come up in the interim. And
10 what's happening is we're taking them on a
11 case-by-case basis in the management contracts
12 themselves or if issues arise with -- you know,
13 through our enforcement division where there is a
14 question that comes up. We understand that there
15 has not been a consistent application of sole
16 proprietary interest or anything that would let you
17 know or your financing folks or anybody that you
18 are in some sort of agreement with or contract with
19 to give you any rules of the road or guidelines so
20 that you know when -- or at least what the
21 boundaries are.

22 And so we've seen and recognize that there
23 is a need for that. So -- or it's brought the
24 question to mind is there a need for this. Again,
25 my disclaimer is that tribes may not agree about

1 this, but we'll see as we open up those
2 discussions. Because for every one tribe that
3 says: Yes, we would like to see some guidelines or
4 something put in place so that we know how to stay
5 away from breaching sole proprietary interest or at
6 least can tell banks or whoever we're in some sort
7 of contract with, we can show them where they can
8 draw the line, there's going to be another tribe
9 that says: Stay out. You're being overly --
10 you're overreaching or you're being paternalistic.
11 And learning the difference between breaking, you
12 know, a sole proprietary interest, a tribe -- you
13 know, our job is to make sure that the tribes are
14 the primary beneficiary. And that's where sole
15 proprietary -- dimensions of. It's a concern for
16 us. But once there -- what's the difference
17 between sole proprietary interest and when it's
18 just a bad deal. What is our responsibility. We
19 have 18, count them, meetings on group 5. So there
20 will be plenty of opportunity to weigh in. And I
21 would encourage you to participate in a few of them
22 so that you can hear what other tribes might have
23 to say. And if you can't, certainly read the
24 transcripts when they are posted online. Its good
25 to see how other tribes may view the very same

1 issue.

2 Like that movie Ferris Bueller's Day Off:

3 Anyone? Anyone?

4 (No response.)

5 CHAIRWOMAN STEVENS: It was a good
6 movie by the way. Other questions about any of the
7 parts that we've discussed today, anything about
8 the process moving forward? Because our next stop
9 is ATNI, Affiliated Tribes of Northwest Indians, in
10 Plummer, Idaho at the Coeur d'Alene facility. And
11 that will be on Friday. I certainly don't expect
12 that folks will be there attending that. A few
13 might be here. But just FYI in case there's anyone
14 you know who will be able to attend, who will be in
15 Plummer, Idaho on Friday. I think we have a break
16 after June 5th, but we'll be back here -- June 8th.
17 We will be back here for the Class II gaming summit
18 little right up here behind me, then we go to NCAI
19 in Wisconsin, California and then Tulalip up in the
20 northwest. So lots of opportunities to discuss.
21 Again, you can -- if you can't attend, certainly
22 read the transcripts and all the comment letters.

23 Absent any other desires to speak or
24 burning desires, I do want to encourage everybody
25 to submit written comments on behalf of your tribe

1 or at least take this information and bring it back
2 to your decisionmakers. I recognize -- because I
3 used to work for my tribe. I would sit in the back
4 of the room and just sort of gather information and
5 go back to my decisionmakers to inform them and let
6 them make the decision. So I encourage everyone to
7 submit written comments on the drafts that we have
8 out or all the issues that we're talking about in
9 the two groups.

10 Yes, Mark?

11 MR. FOX: Some of us were here earlier,
12 but I missed a majority of it this morning and I
13 was updated somewhat as I came in. Can you touch
14 briefly on -- it seemed to be that something was
15 being mentioned in regards to environmental -- for
16 those of us that weren't here this morning or
17 missed parts of it in regards to EPA testing,
18 Environmental, Public Health and Safety. So what
19 was the bottom line for how the NIGC is going to
20 approach compliance and enforcement? Can you
21 summarize that for us?

22 CHAIRWOMAN STEVENS: There is a -- yes,
23 I would be happy to. We posted a preliminary draft
24 for discussion purposes only. It's not in the
25 Federal Register. It's a discussion draft. We

1 posted it last Thursday. And my apologies. We had
2 a glitch in our delivery system, so we didn't have
3 them here in time for the meeting. But it is here
4 now. There is a draft out there available to you
5 today, a hard copy. It's also on the web. It's a
6 revision to the facility licensing regulations.

7 And in terms of EPHS, most of those
8 requirements, not all of them, have been taken out.
9 And here's a summary right behind me. And all that
10 we're asking for from tribes is an attestation that
11 you attest that according to IGRA that the tribe
12 has determined that the construction and
13 maintenance of the gaming facility and the
14 operation of the gaming is conducted in a manner
15 which adequately protects the environment, public
16 health and safety straight from IGRA. That's what
17 the draft has been edited and revised to read. So
18 all of the requirements if you look at the draft
19 for what has to be part of EPHS has been removed.
20 So that's the discussion. That's the discussion
21 draft. So basically the tribe is going to attest
22 and confirm they got it covered in some way. And
23 you don't have to send all of the stuff in, the big
24 list of --

25 MR. FOX: All your code development?

1 CHAIRWOMAN STEVENS: That's been
2 removed. And your tribe just has to certify
3 that --

4 MR. FOX: You just have to certify?

5 CHAIRWOMAN STEVENS: Right.

6 MR. FOX: So is there any intention
7 then, any follow up draft regulations regarding
8 subsequent steps that you may or may not take? Say
9 they certify and they test and say: Yeah, there is
10 a resolution on file, here is what we are in
11 compliance with, we are all good to go as far as
12 our facility is concerned, is there any other job
13 regulations that you're contemplating you may have
14 put into place that might require you to follow up
15 further about that, I mean, ask for, you know, an
16 inspection or to get other documentation? Is there
17 anything that you're throwing out there?

18 CHAIRWOMAN STEVENS: Well, on that
19 second page on page 33 -- or line 33 and 34 it
20 states the tribe shall provide Indian lands or
21 environmental and public health and safety
22 documentation that the Chair may in his or her
23 discretion request. If there's something that
24 comes up, you know, there's a -- reserving the
25 right as the Chair to ask for further information

1 should there be the -- but no, not -- not other
2 than that phrase.

3 In this also will be some -- there is
4 language with regard to verifying the status of the
5 land, that it is, in fact, Indian land that's
6 eligible for gaming. And this is for new facility
7 licenses or renewals. Now, are you talking about
8 like enforcement action?

9 MR. FOX: Right. I mean, I would view
10 an inspection as an enforcement-type action, if you
11 mandated an inspection based upon information,
12 documentation you received. Let's say you make
13 another request and you get some information and
14 you get further documentation, would you
15 contemplate that as you're able to take another
16 step and say: Well, we're going to do an
17 inspection to see what your compliance levels are
18 with your own laws? Would you see that?

19 CHAIRWOMAN STEVENS: I think that's a
20 possibility, only -- I think what we're envisioning
21 is that if it's like an emergent situation that
22 would cause serious concern.

23 MS. ECHO-HAWK: I think the intent of
24 this is that, you know, consistently that the NIGC
25 stay in our lane. And so if you see -- if we were

1 to see things that needed to be addressed either
2 through our agency or through, you know, calling
3 the EPA or -- you know, like if our guys were to
4 come out and be doing an audit or just come in to
5 say: Hey, how are you doing there, Mark, and they
6 were to see something that -- you know, we couldn't
7 not -- we have a responsibility under IGRA that the
8 gaming is conducted in a safe way, which is in a
9 manner which adequately protects the environment
10 and public health and safety. So if an issue were
11 to be brought to our attention that we just
12 couldn't avoid or, you know, something comes up
13 through whatever means much like other issues that
14 come up that may or may not be within our
15 authority, I think we refer things out to law
16 enforcement. If we requested -- if the Chair
17 requested additional information, then where that
18 information leads us I think again going back to
19 compliance and enforcement, working with the tribe
20 to get that into compliance, working with whatever
21 other agencies that may have jurisdiction. Because
22 that's one of the main complaints that we hear from
23 tribes is that: You're asking us to do all this
24 stuff over areas that are appropriately regulated,
25 not just by federal agencies but by tribal law and

1 the state Compact and where -- you know, how does
2 this fit within your authority as a gaming agency?

3 So it's a fine line. But I think that the
4 way that the regulations are drafted now sort of
5 streamlines the NIGC's authority, makes it a little
6 more clear where -- you know, we're not telling
7 tribes you have to adopt these laws, you have to do
8 this, show us proof of that, tell us you are in
9 compliance, and if not, how are you going to get
10 into compliance, none of that anymore. It's just
11 you certify that you're operating your facility
12 this way. And if something were to come up that
13 indicated you were not, then the Chair would at
14 their discretion request more information and then
15 take it from there, working with the tribes.
16 Again, this is compliance and enforcement first of
17 all.

18 MR. FOX: Yeah. I think and if I take
19 it from there, that might raise some questions in
20 that regards and its relationship to authorities
21 and things of that nature. I just have to throw
22 that out there for now to get a feel for where you
23 might be headed on this. I appreciate that.

24 CHAIRWOMAN STEVENS: I would like the
25 turn to stay in our lane and refer out to the

1 appropriate agencies or bodies as necessary.

2 Other comments? I'm trying to think of
3 what else we have not talked about. In the absence
4 of further comment, I'll do sort of a last call.
5 Again, please bring this information back if you
6 are just here gathering information to your
7 decision-makers, please provide comment. We have
8 the discussion draft on the fees with a comment
9 period on the -- just the discussion draft for that
10 of May 31st. We also have a discussion draft for
11 the facility regulations which has a comment period
12 for the discussion draft only of June 17th. We
13 will take the information that we gather here in
14 these meetings as well as the written comments as
15 we move forward for a Notice of Proposed Rulemaking
16 if that's what the comments determine and
17 incorporate some of those comments in consideration
18 as we move forward on that.

19 You'll see more discussion drafts coming
20 out. You'll see one on group 2, which is
21 enforcement and proceedings before the Commission,
22 in the next couple of weeks. You'll also see
23 something on the Buy Indian Act coming out again
24 based on the -- what we've seen other federal
25 agencies do with that act. And your comments,

1 please, on Class III Minimum Internal Control
2 Standards and how you would like to see us proceed
3 or what would the effects be on your tribe in your
4 region with any of the proposed actions that have
5 been suggested to us.

6 So that's my last call. The comments here
7 (indicating), the deadlines, the information you
8 can submit by email, you can submit by fax, you can
9 submit by snail mail if you would like. Anyone
10 brings testimony, give them here. I hope to see
11 you all at another meeting or at least see your
12 comments.

13 I want to thank the staff for your support
14 in arranging these. We could not have these
15 meetings without the support of the staff here in
16 the region that's done such a great job. I want to
17 thank the Shakopee Mdewakanton Sioux community for
18 allowing us into their territory and being such
19 gracious hosts for this meeting. We'll probably be
20 around here for the next bit to see if there is any
21 other folks that come in. But other than that, I
22 wish you all safe travels and thank you for
23 attending.

24 (Proceedings adjourned at 2:16 p.m.)
25

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that I reported the foregoing proceedings on Monday, May 16th, 2011 in Prior Lake, Minnesota;

That the proceedings were transcribed by me and is a true record of the proceedings;

That the cost of the original has been charged to the party who noticed the proceedings, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality.

WITNESS MY HAND AND SEAL THIS 23rd day of May, 2011.

Dana S. Anderson-Linnell
Notary Public, Hennepin County, MN
My commission expires 1/31/2015

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