

NATIONAL INDIAN GAMING COMMISSION MEETING
TAKEN ON AUGUST 18TH, 2011
IN TULSA, OKLAHOMA

APPEARANCES

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REPORTED BY: Carla S. Kimbrough

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

3 MR. FLOYD: Thank you very much. It's
4 indeed an honor and pleasure to represent the Muscogee
5 Creek Nation in welcoming the NIGC tribal leaders,
6 tribal delegates, as well as all others concerned with
7 where the State of Indian Gaming in Oklahoma and the
8 future may be in gaming. As you're well aware Tulsa
9 is in the Creek Nation. Parts of Tulsa also lie in
10 both the Cherokee and the Osage Nations. The majority
11 of Tulsa is Creek Nation.

12 A little history about the City of Tulsa.
13 Of course, we have more tribes, as all of you are well
14 aware, in Oklahoma than any other state in the Union,
15 however, none of us are native to these lands. The
16 Indian Removal Act of 1830 put the ball in motion so
17 that we seceded all of our ancestral lands, wherever
18 they might have been, and were moved under the control
19 of the United States Government. My tribes came from
20 Alabama, Georgia, and parts of South Carolina and
21 Florida. In 1834 we started out with our first group
22 leaving Alabama, 680 tribal members. During that
23 march we lost over 161 people, and that was the first
24 of several in getting our people to the promised land
25 in Indian Territory that we inherited.

1 So when our people made it to our new lands in
2 Indian Territory, they -- well, they were the Muscogee
3 Nation, of course, but were also known as the Creek --
4 back up here. The reason for that is when the
5 European settlers started infiltrating into our
6 ancestral lands, they realized that my ancestors
7 resided along rivers and streams. We fished, we
8 hunted, raised crops and livestock, so we became known
9 as Creek Indians. And so that's where that came from.
10 So when we got to our new lands here in Indian
11 Territory, the ancestors had to be thinking that they
12 wanted to find some place that reminded them of home.
13 And they were fortunate that they found a tall bur oak
14 tree that stood on a low hill that overlooked the
15 Arkansas River, and I have to assume that it had a lot
16 more water in it then than we do now.

17 When they found this bur oak tree that reminded
18 them somewhat of home, overlooking the Arkansas River,
19 they laid down the ashes as were their tradition, the
20 ashes that were brought from the last fire in our
21 homelands in Alabama, relit the fire in our new
22 homeland. They immediately held a Busk Ceremony to
23 honor those who died along the way. Our Creek
24 National Council also held their first national
25 council meeting underneath that big bur oak tree.

1 That big oak tree still stands today. It's
2 surrounded by a well-manicured city park, known as the
3 Council -- Creek Council Oak Tree and that's less than
4 a mile away from where I stand today here at 13th and
5 Cincinnati here in Tulsa. So it stands as a monument
6 to a proud Indian Tribe that brought law and order to
7 a wild and crazy Indian Territory that we all moved
8 into over 156 years ago.

9 The City of Tulsa -- when the tribes came in, the
10 Turtle Clan of the Creek Nation settled in this area
11 and they claimed their town and they named it Tallasi.
12 And so from that as the white folks started coming in
13 and trying to interpret what we were talking about it,
14 then it became Tulsey Town and now Tulsa as you know
15 it today.

16 The Indian Gaming around in this area, as you're
17 all aware, Oklahoma is on the forefront of Indian
18 Gaming. The NIGC reports show that in 2010 the
19 Portland region and the Oklahoma region were the two
20 that had the most revenues. The Oklahoma City region
21 of Oklahoma had more gross gaming revenue dollars than
22 just about what anybody else around in the regions
23 that they cover outside of Portland. Tulsa's region
24 amounted to about \$1.8 billion as well. So we have a
25 significant investment in the tribal communities and

1 the revenues that are produced by tribal revenues and
2 that filters down to services that we're able to
3 provide to our tribal members.

4 And as a member of the Creek Nation, I'm also
5 general manager of our flagship property, River Spirit
6 Casino at 81st and Riverside. We are -- and I tell
7 all of my employees that you should be proud in doing
8 what you do every day because there aren't many jobs
9 left where you can feel good that the money that you
10 generate goes to help people that really need those
11 goods and services that come from that.

12 So with that I'd just like to welcome each and
13 everyone one of you to Tulsa and say thank you and
14 muh-toh in Creek.

15 MS. STEVENS: Thank you very much, Jerry.
16 I'd like to now have the -- well, first, if you're a
17 tribal leader, please come on up to the table. We'd
18 like to have the tribal leaders sit at the table with
19 us if you're not too shy or a designated
20 representative of tribal leaders as he said.

21 I'd like to take the opportunity to have the
22 folks at the table. And since we have such a small
23 audience, the people in the back, if you thought you
24 were going to get away from not introducing yourself,
25 you were wrong. We're going to send the microphone

1 back there, and we'll start to my left. We'll go
2 around the table. If you could please introduce
3 yourself, give us your name and who you're with, and
4 then we'll move to the back with the microphone.

5 MR. MORGAN: Matthew Morgan, Gaming
6 Commissioner Chickasaw Nation.

7 MR. HILL: Ronald Hill, Acting Gaming
8 Commissioner Muscogee Creek Nation.

9 MR. FLUTE: Homer Flute, Vice Chairman
10 Apache Tribe.

11 MR. STEVENS: Granthum Stevens, Pawnee
12 Nation Gaming Commission Director.

13 MR. WOOD: Richard Wood, Gaming Commissioner
14 Seneca-Cayuga.

15 MS. COLLIER: Barbara Collier, Gaming Agency
16 Director Quapaw Tribe.

17 MS. LASH: Robin Lash, attorney and Gaming
18 Commissioner Miami Tribe of Oklahoma.

19 MR. KITCHKUMME: Rey Kitchkumme, Potawatomi
20 Nation Gaming Commission.

21 MS. GUERRERO: Joyce Guerrero, Tribal
22 Council Vice Chairperson Prairie Band Potawatomi in
23 Kansas.

24 MS. O'TOOLE: Carrie O'Toole, Prairie Band
25 Tribal Council member.

1 MS. STEVENS: And if we can get -- we'll
2 start from the right and then go all the way back.

3 (Whereupon, members of the audience
4 introduce themselves.)

5 MS. STEVENS: Okay. Thank you, everyone,
6 for taking a moment to introduce yourself and let us
7 know who you're with. At this time I'd like to also
8 introduce the Commission and the staff that we have
9 here. Many of you know our regional directors out
10 here, Tom Cunningham and Tim Harper, who are here. I
11 think Tom is outside.

12 MALE SPEAKER: He's behind you.

13 MS. STEVENS: Oh. Brian Moody. We also
14 have Marci Ober here, and as William said he's in the
15 back there with our audit division. We have Esther
16 Dittler, who is from our general council's office.
17 Nimish Purihit, who is our Acting Training Director
18 right now. And outside those folks that were so kind
19 to help us get organized in registration, Christie
20 Jamison and Karen Simmon, our administrative
21 assistants from both regional offices here in
22 Oklahoma. Lastly, we have Lael Echo-Hawk, who is
23 council to the Chair who's been heading up this
24 regulatory review process.

25 So I just want to recognize our staff here

1 because without them we cannot, you know, perform
2 these consultations, do this regulatory review. These
3 are the people behind the scenes that are doing all
4 the work and helping the Commission perform these
5 consultations. So my hand is up to our staff and I
6 appreciate everything that you've done. If you-all
7 get a chance, be sure to thank those folks. I'd like
8 to take a minute to have the other commissioners
9 introduce themselves. I'll start with our vice
10 chairwoman Steffani Cochran to my right over here.

11 MS. COCHRAN: I'm going to stand up because
12 I'm not very tall as it is. Good morning. I know so
13 many of you, but for those of you I haven't had an
14 opportunity to meet, my name is Steffani Cochran. I
15 am the vice chairwoman as Tracie has pointed out. I
16 am a member of the Chickasaw Nation, born and raised
17 here. I am a Cowboy. I am not a Sooner, I'm sorry to
18 say for those Sooner fans in the room.

19 So it's always a great pleasure to come home and
20 this trip is particularly exciting for me because it's
21 going to parlay into the first vacation I've had since
22 coming to the Commission a year and eight months ago,
23 and we're going to vacation down in Broken Bow. So
24 hopefully there's a lake still down there for me to
25 put a jet ski in, and if I seem a little distant

1 tomorrow, understand that I may have already checked
2 out for vacation.

3 But thank you for coming, and I always appreciate
4 your time. I know so many of you are very, very busy
5 and I know you run some amazing facilities. And I
6 know tribal leaders' time is extremely valuable. So
7 thank you for coming to be with us today, and I look
8 forward to our conversation.

9 MS. STEVENS: Thank you, Steffani. I'd like
10 to have Dan Little tell us a little about himself.

11 MR. LITTLE: Hi, good morning. I want to
12 thank everybody for coming today. My name is Dan
13 Little. I'm the associate commissioner. I came in on
14 the NIGC in April of last year. And when we started
15 this process, I know that the Chair was very clear
16 that this is -- kind of going to go by fast. And it's
17 hard to believe I'm almost coming up about halfway
18 through my term.

19 And I think it's very exciting. We're making a
20 lot of good progress. We're getting a lot of good
21 feedback which is a, you know, joint effort from the
22 tribes and an opportunity to make sure that we're
23 updating these regulations and that they're
24 consistent, and they work well for the industry. So
25 I'm very happy to be here and I want to thank

1 everybody for coming today and I really look forward
2 to all your comments.

3 MS. STEVENS: Thank you, Dan. And I'm just
4 going to remain sitting if you-all don't mind. My
5 name is Tracie Stevens and I'm a member of the Tulalip
6 Tribe from Washington State. I'm the chairwoman of
7 the National Indian Gaming Commission. I've met many
8 of you on previous consultations over the past
9 14 months that I've been in office. And for those of
10 you who don't know me, I used to work for my tribal
11 government. I spent almost 13 years working for my
12 tribe, both in the tribal government and also working
13 in a casino. So that's a little bit about myself.
14 Oh, I thought I was doing something wrong.

15 So this is -- I've lost count -- 13 -- number 13
16 on our consultations on our regulatory review process.
17 When the Commission -- when we're all finally
18 together, within two weeks of us all being in the
19 office together, last year we put some initiatives
20 together. And even during my nomination process, I
21 made it clear that I would want to do a regulatory
22 review for ensuring the integrity of the industry and
23 making sure the regulations that on the books are
24 relevant, that they're current, and they are what they
25 need to be. Or that if they need to be changed or

1 modified, that we should do so. But to do so in a
2 fashion that is respectful to tribes as primary
3 regulators and do so in a meaningful consultation
4 fashion.

5 We've got our priorities. Consultation and
6 relationship building, which is our first; the second,
7 technical assistance and training; third is this
8 regulatory review, which is, as it turns out, a huge
9 effort; and then four, our own agency operations
10 review, which is an inside look into how the agency
11 can run better.

12 So this is the regulatory review part. This is
13 number 13 of several consultations that we've
14 scheduled. We started this process back in November
15 with a notice of inquiry asking tribes what
16 regulations we should look at in terms of priority.
17 Because as far as I'm concerned, we only have a
18 certain amount of time here. Three years each and
19 we've all come in at staggered times. And so what are
20 the regs that need attention first? And so we
21 received a lot of feedback from tribes that have
22 brought us to this agenda and these consultations that
23 we're in the middle of now. So that's a little bit
24 about what we're doing.

25 If you haven't been to one of these before, if

1 you haven't heard us talk about this before, in your
2 packet there's a meeting agenda that outlines the
3 areas that we're going to cover throughout the day.
4 We did this as we started to have more regulations on
5 the table so that there's more order for folks who are
6 only interested in specific parts; they knew when to
7 arrive. But I don't -- I do want to say that that
8 does not mean that if you have a general statement
9 that you need to make because of time constraints, if
10 you have a written or oral comment that you'd like to
11 make for the record, you're certainly welcome to do
12 that. And we've made time throughout the day to just
13 open up for general comments even though it might not
14 be for the regs that we're looking at at the time.

15 So in an effort to be respectful of everybody's
16 time because there are a million other things going on
17 besides this meeting that we all know you have to
18 attend to, we open it up for general submissions and
19 comments, and we'll be doing that throughout the day.
20 So that's generally how we're going to work over the
21 next two days, and we'll be going over each of these
22 in just a moment and the groups in the sections as
23 outlined, we'll do our own overview with a PowerPoint.
24 Lael will lead that and then we'll open it up for
25 discussion and comments.

1 So at this time what I'd like to do is open the
2 floor for anyone who has a prepared written or oral
3 statement that covers whatever subject that may need
4 to be covered. Do we have anyone that needs to make a
5 general opening statement or because of their own time
6 constraints needs to do that early in the meeting?
7 This would be the time to do that. Yes.

8 MS. LASH: Robin Lash, Miami Tribe.

9 I would like to speak for a moment on behalf of
10 Chief Gamble. Unfortunately he was not able to attend
11 but he asked me to thank the commissioners for coming
12 to Oklahoma and for the time that you've given to this
13 important review of the regulations.

14 Following the first submission of the draft
15 regulations by the tribal gaming working group in May,
16 Chief Gamble submitted a letter to the NIGC, a letter
17 of support for the document. And in June at the
18 Mystic Lake in Milwaukee consultation, Chief Gamble
19 submitted a rather lengthy statement both directed at
20 the work that the tribal gaming working group had done
21 and in support of the documents and that have been
22 submitted, and he asked that I just go on record
23 mirroring those comments. Thank you.

24 MS. STEVENS: Thank you and be sure to relay
25 our regards to Chief Gamble. We appreciate the letter

1 and the comments from the tribe, from the Chief.
2 We're going to talk more as the agenda goes by about
3 the status of the tribal gaming working group's
4 documents and what our part has been in that and
5 notices that we've put out with regards to those
6 documents in the Federal Register.

7 Any others that need to make an opening
8 statement?

9 MR. KITCHKUMME: Good morning. Rey
10 Kitchkumme with the Potawatomi Gaming Commission and
11 we submitted a written document for the record. And
12 in terms of your agenda, we noticed that a lot of
13 these are on the agenda so we'll discuss them at that
14 time, so I just wanted to mention that.

15 MS. STEVENS: Thank you and we appreciate
16 your written submission. We'll put that in as part of
17 the record. Okay. If there's nothing else, what I'd
18 like to do is turn over the meeting to Lael Echo-Hawk.

19 MS. ECHO-HAWK: Good morning.

20 MS. STEVENS: She'll be running some of the
21 PowerPoint. And the first part, so if you see on the
22 second block of the agenda, 9:30 to 10:15 Group 1.

23 MS. ECHO-HAWK: We didn't know how to put
24 the PowerPoint projector on standby so we used a
25 notebook. Good morning, my name is Lael Echo-Hawk.

1 I'm a member of the Pawnee Nation here in Oklahoma.
2 Council Chairwoman Stevens, where my primary
3 responsibilities at the NIGC issues were made out to
4 have been sort of being the go-to person on this
5 regulatory review that we began in November. And then
6 April we announced the regulations that we would be
7 reviewing, and so it has been kind of sort of keeping
8 our eye on all of this. And I've seen most of you at
9 other consultations here in Oklahoma and elsewhere,
10 and it's very nice to be here, even though it's very
11 warm. I can't decide which is worse, Tulsa or DC
12 right now, both are very warm.

13 But as we look at the PowerPoint, you'll see this
14 information. You can reach us at any time at
15 reg.review@nigc.gov. We check that e-mail regularly.
16 If you submit comments, you have questions, please use
17 that e-mail address or you can reach us also at this
18 phone number.

19 So today is part of the consultation process that
20 the Commission has undertaken. It's important for us
21 to note that these meetings are between tribal
22 governments and the federal government. Only tribes
23 that are designated can attend and participate in
24 these meetings. They are not open to the public.

25 This process is the Commission's -- this is

1 their -- how they implemented the Executive
2 Order 13,175. Particularly Section 3(c)(3) where it
3 says, In determining whether to establish Federal
4 standards, the Commission consults with tribes. And
5 so that's what we've been doing. We're in sort of a
6 discussion draft process. We're getting very, very
7 close to moving out of that phase and into notice of
8 proposed rule making. And we'll discuss that a little
9 bit further, later.

10 The process has been when we tried to figure out
11 how to divide up all these regulations and all the
12 subject matter, we divided these regs into groups,
13 five different groups. They were formed by many
14 factors, subject matter, comments that we received
15 from the notice of inquiry that was sent out and put
16 in the Federal Register in November of last year, and
17 the estimated time and resources. The group numbers
18 do not indicate priority. We've been asked that a
19 number of times. It's just sort of how the
20 regulations -- how when we looked at all of the
21 factors, kind of how we grouped them together.

22 Three phases as I mentioned, we are in this
23 preliminary drafting phase. You have a packet full of
24 draft -- discussion draft regulations that were put
25 out for comments. Later today, probably within the

1 next couple hours, you will see the Stealth
2 regulation. We will talk about this later. The
3 Stealth regulation draft will be posted online as
4 well, and that is out for comment now for the next
5 30 days.

6 The second phase is a proposed rule-making phase.
7 If we get to the point where we believe that these
8 rules need to be put forward in a proposed rule and
9 revisions need to be made, then we're going to be
10 moving into that phase very, very shortly, and then
11 finally final rule making.

12 These preliminary discussion drafts are initial
13 working drafts. They're not -- nothing is set in
14 stone. We take your comments, we consider them, but
15 thought that we needed to get some discussion going
16 and so we put out these discussion drafts. All these
17 consultations are transcribed. Written comments and
18 the transcript are all on the website. All the
19 transcripts up through our last consultation, which
20 was in DC, they are online. So if you're interested
21 can you go and see who said what and what those
22 consultations look like.

23 All the comments as they come in we post them and
24 we send letters out to tribes to note that we received
25 their documents. But all that is online. The

1 commitment the Commission has made is that every
2 comment will be reviewed and considered. Every
3 comment that you guys send in, they look at them.
4 They make their binders and they take a look. So do
5 not think that we're not hearing what tribes have to
6 say. So it's very important if you have something
7 that you're interested in or a comment you need to
8 make, please do send in those comments.

9 Any proposed or final rule will contain a summary
10 of the comments much like what we did with the notice
11 of regulatory review schedule, and this is all part of
12 the Commission's commitment to a clear, transparent
13 process. The president has been very clear that he
14 wants an open and transparent government, and so this
15 is how the Commission has undertaken that.

16 So I won't go through -- we have on the agenda
17 what we're going to be going over today. That's also
18 on your PowerPoint, these are the groupings of these
19 different regulations. But this morning we're going
20 to start off with Group 1. Group 1 deals with the fee
21 regulation, potential repeal of Part 523, Class III
22 minimum internal control standards, the facility
23 license regulation, and the potential Buy Indian rule
24 or regulation.

25 So Part 514 that's the fee reg, you do have a

1 copy of this in your handout. We've made some changes
2 based on comments that we've received and were
3 included in the discussion draft, and we are still
4 looking at that regulation. We've changed the fee
5 calculation from it being based on a calendar year to
6 the fiscal year of the gaming operation. As you know,
7 most -- many gaming operations' fiscal year does not
8 line up with the calendar year, and in order to have a
9 more accurate fee calculation and sort of reduce the
10 number of fee audits that we have to do, we changed in
11 the discussion draft that the fee calculation will now
12 be based on a fiscal year instead of a calendar year.

13 Additionally, the fee rate will be published on
14 March 1 instead of February 1, the preliminary rate.
15 This provides the Commission more time to take a look
16 at all the auditor statements as they come in and make
17 them a more accurate sort of prediction and a
18 preliminary rate February 1 kind of is -- it's a
19 little bit tight in order to make sure we've got the
20 most accurate information. We've done some things
21 like change some language so that we reflect the
22 existing practices and make sure that we are
23 consistent with industry standards.

24 We've also gone back to quarterly payments. Now
25 I know a couple of years ago the NIGC moved to

1 semiannual payments. After some review and hearing a
2 lot of comments, A, about the need for the agency to
3 sort of have the fees coming in on a quarterly basis
4 that helps us run our operations better, but also that
5 the Act itself says that these fees and the financial
6 statements need to be submitted on a quarterly basis.
7 So the discussion draft does make that change.

8 We tried to clarify language. It gets a little
9 confusing, but we pointed back to actual calculation
10 language. We've -- just as a matter of clarification,
11 the rule -- we've heard comments that the rule was
12 somewhat confusing and so we really tried to clarify
13 it, put it more in a little less legal, little more
14 layman terms.

15 We also added a notification period so if you
16 change your fiscal year -- fiscal year from, say, a
17 calendar year 12-31 date to September fiscal year,
18 then how do you notify us. We have added some
19 language in there.

20 One of the biggest changes that we've made to the
21 regulation is that we've added a new section. This
22 new section has to do with how we address late
23 payments of fees for better submitted from the gaming
24 operation to the NIGC. As you know in 2009 there were
25 a number of notice of violations issued to gaming

1 operations for their failure to submit fees on time.
2 And we've heard over and over again that this was much
3 too big of a stick for something that was
4 relatively -- there's a number of reasons why a tribe
5 could be late with their fee submissions. We've heard
6 everything from, like, CPA had a heart attack to
7 change in personnel in the finance department. And
8 there seems to be a more -- we tried to come to a more
9 reasonable assessment of fees and a way to manage the
10 late payment of fees as they came in.

11 And so this is our effort. This is on page -- I
12 believe, it begins on page 5 in your draft. So what
13 we've done is we've distinguished between failure to
14 pay our annual fees, which is a payment that's
15 received more than 91 -- 92 or more days late, and a
16 simple late payment. So you can send your payment in
17 30 days late. What we've done is we've included sort
18 of a sliding scale. It's sort of a ticket scheme so
19 the later you are, the higher your penalty or your
20 late fee assessment would be, much like if you pay a
21 mortgage payment late or you pay a parking ticket
22 late, you're assessed a fee as it's more -- as time,
23 later time is before you pay it.

24 One of the things I need to point out is on
25 line 14, 16, 18, and 20 we have blanks. So we haven't

1 committed, we've been asking tribes, what do you think
2 is a reasonable assessment? Is it a percentage? Is
3 it a flat dollar amount? What should those sort of
4 penalty fees be? And that blank, we are looking for
5 comments on that as we move forward with finalizing
6 this regulation into possible proposed rule making.

7 We've also added an appeals section and added
8 that a late payment resulting in a fee assessment,
9 that failure to pay your annual fee can result in a
10 substantial violation. We do need -- we've run --
11 we're fully operated on your fees and so we do need to
12 make sure that they're submitted in a timely manner.
13 So we're trying to come to a good medium here. The
14 second thing that we did was we added -- we just added
15 the procedure for how we assess fingerprint processing
16 fees for those tribes that do utilize our services to
17 process your fingerprinting, fingerprint cards. Not
18 all tribes do this, but for the tribes that do we
19 thought it was important to say how we do that.

20 So some of the questions that have been out
21 there, whether or not we should change terms to be
22 more industry standard, terms, for example, admission
23 fee change that to entry fee for say tournaments. And
24 so take a look at those and let us know if you have
25 any comments. We've heard mostly that tribes like the

1 idea of trying to make this more consistent with
2 industry standards, and things have changed since this
3 rule was drafted quite a long time ago. And so we're
4 trying to move forward into the 21st Century here.

5 One of the questions that we asked and a notice
6 of inquiry was whether or not we should use the
7 gross -- the GAAP definition for gross gaming revenue
8 for calculating fees, for the purpose of calculating
9 fees. We looked at it and realized that while at the
10 beginning that sort of sounded good, it was a good
11 industry standard, but we realized that this
12 doesn't -- it doesn't comport with the language in
13 IGRA. IGRA has a very specific definition for both
14 gaming revenue and the GAAP definition wouldn't --
15 doesn't comport with that. So we did make the change
16 in the draft. However, we have received comments that
17 perhaps what we should do is define wager and payout
18 and that we should, you know, put out some guidance
19 documents, perhaps offer more training so that we're
20 more clear on what can be included and what is a wager
21 and what is a payout.

22 As you guys know, it's very, you know, you have a
23 match plays and free plays and promotions and what can
24 be deducted and what needs to be included and, you
25 know, if the player is essentially playing with the

1 operation's money, then how do you deduct that? How
2 do you calculate the payout? It's my understanding
3 this is very complicated. We have done a fees 101
4 back at the office and it's clear that it's not that
5 clear.

6 So in the interest of sort of trying to clear
7 that up and to provide clarification for operations as
8 you're calculating your fees, one of the suggestions
9 was that we define wager and payout. So if you have
10 comments on that, we'd be very interested in hearing
11 them. The written commentary did close on May 31st,
12 but we are happy to hear your thoughts on this draft.
13 We haven't put out a notice of proposed rule making
14 and if and when we do, you certainly will have more
15 consultation and time to provide written comments.

16 The other -- the Part 523, we've looked at this
17 and we're asking the tribes whether or not this part
18 should be repealed. It only applies to private
19 ordinances enacted before 1993 and that have not been
20 submitted to the Chair for approval. We don't have
21 any leads on the record, so we're proposing to repeal
22 this part.

23 Part 559 is facility license notification. We
24 asked in a notice of inquiry whether or not this part
25 should be revised. All the comments came back

1 universally supported reviewing this part. There were
2 a number of concerns about how this regulation was
3 initially adopted. There was some concern that there
4 wasn't proper consultation that the process for
5 putting this regulation into the Federal Register and
6 implementing it was not -- there wasn't sufficient
7 consultation at the time. We also had a number of
8 comments that NIGC doesn't have the jurisdictional
9 authority over environmental, public health and safety
10 issues.

11 So we looked at the draft -- or we looked at the
12 regulation, we created a draft also in your packet,
13 and we did some things. We changed the time frames
14 for notice of a new facility license. It was 120 days
15 and in this draft you'll see that we changed it to 60
16 with an additional 60. And it also included a
17 provision for expediting the process when
18 circumstances permit. So if it's very, very clear if
19 we -- you know, if it's on a reservation or there's a
20 way to simplify and expedite the review of the
21 primarily new land verification, then we included a
22 provision in the draft for that.

23 Newly issued or renewed facility licenses since
24 the NIGC within 30 days. We were taking out this
25 section that required the tribe to renew their

1 facility license every three years. We heard from
2 tribes that this was unnecessary. You're not -- it's
3 unlikely that you're going to be doing something to
4 the facility that changes what the footprint of the
5 layout is, the facility license. So we just require
6 that the -- the new draft only requires that newly
7 issued and renewed licenses be sent within 30 days of
8 issuance. You decide when you renew, if you do.

9 We also removed a fairly large section that
10 requires and has sort of this list of laws and
11 resolutions and all these things that tribes needed to
12 do in order to comply with the environmental, public
13 health and safety issues and simply now require an
14 adaptation that the construction and maintenance of
15 the facility and operation is conducted in a manner
16 which adequately protects environmental, public health
17 and safety. And this is language verbatim from the
18 Act.

19 Just for the agency to know when facility
20 licenses are opening or they're closing, we've
21 included a provision that the NIGC be notified within
22 30 days when the license is terminated, buyers, or
23 facility closes or reopens. And so this when a
24 facility closes or reopens, issue has come up. We try
25 to provide some clarity in -- with regard to what

1 closure means. So if it's is a seasonal closure, you
2 don't need to notify us. If it's a temporary closure
3 of blank days -- now we didn't include -- we didn't
4 provide an estimate. There's a blank in the current
5 draft. I think it's on the second page, line --
6 line 26 on the second page. So when do we need to be
7 notified of the temporary closure? If you're putting
8 a new roof on, you know, or you're remodeling,
9 extensive remodeling, what is that number of days
10 that's reasonable before we need to know, the NIGC
11 needs to know that the operation has been closed. We
12 didn't have an estimate. We left it blank and we're
13 asking for tribal comment on that.

14 MS. O'TOOLE: How do you handle when
15 weather-related closures happen like the tribe in Iowa
16 had to close because of the water issue. How is that
17 handled?

18 MS. ECHO-HAWK: Can you please state your
19 name and your tribe?

20 MS. O'TOOLE: I'm sorry. Carrie O'Toole of
21 Prairie Band Potawatomi Nation.

22 I was just -- it doesn't affect us, but it does
23 affect some of our surrounding tribes close to us.
24 The water has made an issue that they've had to close
25 so do they have to give you temporary notice saying.

1 MS. ECHO-HAWK: Well, under the discussion
2 draft, the way that it's drafted, of course, we
3 haven't put a number of days, but if it is a temporary
4 closure like that for things like, you know, floods or
5 fires or tornadoes or winds or whatever and you close
6 down, there's no access or there's a, you know, you
7 need to fix the facility, then, you know, we don't
8 need to know if it's going to be in a short time. And
9 that's why this draft leaves those days -- that day
10 blank. We don't know.

11 Tell us what the reasonable number of days before
12 you have to notify us that you're closed. I think,
13 you know, a year, you know, is a year too long? Is
14 six months okay? We don't -- we didn't include that
15 number. We just don't think that every time you
16 temporarily close you have to notify us. So we're
17 trying to resolve that in the draft and so we do need
18 input on that.

19 And then we are trying to move into the
20 21st Century, 20th Century at this point, and we've
21 included a statement in there that electronic
22 submissions are accepted. We're still working out the
23 details on that. Our e-mail addresses, we're trying
24 to make our website more user-friendly, and provide
25 some mechanism so we're not making photocopies and

1 sending them out and that kind of thing. Written
2 comments on this closed on June 17th, but we are still
3 interested in your comments.

4 The other regulation that was proposed is a Buy
5 Indian Regulation. Just to point out, make this very,
6 very clear, this is a regulation that is telling the
7 NIGC to do something. It is telling the NIGC if you
8 go out and you're purchasing goods and services, you
9 need to go out and buy Indian. This is not something
10 where we're telling tribes that they have to do that.
11 This is a regulation pointed at the NIGC and telling
12 the NIGC this is something that they need to do.

13 Now we haven't put out a discussion draft yet.
14 We've run into some complications in the federal
15 government and how you do this, but it is something
16 that we're thinking about still internally. It is
17 supported by IGRA, and I know most of you are very
18 familiar with the Buy Indian Act. And it's something
19 that I think the Commission really thinks important.
20 And so we're trying to figure out the logistics on how
21 to do that within the government and the procurement
22 world.

23 And the final issue in Group 3 -- or Group 1, I'm
24 sorry, is the Class III MICS. How do we direct the
25 Class III MICS? This impacts tribes, states, regions

1 differently. You know, Oklahoma has their own issue
2 with the Class III MICS and the inclusion of them
3 reference to them in your contacts. We have tribes in
4 California that take completely opposite views from
5 each other and from Oklahoma. We have tribes in the
6 Northwest that have another opinion. So we're trying
7 to figure out a way to resolve this to make sure that
8 there are good industry standards out there, that
9 tribes have that assistance that they need and the
10 structure that they can borrow from, but do that
11 within jurisdictional framework that we have to
12 operate under. We'll talk more about that tomorrow in
13 Group 5.

14 We've had a number of comments and I saw
15 Mr. Green come in so I'll make sure that I add his
16 comments that he's made the last three consultations.
17 We've heard that we replaced Part 542 with recommended
18 guidelines that we can address this issue through sort
19 of an agency tribal self-governance type compacting
20 model. Tribal ordinances incorporating Part 542 with
21 NIGC, adjusting the fee rates for those tribes so that
22 they pay for their -- for what NIGC does and how we
23 address Part 542 that would maintain Part 542 and
24 convene the tribal advisory committee to update that
25 regulation. And then on the opposite end of the

1 spectrum to repeal Part 542 entirely. And then
2 another suggestion has come in that's not on this list
3 and that is do nothing with Part 542 at all.

4 So that's Group 1 and then I feel what we will be
5 discussing for the remainder of the morning and the
6 chairwoman will be leading the discussion.

7 Thank you.

8 MS. STEVENS: Thank you, Lael. So there's a
9 number of parts we've covered just this morning
10 briefly. That's why we wanted to break this up into
11 manageable pieces because we have a number of
12 regulations that are in process now in terms of
13 discussion drafts, comments that we've heard back.
14 And so we've got a number that -- regulations that are
15 open for discussion. If there are any questions about
16 any of these parts, any clarifications that need to
17 be -- to be made here, we would be happy to do that.
18 So what I'd like to do now is just open the floor for
19 comments on any of these parts, fees, the repeal we
20 don't seem to hear a lot about, facility licensing,
21 Buy Indian, and what to do with Class III MICS.

22 How are people -- how are you-all feeling the
23 draft, if you've had an opportunity to look at 514.
24 We'll just start with fees that's up at the top of the
25 list here. This is the ticketing system for late

1 fees, the change from biannual to quarterly, views on
2 the hard dollar amounts for penalty versus a
3 percentage. Do the quarterly payments make a
4 difference? Does it really -- I mean, I've really not
5 heard that much about whether it's biannual or
6 quarterly.

7 As a matter of fact, I think we accept payments
8 in a number of different fashions. We have tribes who
9 pay in advance. We have tribes that pay quarterly
10 still. Even though the regs says biannual, we have
11 folks that have converted to biannual payments,
12 doesn't seem to make a difference. Certainly welcome,
13 you know, comments also from your financial folks, how
14 this might affect their work if you need to bring this
15 back to them. Yes.

16 MS. COLLIER: Barbara Collier for the Quapaw
17 Tribe.

18 For us it's really not an issue either way, but
19 preferentially for audit purposes it seems to work out
20 better for my office for the payments to be quarterly.
21 So we were glad to see that that was an issue that may
22 come back into play. It seems like when we go
23 auditing, it's broke out into quarterly time frames
24 throughout the years so that just makes it a little
25 bit easier financially.

1 And as far as the late payment, I mean, my
2 thinking there's no reason why we should be late so
3 that's the penalty process doesn't really, you know,
4 make a difference to me.

5 MR. LITTLE: 100 percent.

6 MS. STEVENS: Well, I appreciate your
7 comments. One thing I do want to say about late
8 payments, and I had asked this question of our
9 comptroller. Generally speaking, why are tribes late?
10 And they're usually, as he said, it's not willful
11 non-compliance. There are circumstances usually
12 surrounding the late payment or the late worksheet
13 that have to, one, primarily do with employee turnover
14 at the tribe, not, you know, if you have a new person
15 coming in, the person who did it before isn't there
16 anymore. Two, communication breakdown within the
17 tribe or the casino or the operations, some sort of
18 communication breakdown either within the tribe or the
19 tribe and the auditing firm.

20 Either of those instances we -- you know, our
21 comptroller, Chris White, said, I'm on the phone.
22 When it's time for these payments to come around, we
23 spend a lot of time on the phone with tribes or the
24 new person who's transitioned into the position that
25 is responsible for submitting the fees to the agency

1 to bring them in compliance, help them know what
2 they're supposed to be doing just so you know.

3 And for the record that as he has stated it's not
4 usually cases of willful non-compliance. There are
5 certain circumstances surrounding that, and if you see
6 in the draft, you know, it's split up into phases.
7 Like anything, the later you are, the harder the
8 penalty should be. But also the option for the Chair
9 to either take action if it's willful or if not, take
10 action if it's something really like a natural
11 disaster or something just really out of everybody's
12 control that allows the Chair discretion based on the
13 individual circumstances.

14 MALE SPEAKER: Madam Chairman.

15 MS. STEVENS: Yes.

16 MALE SPEAKER: My question is a little
17 concern that I had in reading this, is the thought
18 process that if a facility was closed by natural -- a
19 fire, earthquake, high winds, and we've been closed
20 for over a week because of fires. My concern is does
21 the agency use this as a tool? Let's say it's an
22 earthquake or tornado or something and we become in
23 question whether or not the facility is safe or not,
24 who's going to do that? And does the NIGC -- we'll
25 use this reg to come in and assert our belief that we

1 can open the facility. Are they going to want to come
2 in and inspect a renewal facility or an existing
3 facility that's been closed temporarily?

4 Because if you read this, you ask yourself, we
5 always ask that question, Well, you know, what do I
6 do? What gives you authority to come in -- the agency
7 come in and review anything or question anything?
8 Does this facility license issue with the way it's
9 used, without the environmental health placed in here,
10 give them more authority, other than somebody opening
11 and closing?

12 MS. STEVENS: I don't think that that's what
13 was intended. If you see language that specifically
14 you would like to see altered, please give us your
15 suggestion. But I don't think that's what we
16 intended. We are deferring to the tribe to have
17 adequate public health and safety measures in place
18 and that they are attested to be in place and that you
19 have -- the tribe has procedures and appropriate
20 policies, ordinances, or whatever the mechanism is in
21 place for those kind of emergencies.

22 Certainly, if you see some language that would --
23 could be read to mean that, please point it out to us,
24 either verbally or in written comment, and provide us
25 a suggestion or your concern about it. And maybe we

1 can take a look at it and see if there's a way for us
2 to clarify, clarify that. Yes, ma'am.

3 MS. HUBER: Madam Chairman, I'm Bernadette
4 Huber from the Iowa Tribe of Oklahoma.

5 I'd like to go Section 514 on the fee on the
6 penalty schedule. The tribe I represent is a small
7 tribe, and I think that any time that we have a
8 regulation that gives a specific dollar amount versus
9 a percentage negatively impacts the smaller operation
10 of the smaller tribes. As proponent, you know, a
11 penalty of X number of dollars means nothing to a mega
12 million dollar facility or billion dollar facility.
13 But those that have challenges are typically your
14 smaller operations and to put them a stable number
15 there does negatively impact the smaller tribes. So
16 we would ask that you consider that to be a percentage
17 rather than a set fee.

18 MS. STEVENS: Thank you for your comment.
19 And I do want to say that that is similar views that
20 we've been hearing throughout the country, so that it
21 is proportionate to the size of the facility and not
22 to be overburdensome on smaller operations by a hard
23 number. That's what we've been hearing so far from
24 tribal comments. I'm not sure we've heard one yet
25 that might -- maybe we have, I haven't attended all

1 the consultations to hear all the verbal comments, but
2 it would seem what we've heard is the same thing as
3 that it would be more fair by percentage. Yes, one
4 here and then over to Mr. Green.

5 MR. HORTON: Sam Horton, Ft. Sill Apache
6 Gaming Commission.

7 I'm not exactly sure I approach this being too
8 naive nor wanting to attack the NIGC. But in the
9 two-and-a-half years I've been involved in our tribal
10 gaming commission as chair, and a little bit before
11 that, I guess when I look at you-all trying to define
12 Class III MICS, I look at our casino and there's not a
13 Class II section nor a Class III section. Our picks
14 basically are our -- are departmental policies
15 including the MICS for the Class II games. And at
16 least on our casino and anywhere else we may be lucky
17 enough to go, I doubt if we ever have a mixture of
18 Class II, Class III that we would treat our Class III
19 games any differently because most of the suggestions
20 that are in the Class II MICS are good as far as how
21 to -- surveillance standards and such.

22 I think -- so I kind of look at this and don't
23 really see the need actually to have a set of
24 Class III MICS. I can't address there are tribes
25 where there are only Class III games and that may mean

1 something, but just in those looking at where Class II
2 should be guided, you know, under you-all in the
3 compact direct Class III. I mean, in our casino we
4 use the Class II MICS as guides for what we do. We
5 use the MICS as a guide for our Class III games
6 because they make sense. And I think that the tribes
7 being the regulators of this makes sense that, you
8 know, we take whatever is important, whatever seems to
9 be logical, and use that to guide us along our way.

10 So in a way I look at this and I come out of
11 21 years with the Indian Health Service where I hated
12 new forms. I hated new development of things that
13 just added paperwork. I don't understand in a way why
14 we're looking at Class III MICS except for those
15 casinos that may -- I can't even address them, but I
16 don't see any point for us to be looking at Class II
17 MICS or Class III MICS in our own personal world here.

18 MS. STEVENS: So may I ask what would you
19 suggest then be done with Class III MICS or Class II,
20 Class III. What would be your suggestion? I can
21 appreciate how it affects your particular tribe.

22 MR. HORTON: In the suggestions we wrote in
23 back before one of the deadlines, we had a little
24 think tank of our commissioners and the tribal
25 attorney and I think one of our elected leaders, and

1 we looked at this and said, you know, basically -- I
2 guess what I'm saying is that the Class II MICS are a
3 good, I think, a good guidelines. Somethings can be
4 fixed a little bit, some things need to be adjusted,
5 but overall I just don't see -- we didn't see a need
6 actually for a set of Class III MICS in that. Would
7 you mind repeating that again? I got off on a trail
8 there at the end.

9 MS. STEVENS: What would your suggestion be?
10 Because what I'm hearing from you, and correct me if
11 I'm wrong, is that you basically have one set of MICS.
12 You don't segregate Class II internal controls and
13 Class III internal controls. You have a set of tribal
14 internal controls that you apply to both your Class II
15 and your Class III.

16 MR. HORTON: That's right.

17 MS. STEVENS: Okay. And there are a number
18 of tribes that do that. There are tribes that only
19 are Class II facilities. There are tribes that only
20 have Class III facilities. We have tribes that have
21 Class III in their compacts. We have tribes that have
22 Class III in their ordinance so that we may enforce.
23 So to hear how this applies to you is a very helpful,
24 but I wonder what you would suggest that we do with
25 Class II, Class III because right now and the past

1 commission was moving to segregate them and create
2 these over here II, these over here III.

3 Many of those may be similar, we've heard that.
4 There are functions, of course, within the casino
5 whether it's Class II gaming or Class III gaming where
6 the control will be the same. But because of the
7 Colorado River Indian Tribe case, there may be some
8 places where they need to diverge. So what would be
9 your suggestion?

10 MR. HORTON: The problem is -- I understand
11 that's why I said I didn't have -- we don't have a
12 clear picture of what we do in a Class III all
13 facility in that regard. But I would hazard to guess
14 from talking to a couple of folks out in California at
15 a meeting a few months ago, three months ago, that
16 they still are looking at the Class II MICS as a guide
17 what they do in their all Class III casino.

18 In our think tank it came up that we looked at
19 what your-all bulletins occasionally put out, and
20 those are more responsive. I mean, if you look at
21 most -- my old world is a little different than this,
22 but if you look at any surgical text you're going to
23 find that that stuff in the text is between eight and
24 10 years' history. There may be something that's
25 relatively recent, but you go to the journals for the

1 updated stuff. And so when you look at developing
2 anything at the level that you're developing it, it's
3 almost outdated by the time it's out there. And the
4 Class II MICS is already written and most people seem
5 to use it as an advisory for what they're doing for
6 their Class III machines. And I would hate to think
7 we have a casino where my 700 machines -- or our 700
8 machines -- are every other one has a different set of
9 rules associated with it.

10 And I guess when I look at the Class II MICS they
11 seemed to me to be a fairly good advisory on what to
12 do with the Class -- the Class II MICS seem to be good
13 advisory with what to do with Class III. I don't see
14 the need for that. I don't know enough to honestly
15 say what -- what needs to be done with Class III
16 casino, but I'd be curious to see what a Class III
17 casino actually uses their suggested guidelines.

18 But as far as suggestions from you-all, being the
19 NIGC, coming out with a new idea or some new
20 correction, I'm not sure it's in your bulletin or the
21 way you-all pass resolutions back to us wouldn't be a
22 more time wise economic thing to do as far as getting
23 something corrected out much like the literature in
24 medicine tends to get an idea out much before it's
25 going to appear in a text book.

1 MS. STEVENS: Just to address, you know,
2 what we've heard and what we know of about how tribes
3 that have just Class III facilities managers. Some of
4 them have it in their compact. They negotiated with
5 their state long ago, have their internal controls.
6 They manage it between the tribe and the state. There
7 are others whose compact refers to the NIGC Class III
8 minimum internal control standards, which I think is
9 the case here in Oklahoma.

10 So on Class III, we have tribes that have it in
11 their ordinance and those are the tribes in
12 California. There's tribes in California that don't
13 have that in their ordinance. So whatever we do here
14 will affect tribes across the nation. We just have to
15 come with an approach that may very well be a hybrid
16 approach that does not upset the apple carts of any of
17 those established regulatory frameworks that are in
18 place now.

19 So that's why it's helpful and that's why I asked
20 the question how it works for any particular tribe and
21 what you see would be a possible solution.

22 Yes, Mr. Green.

23 MR. GREEN: Again, I'm not going to repeat
24 the comments that I previously made, but for 514, I
25 think it might be valuable if you have an act of God

1 paragraph. It said the chairman can recognize there's
2 been an act of God, particularly if I've got a small
3 facility. If I have a tornado tear my place up, I
4 don't have any records. And whether I call you or
5 not, here in Oklahoma, your staff is going to tell
6 you.

7 But it would be a great relief to tribal leaders
8 if you had a provision that says you can recognize
9 there's been an act of God, that you're going to
10 forbear any action for X number of days. That would
11 be a great relief for tribal leaders. We wouldn't
12 have pressure on us to try to get accounting out. I
13 mean, I've got one little bitty tiny facility, a
14 tornado hits me, the last thing I want to be worried
15 about is next week do I have to get NIGC payment in.
16 Because we don't have any numbers to figure it from.
17 I mean, we don't have anything.

18 So I really think you could relieve a lot of
19 pressure with a real simple little paragraph that says
20 you would recognize that an act of God has intervened
21 and forbear review for X number of days.

22 MS. STEVENS: We look forward to your
23 proposed language, Mr. Green.

24 MR. GREEN: Yes, ma'am.

25 MS. STEVENS: Thanks for the comment.

1 That's a good observation.

2 Yes, Matt.

3 MR. MORGAN: Matthew Morgan, Chickasaw
4 Nation.

5 Chairwoman, I know it's been stated many times on
6 discussion for Class III MICS. At least the way I
7 understand it, you kind of have a two-part problem.
8 One is how to come up with the standard and two is
9 whether or not you can enforce or who can enforce. My
10 suggestion will be similar to what we did with the
11 Class II working group.

12 Given your time constraints, it would be to turn
13 that over to a group and since Mr. Hummingbird is -- I
14 don't see him present at least -- his group of the
15 National Tribal Gaming Regulators Association that
16 spearheaded that to come up with a draft for
17 Class III. It doesn't appear to me that standards
18 equal regulations. I'm not for sure why that jump was
19 ever made. We do need to be standardized. I do
20 believe we need class and minimum internal control
21 standards.

22 But to adopt them as a guidance for a bulletin
23 for people to reference whether it's in their compact,
24 whether it's in their accordence, something that they
25 can adopt, something that is updated because I think

1 there will be a need for it to match whatever your
2 product is for the Class II. But, you know, just
3 because KRISP (phonetic) said you couldn't enforce,
4 doesn't mean you can't have a standard. And I think
5 that may help you with some of the legal arguments of
6 whether you can expend monies on those types of
7 efforts yourself as an outside group at least brings
8 it and gives it to you as a standard and says this is
9 our suggestion and you can do with it what you will
10 with that.

11 But I do think you need Class III minimum
12 internal control standards just because some of those
13 tribes out there that have a reference within their
14 ordinance and within their compact that needs to be
15 updated.

16 MS. STEVENS: So let me ask you since
17 Oklahoma does have it in their compacts, how would
18 that work for at least your tribe?

19 MR. MORGAN: Well --

20 MS. STEVENS: Because I'll tell you I
21 understand what you're saying because I've heard
22 tribes basically threaten that if we do anything, even
23 a standard, a guideline, a bulletin, you know, it's
24 like a reg so we'll sue you. Not that I'm afraid of
25 litigation, it's a good point. But how does that

1 affect your tribes in Oklahoma who do have and who do
2 make a direct reference to the NIGC minimum internal
3 control regulations?

4 MR. MORGAN: Well, in our compact we refer
5 to the minimum internal control standards. At least
6 what I hear is two theories, one, because it doesn't
7 say as amended that we're a locked into a 2000 -- what
8 is that two?

9 MS. STEVENS: Four.

10 MR. MORGAN: Four MICS. No matter what you
11 do, we're locked into those until we renegotiate or
12 have some type agreement between us and the state.
13 The other agreement, you know, the other line of
14 theory is, you know, whatever you impose we would have
15 to follow.

16 As long as those are in line with the Class II,
17 whatever you come up with for the Class II, I agree
18 with the gentlemen from Ft. Sill. You know, we do not
19 segregate our floor based on Class II, Class III
20 internal controls. We do have to look at our Class II
21 MICS and if you have Class III MICS somehow make those
22 work for our tribal internal control standards. So
23 that's the reason I think we have a need for it.
24 There are, at least within the tribal gaming working
25 group draft, a lot of Class III items we did take out.

1 And I don't know how you would read the current 543
2 along with the 524. We tried to do it previously at
3 Chickasaw Nation and it was a nightmare operation on
4 the floor trying to get 543 to work with 542, it was
5 very hard. We were very happy when you delayed
6 implementation of the 542 because we had a very
7 difficult time getting staff to understand. We had a
8 very difficult time getting the regulators to
9 understand just how some of these nuances would fit
10 together because we had a document that was very new
11 and trying to read it with a document that was several
12 years older and they did not quite mesh up.

13 MS. GUERRERO: Joyce Guerrero, vice
14 chairperson tribal council.

15 I might have to ask the gaming commissioners here
16 for some help too, but now in Kansas we are strictly
17 Class III and it's covered in our compact. I'm not
18 sure that even NIGC is mentioned in our compact. Is
19 it.

20 It might be mentioned, but we've always been told
21 that we follow whatever is the most stringent. So
22 we've always complied with NIGC. And our state gaming
23 agency is sometimes very quick to threaten, I guess,
24 you know, our compact saying -- well, it's like they
25 don't want NIGC stepping on their authority either.

1 So, you know, I don't know. I just wanted to throw
2 that in there. I don't know if it would help us to
3 have a MICS.

4 MS. STEVENS: That's an interesting -- and I
5 appreciate you bringing that. You're not the only
6 state, you're not the only tribe in the state where
7 the, you know, NIGC is not mentioned in their compact.

8 MS. GUERRERO: There might be. It's not
9 something that we follow as we do the compact.

10 MS. STEVENS: Well, and states who have
11 basically said to the NIGC thanks, but no thanks.

12 MS. GUERRERO: Yeah.

13 MS. STEVENS: We negotiated as part of our
14 compact and, you know, imposing this on us or the
15 tribes in our state would cause some privacy issues,
16 who's on first and who's doing what, and, you know,
17 we've got it sorted. Thanks. So we've got the
18 spectrum of thanks, we don't need it, and all the way
19 to the other end of the spectrum, we absolutely need
20 Class III minimum internal control standards, so.

21 Yes, we'll take one more and then if you-all are
22 okay, we'll take a break and we'll continue the
23 conversation so we can get up and stretch.

24 MR. STEVENS: Granthum Stevens, Pawnee
25 Nation.

1 Just like Matt said we have the same problem when
2 we looked at 542 versus 543 and we looked at
3 operations. When we actually started to look at it,
4 we had a big problem about them not working together.
5 And basically what we stood on was the effect of the
6 regulation through our own internal regulatory and
7 establishing that through the guidance of what we
8 could do within our ordinance.

9 And that's what we're currently doing right now
10 is revising our ordinance to address a lot of the
11 issues that have come up. But I think when we look at
12 542, one of the issues that does come up and why it
13 works so good in Class III is because when you look at
14 where NIGC received the information was it was either
15 going to come from Las Vegas or New Jersey. Either
16 one of those states don't run on a Class II, Class III
17 setup, theirs is gaming regardless. So when you look
18 at 542 and this is an issue that I had on several of
19 their regulations internal controls was I referenced
20 that back all the way to Nevada and contacted Nevada
21 because that gave me have my state's perspective on
22 how did they view gaming.

23 So I know in Oklahoma we did stand on 542 and I
24 believe we are locked out of 2004. But, I mean, as
25 far as me, I think we can do a Class III, but I think

1 it's going to be on the same grounds that it is going
2 to have to go. And I believe Jamie Hummingbird, if
3 they did spearhead that, I think they would be able to
4 produce a great document that we'd be able to work
5 with.

6 MS. STEVENS: Thank you. And I want to put
7 everybody on pause for a moment and we'll continue the
8 conversation in 15 minutes. Get up and stretch,
9 return your phone calls that we're missing right now.
10 We'll be back in 15 minutes.

11 (Break taken from 10:27 a.m. to 11:02 a.m.)

12 MS. STEVENS: All right. I'm going to start
13 over. I want to make sure that the transcriptionist
14 is ready to rock and roll again. Had a little longer
15 break than usual. It looks like people have been able
16 to get a snack, refresh their coffee, take a break,
17 and use that time.

18 So again we're covering fees, Class III MICS
19 facility licensing by Indians, and review and approval
20 of the existing ordinances. Has anyone had any
21 thoughts over the break, any questions that they'd
22 like to clarify?

23 One change that we've made to the fees is
24 changing from a calendar year to the tribe's fiscal
25 year. This is meant to correct some of the

1 inaccuracies in calculation, also reduce the fee audit
2 issues. Because we're going on a calendar year and
3 not all tribes operate on a calendar year, having to
4 recalculate away from your fiscal year and do yet
5 another calculation is burdensome and often created
6 errors and a lot of work for our audit department. So
7 it was actually the suggestion of our comptroller who
8 said it would be really great, although it might
9 create some more work for us to keep track of each
10 tribe's fiscal year, which we already do by the way,
11 that it would make it easier. We'd reduce the errors
12 in fee calculations.

13 Are there tribes that have a particular issue,
14 okay with this change from calendar to fiscal? Well,
15 any -- I'm going to jump around on the fees because
16 there's some open questions with that. We've heard
17 some comments about having the penalty be
18 percentage-based rather than a hard, fast
19 number-based. Any suggestions on the amount of time
20 that there would be a temporary closure where there
21 would be no need to report to the NIGC for that
22 closure?

23 There are tribes way up north that we've heard
24 from that close six months out of the year because of
25 the weather and their remote location, and that the

1 rest of the year is a tourist season for them and the
2 road is open and they have more traffic through. We
3 don't really necessarily want to hear about those
4 every year, when you open and close, if it's a regular
5 occurrence.

6 Also we've heard about rebuilds, construction,
7 repairs, something devastating has happened. Because
8 we all know what you thought was going to take you six
9 months to build actually takes you a year to build.
10 So do we have any thoughts on -- do we have anyone
11 that temporarily closes here, seasonal, has had to
12 close because of natural disasters?

13 MS. COLLIER: We have.

14 MS. STEVENS: Yeah, there's a couple tribes.
15 How long were you closures?

16 MS. COLLIER: Oh, just a few days.

17 MS. STEVENS: Okay. A few days? Okay.
18 This would be like supernatural disaster, an act of
19 God maybe. How about remodels, construction where
20 you've had to close, or do you try to keep your
21 facility open? I think most people try to keep one
22 part of their facility operating. Okay. I think
23 that's most of everything on the fees that we wanted
24 to talk about.

25 Certainly everything is open on this group on

1 facility licensing. Again, we made a change. We're
2 moving many parts of 559 and paring it down to an
3 attestation from a tribal authority or tribal official
4 that environmental, public health and safety is, in
5 fact, there are protocols in place for that.

6 What we're hearing is that whether it's through
7 your compact, through an agreement with the state,
8 through local agreements or federal agencies like
9 Indian Health or other tribal law and services, many
10 of these issues are handled and that this facility
11 license -- these requirements that are currently in
12 place are duplicative. Yes, Barbara.

13 MS. COLLIER: Barbara Collier, Quapaw Tribe
14 Gaming Agency.

15 Thank you, Chairwoman. I would like to take this
16 opportunity to make quickly a comment concerning your
17 time frame on the calendar year versus other year.
18 Again, I go back to the quarterly reporting thing. I
19 think that's not a problem. It's not a problem for us
20 anyway because we do it quarterly when it ends or
21 begins. So that makes it a little more -- you know, a
22 little easier to figure the fees and any reporting
23 period or whatever because it's broken down quarterly.
24 So you can incorporate a time frame there a little
25 easier.

1 Also I'd like to take this time because I won't
2 be able to attend this afternoon to state that we will
3 be submitting in writing our comments. We've
4 submitted previous comments to you that I'm sure
5 you've reviewed, but on the Group 4 regulations, the
6 25 CFR Parts 571, 577, 556, and 558 also the
7 enforcement regulations of 25 CFR Part 573. We will
8 be submitting those to you effective today for your
9 consideration. So I won't -- one of them is quite
10 lengthy so I won't take time to go through that.

11 But also I would like to express our support in
12 the tribal working group comments that they submitted
13 to you in Washington and that we support those that we
14 were -- when we could apply our time to assist with
15 that. And I think that it's a very good, firm
16 document and would like for you to please consider
17 that. Thank you.

18 MS. STEVENS: Thank you. Although I know
19 this is on tomorrow's agenda on Group 4 -- which
20 group -- or 5, right.

21 MS. ECHO-HAWK: (Nodding head.)

22 MS. STEVENS: I may ask Lael to let
23 everybody know where we're at with those. If you-all
24 don't know, in case you don't know, and for those
25 people who may be leaving this afternoon where -- you

1 know, what has happened with the Class II tribal
2 gaming working group's document.

3 MS. ECHO-HAWK: Yeah, so we received the
4 submission from the tribal of gaming working group and
5 as our D.C. consultation will receive this giant
6 packet beautifully bound. And we subsequently posted
7 a -- or published a Federal Register notice saying
8 that we received these comments. This is something
9 that other agencies commonly do. They put out a
10 notice of availability that's what we -- and request
11 for comments, which is what we've done. We've
12 published that in the Federal Register.

13 You can find those documents on our website. Our
14 website, I know is sometimes difficult or kind of hard
15 to find, but if you go to the tribal consultation
16 button and hit regulatory review 2010 to 2011, those
17 documents are posted in Group 3, which is where the
18 Class II MICS and technical standards are addressed.
19 They're posted there in their entirety, and we're
20 looking forward to comments on those -- on that draft
21 regulation.

22 Also you may have seen it's also on our website.
23 The Commission has decided to put -- to put together a
24 new tribal advisory committee. There's a letter out,
25 your tribal leader letter went out last week asking

1 for nominations for that group. We'll talk more
2 tomorrow about what -- how this Commission should
3 consider composing that group, what it should look
4 like, how we deal with Class II MICS technical
5 standards, and perhaps Class III minimum internal
6 control standards. So that's the direction that the
7 Commission has decided to go with the Class II MICS,
8 travel advisory committee considering Class III as
9 well.

10 There's an inaugural meeting for those members
11 who -- for those individuals who were nominated and
12 selected as members. That will take place in October
13 at Forge Creek, October 18th. I think it's 18th
14 through the 20th. I think it's the 18th through the
15 20th. It's in the letter. It's posted online. And
16 then we have a series of six meetings planned. They
17 are three-day meeting for the committee members to sit
18 and just put their heads together and work and get a
19 good set of Class II minimum internal control
20 standards and technical standards put together. Now I
21 know the chairwoman as said over and over again she
22 wants to get this issue resolved. It's been pending
23 for quite some time, so.

24 MS. STEVENS: So we're receiving nominations
25 now. We just want to stress that it is a time

1 commitment, both for the dates that we've set out but
2 also work in between the meetings. Anybody who's
3 worked on any of these before knows, you know, it's
4 not just the travel time and time of the meeting doing
5 work, but you end up reviewing a whole lot of
6 documents in between the meetings and teleconferences
7 and webinars. So, you know, we're looking for people
8 who can -- and their tribe who can offer their time to
9 do this.

10 One of the reasons we posted the tribal meeting
11 working group's work is so that it can inform the work
12 of the tribal advisory committee and that we get a
13 jump on the work of the tribal advisory committee by
14 soliciting comments from tribes on that document
15 submitted to us. And so that that is prepared,
16 tribes -- the tribal -- the members of the committee
17 when they sit down to work, they have a product to
18 start with.

19 Both comments from the tribes, the tribal --
20 well, more than both. They've got the tribal gaming
21 working group's product, comments from tribes on that,
22 and also we're doing an internal comparison so that we
23 can see what the differences are. Yes.

24 MR. GREEN: I applaud you for publishing the
25 schedule. That certainly helps us when we're trying

1 to get tribal leaders to nominate people. But I want
2 to make sure that you're aware that your first notice
3 today conflicts with the NIGA's midyear annual
4 meeting. If you could amend --

5 MS. STEVENS: I just want to say I
6 apologize. We did not know that because we were not
7 notified that that's when their inaugural meeting --
8 or their midyear was going to be -- my apologies.

9 MR. GREEN: If you were able to amend that
10 first meeting and move it for three days, we could all
11 make both meetings. My name is Jess Green.

12 MS. STEVENS: Thank you for bringing that to
13 our attention and that's something for us to consider.
14 This -- actually, Jess, this is the first time I've
15 heard that that's when their -- huh?

16 MS. ECHO-HAWK: And not because we don't
17 ask.

18 MS. STEVENS: And it's not because we don't
19 ask.

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

22 Chairwoman, do you know about how many people
23 you're going to be putting on this TAC team so that we
24 can, you know, we don't bombard if it's only going to
25 be a few people? We don't bombard you with a ton of

1 names that, you know, you're only looking for a
2 handful.

3 MS. STEVENS: You know, it's going to be
4 interesting to see who the nominees will be. We want
5 a diverse group. We know in working with some of the
6 folks at the Collaborative Action Dispute Resolution
7 Division of the Interior who's going to be helping
8 with the process with us. They have a lot of
9 experience in advisory groups that get too big and
10 advisory committees that are just a little bit too
11 small. It is a little like The Three Bears. We don't
12 want it too small, don't want it too big.

13 I don't know that we've decided on something, but
14 I can say that when you start getting up just -- what
15 we've been told and in my experience, is when you
16 start getting up around 20 and 25, it gets a little
17 unwieldy. It gets harder for people to show up, it
18 gets harder to manage the work in the meeting that
19 needs to be done and manage the disagreements and to
20 get consensus. And just scheduling alone starts to
21 become a nightmare. So I would imagine that we're not
22 going to go up over 20. You know, I'm not sure that
23 we have a magic number right now.

24 It's going to be, you know, it will be
25 interesting to see who the nominees are. We tried to

1 make it very clear in the letter that we need
2 commitment. We need your time, both at the meetings,
3 to be able to travel, and to work in between meetings.
4 And, you know, that we tried to make sure. That way
5 we can get people whose tribe can really commit and
6 maybe that will keep the pool to a little smaller.
7 And that's why we put the dates out in advance so
8 people knew what was coming. We -- it'll be
9 interesting to see what kind of nominees we get.

10 So it was my understanding there was a lot of
11 discussion here this week about, you know, does
12 anybody know the number, what's the magic number? We
13 don't want the group to be too big because then we
14 get -- the time that it takes to get something done
15 gets longer.

16 MS. MORAGO: And we were thinking around the
17 same lines, I think. And just for clarification, you
18 said this was going to be a diverse group. So you
19 want submissions, operational experience, regulatory
20 experience, you know, across the gamut both Class II
21 and Class III because they sometimes, those two
22 entities, don't quite match up? This is -- you've got
23 your expertise in Class III. In other jurisdictions
24 you've got really good expertise on Class II. In
25 other jurisdictions sometimes they're not the same

1 person.

2 MS. STEVENS: Right. And that's why we
3 didn't spell out the number of people, and we didn't
4 say specifically they had to have this criteria
5 because we know that there are operations that are
6 large, small, that are hybrid. They have different
7 requirements, some Class III, Class II. We think we
8 do need people that have Class III experience. I mean
9 depending on what we decide to do with the Class III.
10 But also just for the sake of being able to identify
11 Class III internal control standard when you see it.
12 If you just have Class II people in there, it's not
13 helpful.

14 If we start going over into an area or we're
15 looking at a control that when it was drafted might
16 have been Class III-ish, it would be good to be able
17 to know what it is when you see it. So we do want
18 those folks in there. You know, we'd like different
19 regions. We just sort of kept it loose. So depending
20 on what the nominees are, it doesn't make it difficult
21 to nominate, but we tried to put the list of things in
22 there that we would consider.

23 Now one of the things we'd like to see have done
24 in the inaugural meeting -- the inaugural meeting is
25 really meant to set the ground rules on how the group

1 is going to function. Because if you don't have the
2 ground rules, it's going to turn into the Lord of the
3 Flies in a very short amount of time. So you set the
4 ground rules on how everybody is expected to behave,
5 how you come to consensus, what the timelines are,
6 what the objectives are, you know, how to break up the
7 work. And part of that is going to be, how do you
8 bring in expertise?

9 MS. MORAGO: That was my second question.
10 And the rules on who gets to come. Are you going to
11 have a set of people that are obviously going to be in
12 the TAC group, the committee. But I would imagine
13 that because of the time frame, the short time frame,
14 they're going to need to have staff behind them and a
15 lot of staff behind them. Are you going to manage
16 that action so that they are able to give input as
17 well?

18 MS. STEVENS: I don't know specifically how
19 the group is going to decide this because that's
20 eventually how this is going to be decided. But I
21 will tell you it is the intent of the Commission to
22 bring in experts. The specific mechanics of how
23 that's going to happen aren't worked out yet. And
24 really we're going to have to, in order to be fair to
25 the group, have the group decide how they want to

1 bring those in. We'll come in with some suggestions
2 on how that will happen, and in three strikes
3 you're -- no, I'm kidding.

4 But it's intended to be flexible enough to bring
5 in expertise when we need it rather than trying to --
6 if we were to try to get experts in every area, we
7 would have a huge group, and then that becomes
8 unmanageable for the time frame that we have. So we
9 plan on having the group figure out the work schedule,
10 the workload, and then how in time not just, you know,
11 how we're going bring in experts whether those are
12 machine experts, those are auditing experts, those are
13 financial experts, cage, surveillance, whatever,
14 operations experts, then we will. I'm sure that
15 they'll figure it out.

16 So in terms of the type of nominee, again, we
17 want to make clear that it has to be somebody who is
18 authorized by the governing body of the tribe, whoever
19 has the authority to speak for the tribe. That's how
20 we -- that is not negotiable. It just has to be
21 somebody that the tribe authorizes to speak for that
22 tribe. So does that help you?

23 MS. MORAGO: Yes, it does help. Thanks a
24 lot.

25 MS. STEVENS: Okay. And, you know, we're

1 going to get a broad range. We're going to get tribal
2 leaders. We're seeing operators. We're seeing
3 regulators from different areas of the country. So
4 we'll know more when we see what the pool is, so.
5 Yes, Tracy.

6 MR. BURRIS: Tracy Burris, VIEJAS.

7 Madam Chair, just to throw in the two cents on
8 that process, is that a conversation I had with four
9 or five tribes last week in California, we discussed
10 that one of the things that we would like to see is
11 that -- and we understand it's going to be delicate
12 for some tribes about who they submit to speak for
13 them, but we would like to at least, if that person or
14 at least have one person at the table or directly
15 behind them at all times, just one person, whether it
16 be an auditor, an operations person, to that extent.
17 In some cases it may be the opposite way. We may
18 appoint an operational person to advise or be
19 submitted but may ask that a representative of the
20 tribe help move them along.

21 MS. STEVENS: We did not envision a
22 restriction on who the committee member can bring to
23 help them with certain technical or people who have
24 certain expertise. I don't think we ever thought that
25 we were going to limit who they could bring. Because

1 certainly NIGC will bring their experts. We're going
2 to bring our experts in certain parts. We're going to
3 bring our general counsel's office. We are going to
4 bring our audit people at the appropriate times. And
5 so only to be fair, tribes should be able to bring who
6 they need to bring depending on what the schedule and
7 the objective of the particular meetings are. So does
8 that help inform?

9 MR. BURRIS: Yes.

10 MS. STEVENS: Okay. Again, we tried to
11 remain flexible and have the group work some of this
12 out in terms of the mechanics, but the general sense
13 from us was what, you know, we're not going to
14 restrict who is nominated and who can be brought in as
15 experts and who the nominee can bring in or who the
16 member can bring with them to help inform their
17 decisions for their tribe.

18 MR. BURRIS: And the concern is that if that
19 representative is brought along and the committee hits
20 a roadblock in terms of, minimal, who they can turn
21 to, if it's their auditor or operational person that
22 does that, they can just turn to them if they could
23 use at that moment to try to put clarity on for the
24 rest of the group. That way we don't have to wait,
25 come back, spend a heck of a lot of time.

1 MS. STEVENS: That, I don't want to hear.
2 I've got to go back to my Council, and I don't want to
3 hear that.

4 MR. BURRIS: No, no. What I'm saying is
5 that if you're sitting there -- you've got a
6 commissioner sitting there but there's a question and
7 everybody has a block about what that function is and
8 we have an auditor that does that day in and day out,
9 they can sit right there and answer it instead of me
10 waiting for ten minutes to get a question and try to
11 explain it and I mess up.

12 MS. STEVENS: That's fine. And that's why
13 we want a mechanism for the people -- for the members
14 to bring who they need to bring so that we can avoid
15 the long stall of we've got to bring this back, my
16 Council doesn't meet for another six weeks, and then
17 I've got to do a resolution. And -- if I had more
18 time, maybe. But, you know, we don't. So that's why
19 we ask that folks be able to speak for their tribe and
20 their tribe only. And, again, the purpose of this is
21 not to -- this is not consultation. This is a working
22 group that's putting together a product so that we can
23 go out and consult with tribes on the product.

24 MR. BURRIS: Thank you.

25 MS. STEVENS: The reason why we want tribes

1 to -- did one of you want to talk about that? FACA
2 has exemptions and many of you know this -- and for
3 those of you who don't, we'll explain. The Federal
4 Advisory Committee Act requires certain things when
5 you put working groups like this together on rules or
6 regulations or on policy, but there are exceptions in
7 tribal governments. Our governments are those
8 exceptions. But the tribes, it has to be a
9 representative authorized by the tribe from an
10 individual tribe, and as we all know, one tribe does
11 not speak for or all or many tribes. They only speak
12 for their tribe.

13 And that's why we ask for members who will
14 authorize -- or to be a representative, whether it's a
15 tribal leader or someone else to speak for their tribe
16 and their tribe only so that we can put together a
17 work product. That's why we do that, because we fit
18 inside. You know, this process fits inside an
19 exemption that respects the government-to-government
20 consultation process. We just have to make sure that
21 it is the government who is putting forward the name.
22 And then the intent is to take the work product out
23 and get comments from tribes on the final work product
24 of the group. We don't mean to substitute
25 consultation with its group just to be clear.

1 So that's what's going on with the tribal
2 advisory group committee and tribal gaming working
3 group's product. We put it out there so we can get
4 some work done ahead of time, and then when the group
5 gets together, they can hit the ground running.

6 That did go to, you know, on tomorrow's agenda,
7 but for any of those who wanted to know and with those
8 pending questions that came up this week at OIGA. And
9 this may come up, Class III, you know, we may be need
10 to figure out how to deal with Class III, however that
11 may be. We still don't have the decision or -- or
12 leaning one way or the other.

13 One of the other reasons to bring in Class III
14 people is if we end up, you know, segregating these
15 things and whether they're put into a standard, a
16 guideline, a reg, bulletin, the work still needs to be
17 done. And we have yet to decide how we're going to do
18 this. But it may possibly be through this advisory
19 committee. But we have to determine then -- that yet.
20 Are there any other -- going back to today's agenda,
21 any comments on the fee -- the fees, facility
22 licensing? Yes, Max.

23 MR. MORGAN: Max Morgan, Chickasaw Nation.

24 Madam Chairwoman, I was wondering within your
25 facility license regulations you use the term place,

1 location, or facilities. And the previous -- you
2 predecessor issued a guidance document on what does
3 that mean. And I know we've had lots of discussions
4 with your group on, you know, how different
5 jurisdictions license something.

6 Is that something contemplated to be taken up in
7 the regulation? Is that something going to be those
8 types of specific clarifications going to be issued
9 within a guidance document? Or is there any thought
10 process including to how you're going to deal with
11 maybe how different tribes -- because I say that
12 because the way I license is -- I license property,
13 where it's located at. And so if they decide to build
14 an expansion and that, you know, in guidance document
15 you talked about awning and coverings, is that a
16 separate facility if I have the same drop team that
17 does a facility and maybe a C store that's 20 feet
18 away, is that a separate facility? Is it the same
19 facility?

20 Is there going to be any type of indication
21 within your regulations with how we're supposed to
22 deal with it? Or is it going to be more of a
23 case-by-case basis in determination?

24 MS. STEVENS: Well, it sounds like what
25 works for you and maybe -- or your tribe, tell me if

1 I'm not understanding this correctly, is that guidance
2 works better rather than having it explicitly spelled
3 out in the reg. Once you start spelling these things
4 out, especially with a new reg, it puts everybody into
5 a box. And if tribes have different places,
6 facilities, and locations or how they define that, in
7 their licensing process, you know, it -- I certainly
8 don't want to make that more difficult.

9 MR. MORGAN: I agree. On the flip side of
10 that argument is if it's only in a guidance document.
11 If you ever decide to change your guidance, there's no
12 requirement that you have to solicit comments or
13 requests. And if you change your guidance documents
14 and maybe disallow something that we've relied upon in
15 the past, that completely changes what we need to do.
16 So I'm not sure if there's a good answer, but to me
17 that's the way I see it. And I just want some
18 consistency, I guess, is what I'm looking for.

19 MS. STEVENS: Well, I think we're with you
20 on the consistency part. Again, the diversity in the
21 Indian Country makes it a challenge to get language in
22 that doesn't upset the apple cart of anyone in any one
23 particular tribe.

24 MS. COCHRAN: Madam Chairwoman, if I could
25 add on also under the draft consultation policy map

1 the agency would have an obligation to consult with
2 the tribe if we do something that has substantial
3 impact upon the tribe. So if we were, or any future
4 Commission were, to revise it in such a way that it
5 substantially impacted you, it would seem to me that
6 you'd have the mechanism to request to consult with
7 the Commission about the change even though it's not
8 regulation and guidance format. That may be a
9 mechanism that could assist the tribe with future
10 endeavors.

11 MS. STEVENS: We'll take a look at that
12 language and maybe talk to some of our staff with
13 regard to what they see come in and see what we can
14 fashion. Yes.

15 MS. HUBER: Bernadette Huber with Iowa Tribe
16 of Oklahoma Gaming Commission.

17 I wanted to express our strong support for the
18 Buy Indian policy. I think that it's incumbent on all
19 of us to recognize that it's all our duty really as
20 tribal people to support economic development within
21 our tribal nation and our tribal vendors. And I just
22 want to encourage you to make that part a very real
23 part of this law and make sure that it's consistent
24 with the verbiage that's being put out by the other
25 leading -- that like the NIF, NIGA, and other

1 organizations because I think it's a concern across
2 the country that we do support Buy Indian.

3 MS. STEVENS: Okay. Thank you. And just to
4 clarify, this will be a burden on the NIGC in our
5 purchase of goods and services. We're not going to --
6 we're not suggesting that tribes have to do that.
7 That's the sovereign right of the tribes to decide how
8 they manage their business. We're looking at other
9 agencies that already do this, like DOI, DIA, Indian
10 Health. They've been doing it for a very long time.
11 So we're looking at their regs. We're looking at
12 their processes to see what could work for us because
13 we have a -- you know, we could use language in the
14 Buy Indian Act that is under the secretary. We also
15 have authority to support it under IGRA as well. Yes,
16 sir.

17 MR. HORTON: Sam Horton, Ft. Sill Apache.
18 I was just curious when I talked to a couple of
19 your local commissioner guys about a year or two ago,
20 there was no Indian preference policy in the NIGC, and
21 then I heard that there was one accepted or one
22 proposed. I don't know actually the answer to that or
23 if it exists, but then when I asked about it a couple
24 of weeks ago, I said, Is it now in policy in the NIGC?
25 And the answer was, Well, it's at the level that it

1 it's applied to the commissioners, but not applied to
2 the entire organization.

3 MS. STEVENS: That's interesting because we
4 passed the Indian Preference Policy --

5 MR. LITTLE: In the springtime.

6 MS. STEVENS: -- in the spring.

7 MR. LITTLE: Yeah.

8 MS. STEVENS: So I apologize if there was
9 some misunderstanding or misinformation that you
10 received, but we have been very clear that we have an
11 Indian Preference Policy in place now for hiring. And
12 we passed that. The Commission authorized that
13 back -- actually it was in Phoenix, wasn't it?

14 MR. LITTLE: I think.

15 MS. STEVENS: Yeah, it became effective in
16 July, June or July. So it is in place. Just looking
17 through some of the information that we have here, is
18 there some more information that we can garner? What
19 do -- can tribes here give me examples of how you
20 handle -- I'm going to jump back to facility
21 licensing -- how environmental, public health and
22 safety is handled within your tribes?

23 As I said, we know that there are some compacts
24 that require the adoption of some state laws or
25 processes or policies. Other tribes manage these

1 things all within tribal law or they use federal
2 agencies. So if you have wastewater treatment, you
3 have food handler permits, you have -- you might work
4 through Indian Health. If you have emergency
5 evacuation or disaster issues, you might work through
6 FEMA. If you have fire/police, you know, how do
7 you -- how do you handle that? Your building codes
8 might be your own, they might be something from --
9 that your tribe has adopted from the county or the
10 state. What exists here for the tribes that are
11 intended? If you could share that, that would be
12 helpful. Do we have tribes that can share how that
13 works for them? Yes, Matt.

14 MR. MORGAN: Matthew Morgan, Chickasaw
15 Nation.

16 At the Chickasaw Nation, we use several different
17 models, depending upon the subject matter, most
18 commonly either by tribal law or policy. We've
19 adopted some international standard that we use
20 building code, fire safety code, you know, electrical
21 code, et cetera.

22 Because those expertise do not reside and the
23 regulatory office itself we use expertise, at least at
24 Chickasaw, that are located either within the Division
25 of Commerce outside the Gaming Division or we -- for

1 our food we use the OEH, Indian health benefits, our
2 local OEH, and they operate through our health systems
3 division. And then for a lot of our building code
4 permits we have a Tribal Utility Authority, and they
5 come in and issue and document those things as well.
6 And so all those things are submitted to my office.
7 It is my job to make sure all those processes are
8 done, but we rely upon our expertise within the tribe
9 to actually accomplish those type of tasks.

10 MS. STEVENS: So you make sure that the
11 practice and the policy and procedures are in place
12 and then you have someone from those divisions of the
13 tribal government enforce or implement those.

14 MR. MORGAN: Yes. Different branches of
15 tribal government get to implement. If they don't
16 implement at a specific gaming facility where I have
17 jurisdiction, it's my job to come in and enforce or
18 get them into compliance. But I have to rely upon
19 other expertise, and I think maybe we found this, you
20 know, nationally through, you know, when we -- when
21 the NIGC adopted this standard this is not an area
22 where the gaming regulatory body had those type of
23 expertise. So luckily at our place we were able to
24 rely upon intergovernmental focus to be able to do
25 that, but, you know, I have at least heard from other

1 tribes that they do rely upon outside groups in order
2 to accomplish that. And I'm not for sure how you
3 accomplish.

4 MS. STEVENS: Let me go to Barbara, then
5 I'll go to Jess in the back.

6 MS. COLLIER: Barbara Collier, Quapaw Tribe.
7 We do similar. We have, other than what he has
8 already mentioned, which is pretty much what we do, we
9 have an outside consultant for a few things. We have
10 one come in for building codes and things like that
11 that we consult with that has the state standards as
12 well as what we give them tribally to abide by, and
13 they, you know, observe and report to our office. We
14 get all of the reports on all of the compliance
15 issues. We also use an in-house service for food and
16 beverage and facility review. And, you know, being in
17 environment for many years myself, that's quite a task
18 to have the knowledge. You know, we would not have
19 the knowledge in our office to accomplish all of those
20 things nor do probably any tribe as far as the
21 regulatory side or their gaming side. So we depend on
22 those individuals to come in and report.

23 In our facility though we do have people that
24 take care of the facility licensing and/or issues, not
25 licensing as we do, but overview of the policies and

1 procedures that do need to take place on the facility
2 side of each casino, and then they report their
3 document back to us. They submit those to us for
4 review. Mostly the same issues.

5 We do have our own, and I think they do too, our
6 own fire and police and safety individuals that do
7 come in and do those kinds of things in the facilities
8 as well as water testing and things like that from our
9 environmental department on the tribal side, water,
10 and soil samplings and different things that are
11 required, you know, when they are along that field.
12 But it's both tribal and governmental and then a few
13 contractual-type issues.

14 MS. STEVENS: Thank you. Jess, in the back.

15 MR. GREEN: Again Jess Green, Chickasaws,
16 Delawares, Iowas, Fort Belknap Montana, and others.

17 The problem that we have with the facility
18 licensing notification about these and other
19 requirements is jurisdictional. The current
20 regulations says you only have jurisdiction in the box
21 of the building. As Matthew pointed out, he wants to
22 license the entire footprint if he can. And in other
23 locations, again, other tribes I've represented, that
24 allows us to get the sewage moving. Then the gaming
25 commissioner can tell you what regulations were used

1 to build a sewage lagoon. The problem with the
2 current regulation is he does not have the
3 jurisdiction to tell you what happens. This is beyond
4 the edge of the building because he has no
5 jurisdiction.

6 Now what Matthew is telling me is that he will
7 send you -- is he will send you the tribe's current
8 policies about what happens beyond the edge of the
9 building, but he has no jurisdiction to affect those
10 policies. And even if he has a footprint that
11 includes the entire parking lot, if we dump it in the
12 nearby city's sewer system, we don't have the ability
13 to tell that city how to treat the sewage. Now
14 hopefully they have to comply and they do comply with
15 federal requirements and state requirements.

16 But what you are going to receive is not
17 something that the Gaming Commission can control.
18 What you will be receiving are the standards of how
19 this is -- this is being kept or their understanding
20 of how it's being kept or administered by the tribe.
21 And if you're in a location where the jurisdiction
22 ends at the building, he's simply going to be able to
23 send you the standards that the tribe uses beyond the
24 building in whatever lagoon the stuff is going to.
25 And this creates a real problem.

1 I know for you because you're trying to say he
2 has to have jurisdiction over these things, but the
3 tribe doesn't give him jurisdiction and his foundation
4 base for licensing doesn't give him jurisdiction. And
5 we have to be very careful, and I would like the NIGC
6 to understand when he sends you that these are our
7 regs, that's all he can send you. Or when he sends
8 you a statement that the utility authority of the
9 tribe governs these issues, I would like for the NIGC
10 in its drafting to have some kind of recognition that
11 we can tell you the party that's responsible, we can
12 tell you the rules they are responsible for, but it's
13 beyond the jurisdiction of the Gaming Commission. And
14 largely when it leaves the building, lots of locations
15 lose the Gaming Commission jurisdiction. The places
16 like Matthews and the Chickasaws that license a
17 footprint we can tell you what's going on in that
18 footprint because we have jurisdiction over it. But
19 when we leave that footprint, we don't have
20 jurisdiction to give you explanations any further than
21 the standards that are being implemented.

22 MS. STEVENS: Now is that -- if I understand
23 you correctly, that's the current regulation as it is
24 today, not the draft.

25 MR. GREEN: The current regulation and,

1 again, it's the Chickasaws -- we have even more odds
2 with the guidance letter. We wish you would pull that
3 guidance letter that says if you -- if you have a
4 property that even though you've licensed the whole
5 footprint and your building does not touch the other
6 building, in other words, you have a fuel stop and
7 instead of adding a building on the side, you pull a
8 trailer in and park it 25 feet away so you don't
9 interfere with the ingress and egress to the existing
10 location. If we don't connect it with an awning, your
11 guidance letters says we've got to get a new license
12 and that's just crazy. We've always had jurisdiction
13 with these properties. The license extends for it,
14 but that's what your guidance letter says.

15 What I am suggesting is that if you let us
16 license as big a piece as we can, the Gaming
17 Commissions always tend to throw their loop as big as
18 they can. They will get the lagoon if they can, but
19 when your reg says we only have the building, you have
20 excluded us from getting -- do you follow what I'm
21 saying?

22 MS. STEVENS: Yes, I do.

23 MR. GREEN: All right.

24 MS. STEVENS: And what I'm trying to draw
25 from you is a suggestion on the language of the

1 current drafts so that we can address --

2 MR. MORGAN: Well --

3 MR. GREEN: Well, Matthew suggested that you
4 would withdraw the draft and simply have a statement,
5 we send notice. And if you request these items from
6 us that we provide you with a notice of what standards
7 we have been given and who is responsible for them
8 within the tribe. The problem we have even if we --

9 MS. STEVENS: I'm sorry. Withdraw the
10 guidance?

11 MR. GREEN: No. You want to with withdraw
12 the guidance letter for sure.

13 MS. STEVENS: Right.

14 MR. GREEN: The reg, as it is written,
15 doesn't give us flexibility.

16 MS. STEVENS: The current reg.

17 MR. GREEN: The current reg does not.

18 MS. STEVENS: How about the draft?

19 MR. GREEN: The draft is helpful but it --
20 it needs more flexibility. It needs more flexibility.
21 If I can license a five-acre footprint that's fine,
22 but I still may not get the sewage lagoon, or I may
23 not get the city in or I may not get the tribe lagoon
24 in. I need a provision that identifies the
25 information I'm giving you from my gaming commission

1 is the information that's been given me from outside
2 my jurisdiction and that I do not have the
3 jurisdiction to alter that.

4 MS. STEVENS: And there are some tribes that
5 don't want the regulators to have that jurisdiction
6 that you might have public works as a tribe that says
7 I have all jurisdiction over the gaming facility and
8 the lagoon and the pipes that go from the lagoon to
9 the facility.

10 MR. GREEN: Well, then they will exercise
11 that.

12 MS. STEVENS: Right.

13 MR. GREEN: But I would argue that the
14 Gaming Commission has co-jurisdiction when you get
15 inside its license.

16 MS. STEVENS: Yeah, it just depends on
17 the --

18 MR. GREEN: But they definitely won't have
19 any outside of that.

20 MS. ECHO-HAWK: Well, the regulation, Jess,
21 I think it provides that flexibility. I think that's
22 something that should be taken up in tribal ordinance.
23 One of the things we didn't want to do is box tribes
24 in, and by saying place, location, facility, you
25 can -- the tribes can decide how they want a

1 licensing. And the other thing is it's not a license
2 issued by the Tribal Regulatory Agency, it's a license
3 issued by the tribe. So the tribe issues the license
4 and then provides us an attestation in whatever form,
5 listing, you know, if they want areas of jurisdiction,
6 laws, and regulations.

7 I think the intent of when we were drafting this
8 was to provide tribes with the flexibility to craft
9 their regulatory structure, gaming regulatory
10 structure and environmental, public safety regulatory
11 structure, however they want. We just need to know
12 that it's there and the tribe gives us their
13 attestation certifying that all the components that go
14 into the maintenance and the operation of that gaming
15 facility is -- meets the requirements of the Act.

16 MR. GREEN: My point is, a part of these
17 things you just described may even be beyond the
18 jurisdiction of the tribe. The attestation you're
19 going to get is probably going to be from the Gaming
20 Commission. And you don't have the ability to command
21 the Tribal Utility Authority to give you an
22 attestation. But you don't have jurisdiction over
23 them, and if you try to assert it or even the Gaming
24 Commission suggests they assert it, you're going to
25 cause all kinds of friction within the tribe.

1 MS. ECHO-HAWK: That's why we said the tribe
2 has the issue, and when you say tribe, it's got to be
3 the tribal government. It can't be, you know, the
4 very lovely person at the utilities or the director of
5 the Gaming Commission either. It needs to come from
6 the tribe, the government. That's the way the
7 language is drafted now. And I understand how that
8 all works, how it circulates. It would go from the
9 Gaming Commission follow a recommendation to the -- to
10 the tribal, you know, and in the Chickasaw case
11 government or whatever, but that's the intent of this
12 so that we know that the tribe's structure to the
13 extent that they have it, they put this thing into
14 place if they have a local agreement with state -- or
15 with the states or local government for fire
16 prevention and water testing and all that stuff, that
17 we need to know from the tribal government that
18 through an attestation, send us whatever you want.
19 However that happens, that that regulatory structure
20 is in place to make sure that the gaming operation is
21 operating within the EPA requirements of IGRA. So
22 we're trying to be wide --

23 MR. GREEN: But you're missing the point.

24 MS. ECHO-HAWK: Okay.

25 MR. GREEN: Neither you nor the gaming

1 commissioner have that jurisdiction. Your
2 jurisdiction is in the box where the license is
3 issued.

4 MS. ECHO-HAWK: Right.

5 MR. GREEN: And my point is, you don't have
6 the jurisdiction outside that box. I can do
7 everything I want to in the box and as soon as sewage
8 leaves, I can pour it on the ground because it's not
9 in the jurisdiction. You can get your attestation.
10 These additional things that you would like to have to
11 fill your file, that I would like you to have in case
12 you get sued by some third party, you need to
13 understand are beyond both of our jurisdictions.
14 That's my point.

15 MS. ECHO-HAWK: So how do we address that in
16 a regulation when our jurisdictional authority is what
17 it is, and that's -- we can't --

18 MR. GREEN: And you want this additional
19 information. I am suggesting your guidance documents
20 have suggestions as I just did that the tribe also
21 provide if they have availability of who is
22 responsible for the sewage after it leaves your
23 facility. It's not a requirement. You simply want
24 that informational document because neither of you
25 have jurisdiction beyond wherever that license is

1 issued.

2 If you issue even on the parking -- if you
3 include the parking lot or five acres when it goes
4 beyond that, neither of you have jurisdiction. Your
5 jurisdiction is coterminous with where the license and
6 the Gaming Commissions. The tribe's jurisdiction is
7 much larger and if I dump it in the city sewage, it's
8 outside of both of our jurisdictions. We simply will
9 tell you how.

10 And all I'm suggesting is that both of our
11 guidance documents and the document itself recognize
12 that the facility and operation instruction and
13 maintenance right now is a box. You know, I can pour
14 that sewage on the ground outside that building
15 because neither of you have jurisdiction under the
16 current reg. It is good for both of us that your file
17 is full. Recently there's been a rash of lawsuits
18 directly against federal agencies that leave the
19 tribes out. And the federal agencies that are saying
20 things are okay; files have not been full of the
21 documents they need to defend themselves with. What I
22 am suggesting is we need guidance documents to say
23 send us this suit to fill up your files and recognize
24 that your jurisdiction does not extend to my electric
25 company or my sewage company.

1 MS. STEVENS: Got it. Thank you, Jess.
2 Yes, down here.

3 MR. STEVENS: Granthum Stevens, Pawnee
4 Nation.

5 We also run on a similar situation where we
6 outsource it out to the different tribes or different
7 organizations within the tribes. One of the problems
8 that we've had is that Pawnee has enacted their laws
9 very recently, and we don't have the expertise. And
10 so what we end up doing is they consult it out to
11 outside an agency that comes in.

12 Now just like Jess said, what we don't have
13 regulatory over that department within our tribe, and
14 so what we've ended up having, is we had a big problem
15 on trying to get them to move to get all the
16 regulatory paperwork in place. And we have gone down
17 to where we were at the very end of our extensions. I
18 mean we -- we pushed them back over eight months
19 before we could finally issue one. Then it came down
20 to who had the authority to find that attestation
21 letter.

22 As you said, it comes back to the tribe. The
23 tribe is the one who is basically signing off. Well,
24 underneath the ordinance that was specifically
25 authorized through the Gaming Commission. So we were

1 the ones who were basically in the eyes of the tribes.
2 We were responsible for doing it. But now after we're
3 hearing it, it's coming from the tribe. So I have no
4 jurisdiction on getting my division of natural
5 resources who hold all my laws and regulations over
6 the environment, to get them to keep moving forward.
7 Now they're starting to comply now, but it's taken
8 basically an act of God and an act of Congress to get
9 them moving.

10 So my biggest thing with how problematic this
11 regulation has been is on the same grounds is that it
12 is between four walls. And our facility currently is
13 at a place where we have a gas station, and it's
14 always been brought up with USTs and stuff like that.
15 But according to the regulation is we've only been
16 allowed to look at the four walls. And we also
17 utilize stamping our name on the full jurisdiction of
18 the property. But, yeah, we don't have a say when it
19 comes to the other divisions that we can enforce our
20 regulatory upon them.

21 MS. STEVENS: Okay. That's good to know and
22 to understand. Barbara.

23 MS. COLLIER: I agree with the comments that
24 have been made. It is a nightmare and even more so
25 when you have three states to deal with, believe me.

1 But what I would like to see more definition of or a
2 fix for would be like Matthew was saying, the
3 footprint, when you have a facility as large and as
4 spread out as some of our facilities are, from
5 building to building and oftentimes they cannot be
6 attached. So to me, even this draft is not addressing
7 the fact that I would be able to license a facility
8 without conjoining a convenience store or a separate
9 building for gaming that may not totally 100 percent
10 of the time be gaming, but it might be, oh, like some
11 of the tribes have a showrooms and entertainment
12 spaces, but oftentimes they may be used for gaming
13 temporarily.

14 So I would like to see something that would
15 cover -- just facilitate a license that would cover
16 all of those area spaces, and I don't mean, you know,
17 a place in Tulsa and a place in Oklahoma City, I mean
18 just within an area. Something that would cover that
19 so we wouldn't have to do licenses for separate
20 sections of our area.

21 MS. STEVENS: Well, it sounds like, based on
22 what Matt and what you and others have been saying, is
23 that guidance seems to be -- the current guidance --
24 well, one, the current facility regs, but coupled with
25 the guidance, seems to be a bit of a problem. Is this

1 something you think can be achieved with this current
2 draft with some different guidance that correlates
3 with the new draft?

4 MS. COLLIER: Possibly. What section was
5 Lael referring to that kind of led to that, what you
6 were citing, which paragraph?

7 MS. ECHO-HAWK: It's 559.4. I think is what
8 you're referring to. And, you know, I -- what we
9 attempted to do is build in enough flexibility so if
10 you wanted to license a place, the land, you wanted to
11 issue a license, you can be -- the tribe can be as
12 broad as it needs to be. Now we also know that we've
13 got -- we've got situations here in Oklahoma, for
14 example. I can think of at least one where we've
15 got -- the facility is the part that they license or
16 the part that we needed the legal description of to
17 make sure that it's Indian lands. I mean, that's one
18 of the issues that we're talking about.

19 We need to make sure that the gaming operation
20 is, where gaming activity occurred is on Indian lands,
21 is on land eligible for Indian gaming. So you have
22 situations where the license might be to a particular
23 wall in the facility and the other side of that wall
24 is the hotel. I think the Hard Rock, the Cherokee
25 Hard Rock is an example of that scenario where you've

1 got a chicken -- chicken, kitchen built on the other
2 side because it's not trust land anymore, or it's not
3 land eligible for gaming to occur on that.

4 And so tribes have gotten very creative in the
5 way that they license and the way that they build.
6 And we don't want to stifle any of that. We need to
7 make sure, however, that the land -- that we have
8 jurisdiction over the land where the -- that the
9 tribes are operating gaming on has to be Indian land
10 eligible for gaming. And -- but beyond that, I think
11 that the way that this is drafted, tribes can exercise
12 your sovereignty and make those decisions, and then
13 just let us know. And then we'll fix the guidance.

14 MS. STEVENS: Thank you.

15 MS. COLLIER: All right.

16 MS. STEVENS: If there's not any other
17 pressing comments, it is the noon hour. It's time for
18 a lunch break and I never want to be the person who is
19 impeding food or chicken for myself or others. So
20 we'll reconvene at 1:30 and we'll move on to the next
21 exciting group on Group 2 on enforcement and appeals.
22 And attorneys, this is the stuff you've come here
23 for.

24 (Break taken from 12:02 p.m. to 1:49 p.m.)

25 MS. COCHRAN: Good afternoon. I do want to

1 go ahead and get us at least started in the overview
2 for Group 2 that Lael can present. We are going to
3 try to end a little bit early today because I know
4 many of us are going to head to Norman for Jess' party
5 tonight. I don't know if that's the right word or --
6 anyway, so we are going to try to wrap it up so we can
7 get on the road and I know many of you may be
8 attending as well. So I'm going to turn it over to
9 Lael and have her begin the overview for Group 2.
10 This is enforcement and our appeals regs, and I'll
11 have her walk us through it and then hopefully we'll
12 get the rest of the group to show up and we'll begin
13 the discussion.

14 MS. ECHO-HAWK: Okay. So as you can see in
15 your agenda and on the PowerPoint, Group 2 covers sort
16 of two primary areas. Part 553, which is the
17 enforcement regulation and then all the parts
18 concerning proceedings before the Commission or
19 basically appeals. So you do have discussion drafts
20 for all of these sections.

21 So starting with Part 573, this is the
22 enforcement -- this is the enforcement section, and
23 what we tried to do in the discussion draft was we --
24 let's see. So when we put together discussion drafts,
25 we utilized the number of comments that we heard; some

1 concerns tribes had about enforcements. And combining
2 that with the Commission's goal that compliance, their
3 assistance, their aid program, assistance compliance
4 and then enforcement, really embedding that into this
5 regulation.

6 So as you can see in Part 573.1, this is the
7 first section, we've added voluntary compliance as a
8 goal of the Commission to sort of set the tone for
9 this regulation. We then included a new
10 Section 573.2, which adds the pre-enforcement action
11 process. So before -- the idea is that before we get
12 to enforcement action, notice of violation, temporary
13 closure order, or whatever it is, that there has been
14 a dialogue within the -- between the agency and the
15 tribes. And this sort of lays out a formal process.
16 It identifies a letter of concern and/or a
17 non-compliance notice that we would provide to the
18 tribe or management company or whoever.

19 A letter of concern is different because it just
20 indicates that there's something -- there's something,
21 a condition out there, that may be a violation. The
22 non-compliance notice is different because it says
23 affirmatively that there is a violation and that
24 necessary -- some sort of necessary action needs to
25 occur. Neither of these are official agency actions,

1 this is just pre -- just to try to formalize the
2 process where we talk to tribes prior to issuing an
3 enforcement action if possible.

4 Either of these may provide a time period for the
5 tribe to come into or the tribe management company,
6 whoever, to come into compliance. That's one of the
7 comments that we've received is that we need to make
8 sure that we included the regulation, that a time is
9 required -- a time period is required to be included
10 in these letters or the notice so that the tribes know
11 what the time frame is that we're talking about to
12 bring them into the compliance so that they don't get
13 a notice of violation or another enforcement action.

14 The pre-enforcement action doesn't limit or
15 constrain the chair's discretion to issue a notice of
16 violation. This is important to include because there
17 are those situations where we need to act quickly.
18 And in those situations, the Chair has to have that
19 discretion and may not be able to issue a letter of
20 certain or non-compliance notice. Written comments on
21 this discussion draft closed last week on August 9th.
22 We'd still like to hear your comments today if you
23 have them.

24 The next section that we cover in Group 2 is
25 proceedings before the Commission. Now that's the

1 kind of thick packet that you have. That's what we're
2 considering doing is repealing Parts 519, 524, 539,
3 577 and putting them all -- taking all the parts that
4 deal with proceedings before the Commission and appeal
5 of a management contract approval or disapproval,
6 ordinance disapproval and putting it all in one place,
7 putting it in a new subchapter, Subchapter H that
8 we're calling proceedings before the Commission.

9 We've divided this up into six different parts,
10 and one of the things that we did was we created a
11 sort of rules of general application. So instead of
12 repeating some things over and over again on each
13 different part, we added just the rules of general
14 application for this subchapter, included things like
15 definitions, and ways to suspend or waive the rules,
16 who can appear, service requirements, ex parte
17 communications and what that means.

18 And then we moved into the sort of different
19 proceedings that are identified, that were identified
20 in the previous reg and we just moved them all into
21 the subchapter. But Part 581 -- before I go there --
22 Part 581 included motions. So what motions can be
23 made to the Commission when you're involved with one
24 of these proceedings. We didn't have this before.
25 The motions were -- people would make them or not make

1 them. It wasn't clear, sort of when limited
2 participation and intervention was permitted or if you
3 could file a motion for reconsideration. And so we
4 try to lay that out in Part 581. So Parts 580 and 581
5 are sort of generally related to all the different
6 types of proceedings.

7 And then Part 582 covers appeals of disapprovals
8 of gaming ordinances, resolutions or amendments, says
9 who can appeal, how you can appeal, standards of
10 review, what are decisions going to contain, what the
11 effective date is. And then it says that the approval
12 or disapproval will final agency -- or the resolution
13 is final agency action for the purposes of the
14 judicial review. And we say that every single time.
15 That is something that wasn't included, but we wanted
16 to clarify that a tribe can -- or a respondent after
17 going through the appeal, once they get the decision,
18 then it is final agency action.

19 Part 583 covers approval and disapprovals of
20 management contracts or amendments to management
21 contracts, covers the same kind of information. We
22 wanted it to be very uniform. We wanted these things
23 to look very similar so that you know what you're
24 working with. We have the same content, cover the
25 same information as it applies to a particular

1 proceeding.

2 584 is appeals before a presiding officer for
3 notice of violation, civil fine assessment, temporary
4 closure orders. And the chair's decision to void or
5 modify a contract, and notice of late fees or late fee
6 assessment. Now Part 585 and Part 584 are related
7 because a tribe -- when it's appealing for one of
8 these particular enforcement actions or decisions, a
9 tribe or tribal respondent can choose to either go to
10 a presiding official, which is essentially an
11 administrative law judge, and have a full on hearing.
12 So, you know, you'll have discovery and witnesses and
13 it is a hearing, it's in person, and the tribe or
14 respondent or appellant can choose to go that route.

15 Now under Part 585 oftentimes we find that
16 appellants decide to go appeal directly to the
17 Commission, not use the presiding official, go direct
18 to the Commission, but only do written submission. So
19 it's not a hearing. You don't get up, you know, it's
20 not that sort of format. It's only on written
21 documents that are submitted to the Commission over
22 the same topic areas.

23 One of the things that we wanted to do to make
24 clear in this particular section is that when it comes
25 to an appeal before the Commission that the Chair

1 isn't -- because a chair is essentially the
2 prosecutor. Whenever, for example, if a proposed
3 civil fine assessment was issued, the Chair would have
4 been the one who would have issued it. And we heard
5 comments over and over again that it didn't seem fair
6 that it was inappropriate to have the Chair sitting on
7 the Commission deciding on something that they -- that
8 they essentially issued.

9 So we added a section in Part 585 that says that
10 the Chair won't participate in sort of this back and
11 forth when you're -- when you're appealing under
12 Part 585. So any submissions that are set in, any
13 motions that are filed, the Chair wouldn't respond,
14 you know, file a motion. The Chair sits over on this
15 side and they issue a response, and they trot around
16 to the other side of the table and then they're
17 helping make the decision on the appeal. So we tried
18 to make that so the appearance of fairness that it's
19 clear that the Commission as a whole is deciding this
20 issue based only on the submission of the appellant.

21 Written comments closed on this -- will close --
22 what day is today? Will close on August 22nd. Need
23 to change that. So we're really looking forward to
24 hearing what tribes have to say. I know there was
25 some significant discussion in D.C. at the end of

1 July. So if you're interested in that discussion,
2 that's online. And I think we've gotten one sort of
3 substantive letter that's also posted online that
4 speaks to these parts. And that's what we've got for
5 the afternoon.

6 MS. COCHRAN: This particular group I took
7 an interest in, not only because I'm a lawyer but, you
8 know, I spent so many years as general counsel for
9 Pueblos, and not everybody engaged in gaming has
10 gaming specialty lawyers; they have to rely on their
11 general counselors. And when I looked at the rule
12 with that eye, it became really apparent to me that
13 while I spent a lot of time sitting in a room with
14 lawyers who do gaming and have done gaming for many
15 years and have a great deal of expertise, the person
16 whose governor calls them up and says, I need help, I
17 need you to take this on, needs to be able to
18 understand those rules. And the rules need to be fair
19 and applicable across the board, and our rules weren't
20 set up to do that.

21 And so I spent a lot of time with the lawyers to
22 look at the rules, talk about how we can improve them,
23 how we could make them more comprehensive so that the
24 rules of engagement were clear, but that we could also
25 add in some due process protection, which we're

1 obligated to have for participants, but that there
2 were simply lacking from the way the existing rules
3 were written. So the office of general counsel spent
4 a great deal of time with these regulations. They put
5 them all together at one point to see how that looked.
6 That didn't work out. We pulled them back apart and
7 that's kind of where we get the discussion reg coming
8 from.

9 So, you know, I -- first and foremost, I want to
10 give -- does anybody have any direct comments they
11 want to offer for discussion on any of these parts in
12 particular? Part 573 does -- did offer a great deal
13 of discussion, and I want to share with you, for those
14 of you who weren't involved in that particular
15 consultation -- that was in D.C., wasn't it?

16 MS. ECHO-HAWK: Yeah.

17 MS. COCHRAN: Was it D.C.? No -- yeah.
18 Well, there was a great deal of discussion that was
19 brought up on Part 573.

20 MS. O'TOOLE: Carrie O'Toole, Prairie Band
21 of Potawatomi Nation.

22 That PowerPoint that you just went through, I
23 couldn't find in our packet. Will we be able to get a
24 copy of that by chance.

25 MS. ECHO-HAWK: It is in your packet. It's

1 in the same one -- should be.

2 MS. O'TOOLE: Mine isn't.

3 MS. COCHRAN: They're not in there?

4 MS. O'TOOLE: No, the ones that you just
5 went over are not attached in our packet, so.

6 (Off-the-record discussion.)

7 MS. COCHRAN: Well, we will certainly make
8 sure that you have a copy, and thank for you pointing
9 that out. We weren't aware that it wasn't included.
10 Okay.

11 And 573 as Lael pointed out and discussed
12 initially on this, the focus here was on supreme
13 enforcement activities for the Commission. And one of
14 things that, you know, we wanted to emphasize because
15 a lot of questions were generated about the proposed
16 changes in -- or the new language I should say -- in
17 573.2, this is not final agency action. This is not
18 going to be posted on the website. It's not going to
19 be subject to FOIA to the best of our understanding
20 and talking with our attorneys.

21 But, you know, there was some suggestions and
22 that perhaps we consider looking for some type of a
23 standard in this section that would give the tribes
24 more definition on what we would be looking at, what
25 would trigger reinforcement type of action. There

1 were also some comments that were offered to us that
2 perhaps when we notify the tribe that we believe there
3 may be an issue that we also tell the tribe some type
4 of a time period to bring them into compliance before
5 we will move forward. That was one of the comments
6 that we received.

7 And then there was also some discussion and a
8 recommendation to come out of these consultations that
9 perhaps we consider giving tribes an opportunity to
10 respond to the initial pre-enforcement before we move
11 forward. And that kind of tied into the discussion
12 about a time frame. Tribes, we believe that there
13 might be a problem; we'd like to hear back from you or
14 know how you're going to respond. If you're going to
15 remedy it or disagree with our assessment we'd like to
16 know that within X amount of days. So that was the
17 flavor of the discussion that we had, and it was
18 actually a very robust discussion. So I throw that
19 out for your consideration, as well.

20 And then the only other thing I want to share
21 with you that I took particular note of, had to do
22 with 573.4 Subsection 6. There was some discussion, a
23 very robust discussion, about whether or not this
24 particular provision opened up the door to patron
25 disputes being part of the process. So, again, there

1 was a recommendation made that we consider striking
2 "or a customer" at the very end of that sentence. And
3 that was a large part of the discussion as well that
4 we had. So I don't know if you have additional
5 thoughts or concerns or questions about kind of what
6 the agency is contemplating with the new language that
7 we're proposing.

8 MR. HORTON: Sam Horton, Ft. Sill Apache.

9 We, in our getting together for the NOI last
10 year, whenever that was, I just want to say I agree
11 with the part you were talking about. I do think we
12 all tend to be on different sides of the fence, and I
13 think if you can -- you know, all the sabra raising,
14 armor putting on, all that, if we can do that less, it
15 works out better. And I think giving the tribe an
16 explanation or saying, Hey, we're getting ready to do
17 this is certainly a lot nicer because everybody starts
18 drawing weapons and dropping back into camp. And I
19 think that was the whole gist of what we wrote was
20 that, you know, I don't know if we'll ever be able to
21 all sit together at the same table without arguing.
22 Let's just do it nicely. These prediscussions are
23 always nice.

24 MS. COCHRAN: Thank you. And we acknowledge
25 that this is not perhaps going to be the mechanism

1 that solves every -- every issue that we have with the
2 tribes, but it certainly is a way to approach the
3 issue more cooperatively and resolve where we can
4 before having to bring up agency's heavy artillery.
5 We understand fully what that means to tribes and the
6 impact it has upon you when we have to do that, so.

7 In the revisions that are offered in the new
8 parts, the 580 series parts. Again, this was the
9 agency's attempt to look at how we do appellate
10 proceedings to make them more clear, to break them out
11 so they make more sense in the way that not only the
12 agency can best itself, but the tribes are responding
13 to the process. To give more clarity to the process
14 is the other objective here, to look for standards and
15 review, to identify those wherever we could, again, to
16 give clarity to the process. I see lawyers sitting
17 here, and I'm shocked how quiet we are.

18 Mr. Morgan.

19 MR. MORGAN: Matthew Morgan, Chickasaw
20 Nation.

21 The breadth of your definition on ex parte
22 communications means any employee? I mean, if I'm
23 looking at it from a prosecutor's role, many times I
24 met with the defendant outside the arbitrator's
25 presence to sort of try to come to reach a settlement

1 agreement. But under this breadth of a definition of
2 any employee, no communication could go on with any
3 employee of the Commission proceeding, is that my
4 understanding, I guess, currently drafted.

5 MS. COCHRAN: Well, yeah, and thank you.
6 That was a discussion also that came up. We do want
7 to look at this because that was the commentary that
8 was made. And we have given it a little bit more
9 thought and are curious to see maybe if we need to
10 look at the language because there is a modifier on
11 that which is, Without notice and opportunity for all
12 parties to participate. So if that's not enough of a
13 modifier, then perhaps, you know, that's a discussion
14 that needs to go on, meaning to look at it. Because
15 the intent, no, is not to cut off communications.
16 That doesn't make any sense. But if it needs to be
17 retooled perhaps and bring something to the table and
18 let's talk.

19 MR. MORGAN: My other question is --

20 MS. COCHRAN: Yes.

21 MR. MORGAN: -- dealing with noncompliance
22 issues of a regulatory nature versus statutory nature.
23 Do you contemplate treating those the same or is that
24 something that we're going to have to get used to by
25 practice of the Commission? As we move forward, some

1 of the necessary violations of the statutory nature
2 may not rise and may not need to proceed down the same
3 path as a simple noncompliance issue, maybe a lateness
4 of fees. I mean, cases kind of change, but, you know,
5 that clearly, at least in my mind, is a difference
6 between a violation of a statute versus violation of
7 certain proceeds under just the regulation.

8 So is there -- is there differing paths to take
9 or is that going to really follow the same process and
10 you want to set that, you know, a standard up and then
11 maybe as you get more experience with those and then
12 the public can kind of see how you deal with those. I
13 didn't know if you-all have any thoughts about how
14 that is going to come about.

15 MS. COCHRAN: Well, I don't -- and the other
16 commissioners can certainly jump in. There's
17 certainly discussions that we have as we look at the
18 rules, trying to sort out the statutory versus the
19 regulatory issues that come up. And that's why we've
20 given the late fee system, we've tried to pull stuff
21 out. Because, again, measuring it up against our
22 obligation, our big obligation, to promote economic
23 development and strengthen tribal gaming in Indian
24 Country and so with that always being the measure, you
25 know, what makes sense and what doesn't. And so

1 beyond those discussions, we haven't given it
2 additional thought.

3 If there are areas that you would like to suggest
4 that we look at, we'd like to hear from you. There's
5 four of us and there's two other employees, 36 gaming
6 tribes. There's a lot more of you to come up with
7 ideas, and if you'd like to share -- give us something
8 to focus on, we're happy to do -- now is the time to
9 do it, absolutely. Are there any other comments?

10 MS. HUBER: Bernadette Huber, Iowa Tribe of
11 Oklahoma.

12 My, just kind of a -- I don't know if it's
13 clerical or what, but how do we tell the difference
14 between what is a friendly correspondence and what is
15 a letter of concern? You know, do we -- do we assume
16 that all letters from NIGC are letters of concern?
17 You know, what is the difference? Is a notice, is
18 a -- you know, when is it a letter of concern? Is it
19 going to have a title at the top that says letter of
20 concern? I mean, how do we know when we're getting a
21 friendly letter of reminder and when we're getting an
22 actual precursor to an action? I know that sounds
23 dumb, but.

24 MS. COCHRAN: Absolutely not. Absolutely
25 not. I'm just glancing at the subsection. I

1 apologize, I wanted to make sure. I know that we put
2 in somewhere else in our regulations where it falls
3 at, where the letter would come at from the
4 Commission, what steps in our hierarchy which should
5 be a real clear indication. I mean, if you're getting
6 something from -- certainly from the Commission, you
7 know, that would be much more cause of concern. But I
8 don't see that type of language here, and maybe that
9 would be a segue. Maybe we need to think about how
10 would they know? How would they know what is the
11 difference?

12 I mean, this does have in there the items which
13 must be in that letter, but I can see how, if you get
14 correspondence often from the field office and it just
15 happens to have that same thing, that you may
16 misinterpret that.

17 (Off-the-record discussion.)

18 MS. COCHRAN: Lael is just saying that it's
19 her understanding that it would be captioned as such
20 so that you would know it. And that may be the simple
21 way, but we'll look at it. That's certainly not a
22 silly question because our intent is to get your
23 attention early, and if we don't get your attention
24 because you think it's routine correspondence, we
25 haven't -- it's not achieving its objective.

1 FEMALE SPEAKER: In our Commission and how
2 we usually address it, in concern to an actual
3 violation is that we call it an advisory to a
4 potential.

5 MS. COCHRAN: Right.

6 FEMALE SPEAKER: So that it's clearly
7 labeled as to what it is, is what our concern is to
8 know it's an advisory for a potential. So that may be
9 some suggestive verbiage.

10 MS. COCHRAN: That's very good, thank you.
11 Anything else? Good afternoon.

12 MR. ADAMS: Good afternoon. Sorry. I
13 didn't know it was that sensitive.

14 My name is Andrew Adams. I'm an attorney with a
15 law firm up in St. Paul, Minnesota, Jacobson, Buffalo,
16 Magnuson, Anderson & Hogan.

17 And I apologize about this. I have to leave
18 tomorrow and I know that the 543 discussion is slated
19 to be tomorrow, but I've got to leave super early in
20 the morning and wouldn't be able to attend and would
21 like to ask permission to bring up 543 stuff formally
22 on the record.

23 MS. COCHRAN: Did you have a statement you
24 wanted to read into the transcript and then you can
25 also certainly bring us any materials you have, but do

1 you want to take this opportunity to put something
2 into the transcript as well, verbally that's --

3 MR. ADAMS: Yes, I could. It's just really
4 quick questions, just three really small ones. But
5 under 543.7 Sub E, Sub 2, Sub Roman numeral II sales,
6 clarifying manual sales, we have some tribal clients
7 that want to know if this section applies when, say, a
8 system is down or when no system is in use in terms of
9 reconciliation purposes. And then also, is the
10 Commission taking the standpoint that all of the floor
11 sales are considered manual, quote, unquote, manual?
12 And if they are, it could potentially be helpful to
13 try to clarify for those that are verifying manual
14 sales by independent agent at the end of the day or at
15 the end of the shift is if that's adequate or not.

16 The second point is 543.8 Sub 2, supervision. We
17 have some clients that I think are looking for, I
18 guess, a more expansive definition of exactly what the
19 minimum level of supervision is that's going to be
20 required. And then also if supervisory employees that
21 typically supervise multiple areas of a facility,
22 would those separate departments need dedicated
23 supervisors that only managed those respective
24 departments?

25 And then under 543.10 Sub (d), again, another

1 supervisory-related question in terms of what level of
2 supervision is expected in order to be in compliance
3 with that section. And then also, you know, casinos
4 have kind of cross pollination promotion actions that
5 happen throughout the facility, and, again, some of
6 the clients that we have, have a concern in a sense
7 that there's a way to read it where maybe promotions
8 have to be segregated to certain portions of a
9 facility. Thank you.

10 MR. LITTLE: Sir, excuse me. For the
11 transcript, what tribes are you representing?

12 MR. ADAMS: You know, the tribes that we're
13 representing, they didn't give me authority to
14 identify them. I mean, we do represent quite a few
15 tribes up in the Great Lakes. I mean, I can go back
16 and speak with my clients and ask them if they would
17 like -- or if need to be identified and if you can't
18 accept the comments, I guess, without the
19 identification, then I can communicate that back to
20 them also.

21 MS. COCHRAN: Okay. Thank you.

22 MR. ADAMS: Thank you.

23 MS. COCHRAN: And thank you for your
24 comments. We can certainly enter them into the
25 transcript. And we can put them in as other comments.

1 If they do represent a tribal client, though, it would
2 be helpful for us to know that because then we can put
3 them up on the website and they can show under the
4 tribal client. Otherwise, we have to put them under
5 others.

6 And the questions that you asked are, as you know
7 specific to the MICS, and the Commission is in the
8 process of putting together a tribal advisory
9 committee. That advisory committee will address all
10 the specifics of the MICS, and they will have
11 available to them the take-away of work group
12 products, the comments that come in from tribes or
13 other interested individuals. They'll have all that
14 and this will be part of that discussion, but it
15 wouldn't be something we would discuss tomorrow. I
16 wanted to make sure you understood the process so that
17 I wasn't being nonresponsive to you. But those
18 distinct issues will be taken up by the TAC.

19 MR. ADAMS: Yes, and I appreciate that and
20 know that I came -- kind of came down here with, you
21 know, kind of bringing a gun to a gun -- bringing a
22 gun to a gunfight with no bullets, you know, without
23 authority to identify them. When I go back, I'll
24 definitely ask them if that's cool and then I can
25 communicate that to them, and then we are definitely

1 encouraging them to participate in that process of
2 nominating people to the committee. So thank you.

3 MS. ECHO-HAWK: It also sounds like you have
4 you some tribes that have some issues related to the
5 operation and MICS compliance. Please encourage your
6 clients to talk to our regions, they're very familiar.
7 If they need training, that's what the agency is there
8 to provide. We can send people out and help them work
9 through the current issues that they have with the
10 MICS as they are. Especially if they have issues
11 ongoing today, right now. It's very practical, it has
12 very practical implications, so we want to make sure
13 that we can provide the service that they need.

14 So if there's clarification for points on
15 promotion or sales, it's very germane to the
16 day-to-day operations. And so if they need assistance
17 that way, please, please contact a region, contact --
18 talk to Nimish. He's the training director right now
19 and if we need to set up some training either in a
20 region or at a specific facility, that's what we're
21 here to do. So just let us know because we're happy
22 to help that way. Because I don't know how helpful it
23 is to say to your client, the TAC is working on the
24 MICS and, you know, that doesn't help them today with
25 their problem in interpreting the MICS and what it

1 means with the issue of sales or promotions, et
2 cetera. So if they need that assistance, that's what
3 we're here for.

4 MS. COCHRAN: Mr. Stevens is sitting in the
5 back of the room trying to be nondiscreet.

6 MR. STEVENS: Yeah.

7 MS. COCHRAN: Good afternoon. Welcome.
8 Would you identify yourself for our reporter and
9 welcome.

10 MR. STEVENS: Good afternoon. Does
11 Commissioner Little have anything to do with
12 identifying my whereabouts?

13 MS. COCHRAN: You're in my direct line of
14 fire. I don't know if your mom ever told you, but we
15 have a line.

16 MR. STEVENS: With no bullets I think that
17 was. But I'm just hanging around from the Oklahoma
18 Gaming Association conference, and I'm going to go
19 over to Chickasha tonight where my good friend and
20 hero, Mr. Jess Green, is being inducted into the
21 Chickasaw Nation Hall of Fame. And I didn't have
22 anything to do so I -- no, I'm just hanging around so
23 trying to be discreet. But at six four and about 270,
24 I can't be so discreet.

25 But, you know, I appreciate this whole entire

1 process, and I appreciate everybody that really gets
2 the work done here. I mean, this is -- I always try
3 to explain that to people that, you know, oftentimes,
4 you know, so many of us that have these positions get
5 the credit for all the hard work, but, you know, I've
6 been able to go to a lot of these different
7 opportunities and I get lost in some of this stuff,
8 you know. This is high level and it's Indian Country
9 doing their work, and so I'm honored to be a part of
10 it, but I was just trying to kind of fade in here a
11 little bit and listen. You can tell my boss Matt
12 Morgan, I'm a good guy then, you know, I'm okay.

13 But I'm happy to answer any questions or if
14 there's anything you need from me. But once again, I
15 just want to say thank you for this work. I know it's
16 cumbersome, I know it's tough, but something certainly
17 people would rather be outside enjoying the -- well, I
18 don't know if the temperature is better here now, but
19 I hear it was pretty hot around here. So I've already
20 got my exercise in at the Hard Rock -- Cherokee Hard
21 Rock and so hanging out waiting for Jess' honoring.
22 But I thought I better at least listen and get some
23 work done myself. So I'm on my BlackBerry
24 communicating back and forth with Washington, D.C. as
25 well.

1 MS. COCHRAN: Did you come looking for
2 snacks?

3 MR. STEVENS: I already got some, believe
4 me.

5 MS. COCHRAN: Well, thank you and thank you
6 for taking the time to join us.

7 MR. STEVENS: Thank you. Once again, this
8 is where the work's done, and, you know, my father,
9 when I was a little boy, he used to take me into these
10 kinds of meetings, and I never knew what was going on,
11 and I think I'm a grown man and I have ten grandkids,
12 and I'm still wondering sometimes what's going on. So
13 I'm listening closely and, you know, it's really about
14 the, you know, it really boils down to community.

15 But I've been traveling around on all this stuff
16 at the big Potawatomi gathering the other day and, you
17 know, it's just tremendous what Indian Country does,
18 you know. But it really starts really from there,
19 from our culture and our language and our community
20 and our families. And, you know, I really appreciate
21 what you folks do because, you know, like me, you're
22 away from family so much, and to me that's the most
23 important thing is trying to understand and appreciate
24 what you give to this industry in spite of the
25 responsibility you have to your family.

1 I did get a text from my son, Councilman Brandon
2 Stevens, a little while ago, so, so far, so good. He
3 just started his second term so I'm very proud of him.
4 Again, I'm here if you need me. I'm just going to
5 kind of lay low in the back here. There's not really
6 enough snacks for me back here. So thank you very
7 much and God bless all of you.

8 MS. COCHRAN: Thank you. All right. Any
9 other final comments on Group 2? If not, we'll cruise
10 right along to Group 4. If I can't get the attorneys
11 to talk about this stuff, I'm in bad shape here.

12 Well, there is a few remaining days on comments,
13 please comment. There's a lot of work that went into
14 it. So even if you don't have anything to add or to
15 recommend change, if, you know, a comment that you
16 read them and they seem sufficient would certainly go
17 a long ways as well to making sure that we are on
18 track with putting something out there that works.

19 I'm going to turn it back over to Lael, and I'm
20 going to let her walk us through Group 4.

21 MS. ECHO-HAWK: I apologize for the little
22 mixup we had in the slides. I'm trying to get the
23 updated slides, probably won't be here today, but
24 tomorrow and you can always e-mail me at
25 reg.review@nigc.gov and I'll send you the updated

1 PowerPoint. So we definitely apologize about that.
2 Hopefully, we'll have them tomorrow.

3 Okay. So Group 4 is the final group that we're
4 going to be discussing today and it covers a number of
5 things: The pilot programs, licensing issues, some
6 monitoring background investigation issues, and then
7 particular definitions.

8 So, we'll start off the pilot program or the
9 licensing provisions that's commonly known as a pilot
10 program although it's been in place for a long, long,
11 long, long, long, long, long time and so it's probably
12 no longer a pilot program. And so the Commission,
13 knowing this was probably no longer a pilot program,
14 undertook reviewing these particular sections and
15 asked whether or not we should formalize a pilot
16 program and how we should do that in the regs.

17 So the pilot program very briefly allows tribes
18 to submit notice of results, background investigations
19 that you've done for primary management officials and
20 key employees. And then the tribe maintains the
21 applications and all the investigative reports so you
22 don't have to send them to D.C. or to the region. You
23 just send us your notice of results.

24 All the comments that we received supported this
25 and so we attempted to do that in Parts 556 and 558,

1 which you have in your packet. So what we try to do
2 is we try to divide 556 and 558 into two, sort of
3 chronologically. So Part 556 includes all the
4 procedures before a gaming license is issued.
5 Part 558 includes all the procedures after the gaming
6 license has been issued.

7 So in -- what we've done in Part 556.6(b), tribes
8 seeking to license a key employee or primary
9 management official have to notify the agency of the
10 applicant's background no later than 60 days after the
11 applicant begins work. Now we know a lot of tribes
12 have done -- there is a temporary licenses issued, and
13 we're not changing any of that. If you have that
14 system in place, that's fine.

15 We tried to keep this very sort of generic so we
16 don't mess up your licensing structure and it
17 certainly shouldn't. All we're doing is formalizing
18 what we already do with one exception. And that
19 exception is that in the way that the pilot program
20 currently operates, we haven't required tribes to
21 notify us once a license has been issued. You just
22 send us your notice of results and that's it. The
23 Act, though, says that a tribe has to provide notice
24 of the issuance of the license. So there's two
25 notices you need to provide us and that is: The first

1 one is a notice of results, the second one is a notice
2 of issuance of the license. That is a bit of a
3 change, and it is one additional step. But it is
4 something that's mandated by the statute, so it's not
5 something that we can eliminate.

6 The other thing that we did in Part 556 was to
7 provide a mechanism for a second -- for another tribe
8 to obtain -- if they're able to obtain prior
9 investigative reports on an individual that they're
10 looking to license, that they can get their reports
11 from a tribe that already licensed individuals, simply
12 update it, and then provide us with that updated
13 information. So, for example, if you -- if you have
14 someone who's working for a Chickasaw facility and
15 then is going to work for a Creek facility, if the
16 Creek facility can get the investigative reports from
17 Chickasaw, all they would need to do then is update it
18 so you're not just duplicating work.

19 We hope that that is something that would be
20 successful and that tribes will be able to access and
21 it might minimize some of the work and the costs
22 associated with licensing and backgrounding of primary
23 management officials or a key employee.

24 So Part 558 includes all the procedures after the
25 gaming license has been issued. It's the same process

1 except that now we're providing that a notice has to
2 be -- notice of license has to be sent in. But as
3 soon as -- so after providing the agency with notice
4 of results, the tribe can license a key employee or
5 primary management official. Here is where it gets a
6 little bit tricky. Because the NIGC has 30 days after
7 receipt of the completed notice of results to either
8 object or to request additional information or to have
9 no objection to this -- to the issuance of the
10 license.

11 The issue comes if the tribe -- so if the tribe
12 sends out the notice of results, the NIGC takes a look
13 at it and says 20 days later, We have an objection to
14 this individual. If the tribe has already licensed
15 that individual, then that individual would have a
16 right to have a hearing and an appeal -- or have their
17 license suspended, and then they have a right to have
18 a hearing to discuss the issues with the license. If
19 the NIGC sends their notice of objection before the
20 license is issued, that individual, because they're
21 not a licensee, doesn't have that same right to a
22 hearing.

23 So it's timing and it's an issue that I think
24 that will be worked out a little bit as we move down
25 the road. And I think it's something that you guys

1 are accustomed to dealing with, but we wanted to point
2 that out, that if you issue a license before you hear
3 back from the NIGC and the NIGC has an objection to
4 that individual, then the tribe has to suspend their
5 license and that person has to have the right to --
6 has a right to have a hearing if they choose. So
7 that's all in 558.3. That's where all that
8 information is contained.

9 And then after the revocation hearing, the tribe
10 has to notify the NIGC of the decision that was made
11 at that hearing. Again, trying to move into the
12 21st Century. We're to put in provisions for
13 availability of electronic submissions. We're hoping
14 that we could do this all electronically, notice of
15 results, our response, your notice of the license
16 issuance, and so we're working on how to do that.

17 And we also said that, well, now your ordinance
18 submissions may not -- your ordinance provisions may
19 not necessarily comply with the changes to these
20 parts. That's okay, but next time you send in an
21 ordinance amendment, then you amend it at that time.
22 That way you don't have to -- you're not making an
23 amendment to your ordinance right now. That's okay.
24 Just next time you do, make sure that it complies with
25 this part. Written comments on this closed on

1 August 10th, but we still are interested in hearing
2 what you have to say about this -- about these parts.

3 We've been looking at a fingerprint processing
4 and we talked a little bit about that earlier this
5 morning. Access to fingerprint processing for any
6 employee designated by the tribe and tribe supported
7 this and we've been talking with the FBI about it and
8 how to make this happen. So it is something we are
9 working on.

10 Part 537 also is in your packet, and we asked
11 when we sent out the notice of inquiry, whether or not
12 we needed to clarify that management contractors of
13 Class II and Class III facilities must have a
14 completed background investigation. The tribes, the
15 majority of them supported it, some said you don't
16 really need it, it doesn't matter, that it's already
17 covered by compacts. The discussion draft does make
18 that clarification so if you, you know, if you think
19 it's necessary, you don't think it's necessary, please
20 let us know. That's in Part 537.1 of the draft.

21 Another issue that was raised and is included in
22 this part is that -- it's in Part 537.1(d). The
23 tribes suggested having a streamlined investigation
24 process for entities that are already licensed by a
25 tribe or a bank, et cetera. And so we did include

1 that in the draft, and it provides that the Chair, at
2 their discretion, can reduce a background
3 investigation and the scope of information to be
4 furnished for any tribe, tribally-owned entity,
5 national bank, or institutional investigator that is
6 federally regulated or is required to undergo a
7 background investigation and licensed by a state or
8 tribe pursuant to a compact.

9 So we're trying to streamline the process and,
10 you know, create more efficiencies and hopefully we'll
11 have some cost savings in there as well for tribes.
12 So we're interested in hearing what you have to say
13 about that. Comment period on that closed August 9th,
14 but certainly give us your comments and feedback.

15 Part 531, we asked in the notice of inquiry
16 whether or not the NIGC should require the submission
17 and approval of collateral agreements. Agreements
18 collateral to a management contract. Tribes were all
19 over the board on this. Many of them -- many comments
20 supported requiring the submission of the agreement,
21 but there was significant disagreement about whether
22 or not the NIGC should be able to approve or
23 disapprove these other agreements. There were
24 concerns raised about that this approval of collateral
25 agreements would discourage private investments. But

1 then we heard that NIGC doesn't have the authority to
2 approve a collateral agreement and that if we were
3 doing that, we would be second guessing tribal
4 business decisions and those should be left to the
5 discretion of the tribe.

6 On the other hand we heard that the trust
7 responsibility mandates that we look at these
8 agreements and review and approve them. That approval
9 protects tribe's sole proprietary interest in the
10 operation. And on the other hand we heard that
11 approval could discourage businesses from attempting
12 to take advantage of tribes and that it reduces risk
13 to both parties.

14 So we heard just the spectrum and so we put it on
15 the list of things to do and items to review and we
16 are still interested in hearing what you have to say.
17 There is no draft, discussion draft, for this
18 particular part.

19 Part 571, monitoring investigations. We asked in
20 the notice of inquiry whether or not we should clarify
21 that the NIGC has access to records, books, et cetera,
22 particularly located at sites maintained by third
23 parties, so not at the gaming operation. Maybe, for
24 example, at a management company's office in Vegas,
25 whatever. We heard lots of comments and we heard the

1 revision was unnecessary. We already have subpoena
2 authorities so why do we need to do this? We also
3 heard that clarification -- it didn't really matter to
4 some commenters, clarification or not, because they
5 said we already had the authority.

6 We did have a commenter say, Well, if you require
7 tribes to maintain all their records on-site, then you
8 don't run into this issue. Maybe that was a way to
9 get to the issue, but that we could only request
10 records within our statutory authority. And another
11 commenter said that we should clarify that the NIGC
12 does not have access to Class II records.

13 So those are all comments that we heard. And we
14 did include that clarification in Part 571 discussion
15 draft that you have in front of you. The other thing
16 that we did in Part 571 was we drafted a section,
17 571.4, that we're calling investigative closure
18 letter. Now we've heard that closure carries with it
19 its own sort of connotation, especially in the context
20 of gaming regulations so maybe we need to think of a
21 different term.

22 But the idea was when we concluded -- when the
23 agency has concluded an investigation and has decided
24 it's not going to begin an enforcement action at this
25 time, that the Commission can send a letter to the

1 tribe and say, Hey, we investigated you. We're not
2 going to do an enforcement action at this time, and
3 provide that to the tribe. It doesn't preclude
4 further action by the NIGC and it's not a finding that
5 there is no violation. It's just saying that right
6 now we've done our investigation, it's closed. We're
7 not issuing any enforcement action right now and not
8 beginning an enforcement action right now.

9 Tribes have been in favor of this for a lot of
10 reasons. We've heard from tribes that said, you know,
11 they had an investigation happen several years ago,
12 they don't know what happened in the meantime, but
13 because there's been no closure, that they still have
14 to notify state or bond holders, their banks, they're
15 under investigation still. And so this might be a
16 mechanism where tribes can, you know, sort of get that
17 from hanging over their head. And so that's included
18 in Part 571.4. Discussion draft -- this comment
19 period closed on August 9th but, again, we're
20 interested in your comments.

21 And then finally in Group 4, we talked about
22 addressing the definition of net revenues to have it
23 be consistent with GAAP. We did not make the change
24 and the discussion draft for many of the same reasons
25 that we spoke about earlier this morning when we were

1 discussing fees. We need to remain -- we heard that
2 we need to remain in compliance with IGRA that, you
3 know, the net revenue is a defining term in the Act in
4 2703(9) and that we can't really clarify using a
5 definition like GAAP which fluctuates.

6 So we didn't -- but we haven't done a discussion
7 draft on this either. If you do think that this
8 definition needs clarified, then please let us know
9 how. Again, we've heard a number of times that
10 perhaps with wager and payout additional guidance
11 would be helpful when discussing these kind of terms.
12 So that is the very brief overview of Group 4.

13 MS. COCHRAN: All right. Are there any
14 initial comments?

15 MR. HORTON: Thank you. Sam Horton, on
16 Ft. Sill Apache Gaming Commission.

17 On the issue of fingerprint I like what you-all
18 put in this document, but just to clarify because this
19 has always been an issue, the idea behind what you are
20 clarifying here because we supported this and what we
21 sent in as well was that we can basically be in the
22 regulatory course for the tribe. We can actually have
23 anyone that the tribes or us designates to somebody
24 who would like fingerprints on. And we're talking
25 about people who are not key employees or primary

1 management officials. I mean, every tribe seems to be
2 doing this, but I've been cautioned left and right
3 that, Oh, you're not allowed to do fingerprinting on
4 people who are doing janitorial work or some folks
5 even in the kitchen, but who handle a fair amount of
6 money in our casino.

7 Is that the nature of this? Is that like saying
8 you can't officially license -- I mean, fingerprint
9 whoever we want? We, being the tribe, we as an
10 instrument of the tribe can determine who --

11 MS. ECHO-HAWK: I think the way that we've
12 gone about talking with the FBI about this and talking
13 with tribes is that if you say in your ordinance you
14 need to do X, Y, and Z or, for example, coming from
15 Washington State, the compact says that you said that
16 they have to fingerprint background employees
17 including janitors, people with back of the house
18 access, cocktail servers, whatever. You know, the
19 thought internally was well, tribes -- if this is what
20 tribes want to do, then is there a mechanism that we
21 can use to work with tribes. And so that's what we're
22 working on. If it's included in your ordinance, then
23 that's the tribe's decision to make and if there's a
24 way we can help you with that by providing access,
25 then we're looking into it.

1 MR. HORTON: So just curious, if our
2 ordinance now said that, would you-all be -- is it
3 fair game to send anyone we designate, even at this
4 point, that we wanted fingerprinted legally?

5 MS. COCHRAN: I apologize. We're looking at
6 the lawyers who know.

7 MS. DITTLER: In the past we have processed
8 fingerprint cards for people defined as key employees
9 in the gaming ordinance, but it's only been those
10 specific employees that are defined that way.

11 MR. HORTON: I didn't get the last part of
12 that.

13 MS. DITTLER: But it's only those employees
14 that are defined that way as key in the gaming
15 ordinance. So if they're not defined as key, then we
16 won't process them.

17 MR. HORTON: If our -- so this would
18 represent a change in what you've printed out today,
19 as shown as on the screen, that at that point in our
20 ordinance we said that the tribe slash Gaming
21 Commission could determine that a janitor needs to be
22 fingerprinted, then that would be acceptable but only
23 after that is in our ordinance?

24 MS. STEVENS: Have we sorted this out with
25 the FBI?

1 MS. ECHO-HAWK: No, we're still talking.

2 MS. STEVENS: We're still working this out
3 with the FBI and buyer beware. It seems if you
4 categorize more people or put them through a process
5 as the same as a key employee or primary management
6 official, there may be similar outcomes for those
7 individuals and do you want those outcomes for those
8 individuals? You know, to be treated like key
9 employees and primary management officials, should
10 something negative come back, and, you know, that's
11 the question we have with the FBI and what they are
12 able to do.

13 And then there is -- we've heard this come up
14 before as, you know, are you going to -- does this
15 subject them if you categorize them that way in your
16 ordinance, or is there some other way for us to do
17 fingerprinting and backgrounding based on your
18 ordinances without treating them that way. That's why
19 I was checking to see if we've figured this out with
20 the FBI yet, which we're still working on.

21 MR. HORTON: At the Commission I appreciate
22 you working with the FBI because that's one of the
23 sources of questions to us about who we sent through.
24 But on the commission and the tribal level we look at
25 that as a security device and as the quickest way to

1 get the answers that we would have gotten going
2 through any local PD or county thing and the answer
3 is, yeah, we don't mind sending them through. If we
4 get a negative outcome or finding, we didn't let them
5 in. Thank you.

6 MS. COCHRAN: Thank you. Are there any
7 other questions on fingerprinting?

8 MS. BUSBY: Kay Busby with the Delaware
9 Nation.

10 My question is more regards to people who work in
11 our facility, not necessarily work for us, but we
12 consider key employees such as vendor technicians who
13 work on our machines and have access to our back house
14 accounting, has access to the machines, if we consider
15 them to be key employees, our compact currently
16 requires that we license them in the same standard we
17 license key employees. But we can't utilize the
18 fingerprint system that you provide for us so we have
19 to spend more money outsourcing, licensing our
20 vendors, our vendor technicians who work in our
21 facilities.

22 My question for some of our smaller
23 organizations, like the Delawares, it would be helpful
24 if we could fingerprint those individuals that we
25 licensed that work on our gaming machines.

1 MS. COCHRAN: Would you mind sharing with us
2 why you can't use NIGC's?

3 MS. BUSBY: They will not cross. I've had
4 this discussion very many times in the past with our
5 local regents and if we have -- if you don't want to
6 change your gaming ordinance to say the definition of
7 a key management employee includes these individuals,
8 then we are unable to actually fingerprint them in our
9 office. We are on the pilot program and have been for
10 years, but we are unable to license -- fingerprint our
11 vendor technicians who actually work for the gaming
12 vendors, not for us.

13 So we have to have them provide us their
14 fingerprints. We cannot process them. We've tried to
15 do it through OSBI and they will not -- there's a
16 technicality with the MOU, and we've been -- what we
17 do is very fruitless because we obtain fingerprints
18 and they sit in a file for our vendors. And those are
19 the ones that really have access to the machines that
20 can change the outcome of the game or can commit fraud
21 in our -- where our money comes from.

22 So that's been one of my key things since I've
23 been employed with the Delawares to try to obtain a
24 better way of making sure that the people who are
25 actually working on our gaming machines, which is our

1 main source of revenue, are reputable individuals that
2 will not commit fraud, which we are told in other
3 organizations it has happened where vendor techs have
4 committed fraud through the gaming machines.

5 So I feel like that's a risk that we've hit
6 barriers that we have not been -- we've had to work
7 around to try to obtain and protect our facility.

8 MS. COCHRAN: Thank you. And that's one of
9 the reasons why we are looking at the ordinance and,
10 you know, as you've just described, there are elements
11 that play here on our end, on the federal end, that
12 we're trying to work with. But there's also elements
13 that play on the tribal side, you know, and given your
14 own internal ordinances and tribal laws and codes,
15 which governs how you conduct yourself as well.

16 So any comments you want to add in how we can
17 address it on our end should certainly be submitted.
18 We welcome it. More fingerprint questions? The only
19 thing I would add in just, again, for those of you who
20 may not have participated, there was some discussion
21 and there's been a request come in from one of the
22 tribes that we maybe look at whether or not we have
23 the ability to do the electronic submission of the
24 notice of results and whether or not that's a
25 possibility under our existing regs. So it's the only

1 thing I had on my end to offer up to discussion.

2 Is there any feedback or thoughts on the way that
3 556 and 558 have been broken out and separated into
4 two different parts because of where they fall at in
5 the processes? Does it seem to make sense to you?

6 MR. CUNNINGHAM: Commissioner Cochran, are
7 you clear on the two different questions that
8 Mr. Horton is asking and Ms. Busby has asked, that one
9 is dealing with employees and Kay is dealing with
10 vendors?

11 MS. COCHRAN: Yes. He was asking whether or
12 not I was clear on the distinction between the two
13 questions that were asked, one dealing with vendors
14 and one dealing with employees. And absolutely. And
15 the vendors is what the Commission is in the process
16 of talking with the FBI about. That's why I say, you
17 know, there are two different sets of processes going
18 on.

19 MR. CUNNINGHAM: Okay.

20 MS. COCHRAN: What our limitations are on
21 the federal end and what the tribes have to -- their
22 definition and their constrictions that might exist
23 under tribal law or tribal ordinances.

24 MR. CUNNINGHAM: Thanks.

25 MS. COCHRAN: In 556 and 558 the NORs are

1 going to be -- have to be submitted back to us. And
2 we're curious about is there a hardship in doing the
3 process that's being outlined the way we've broken
4 them out, is there any additional hardship? We've had
5 some discussions about us responding on our end to the
6 notice. Some of you wait to hear from us before you
7 do licensing; other tribes don't. They conditionally
8 license during that period of time.

9 On 556.5, that's where we moved out reporting to
10 the Commission put it in the new section. Any
11 additional comments or suggestions on changes to this
12 particular area?

13 MS. STEVENS: If I can, if I may, one thing
14 that we are trying to do is while this might -- again,
15 we're separating the before licensing and after
16 licensing processes and to memorializing the pilot
17 program. One thing that we've heard from tribes is
18 that please don't make us do something that we aren't
19 already doing, like don't change the process. And we
20 just -- I think want to make clear that we're trying
21 to create some consistency because what we've heard is
22 there have been different processes to achieve the
23 same end throughout the different regions. And if
24 everyone here is from the Oklahoma or Tulsa offices,
25 you might, you know, they're probably similar.

1 But this will lead to trying to create a
2 consistent process to obtain the same information. It
3 just might look different to you. That was some of
4 the concern that we've heard expressed so far. We're
5 asking for the same information, but it might come to
6 you in a different medium or in a different style, and
7 we want to do away with the differences in the way
8 each region is asking for and having tried to format
9 the exact same information. Just a note, side note
10 here, it might look different, the process may look
11 different, it's not really the process, it's the form.
12 I just wanted to mention that. The heads up, same
13 information, just want to create a consistent process.

14 MS. COCHRAN: We're also hoping that will
15 help with some tribes who have facilities in multiple
16 jurisdictions, you know, if regions are asking for
17 different information standardizing will help, we
18 hope.

19 MS. STEVENS: Or if our regions happen to
20 get overloaded in one area, they can ship some of the
21 work to another region and get some help, but that the
22 process would be standardized enough to be able to do
23 that.

24 MS. COCHRAN: Part 537, the suggestions that
25 we made and the discussion draft are really aimed at

1 seeking clarity. And being very clear in your breach
2 management contract there is required or shall be
3 cause for a background investigation, and that's the
4 proposed changes that you see.

5 (Off-the-record discussion.)

6 MS. COCHRAN: Oh, thank you. And Lael
7 points out too, very correctly, that there's also
8 changes in there, which are designed to streamline how
9 we do things under 537.1(d). The comment period on
10 this, it closed on August 9th, and we didn't get a lot
11 of feedback. And so I didn't know if there was
12 anything that's not being said or hasn't been said.
13 You know, I come from a family who doesn't know how to
14 be quiet, so I'm a little thrown off by the silence.

15 Part 531, collateral agreements. We asked
16 whether or not -- whether or not the regulation should
17 require these to be submitted and we've gotten a lot
18 of feedback. I heard Mr. Green, who is on his way to
19 get polished up for his evening's events, has a lot of
20 very strong thoughts on this.

21 Is there anybody that is experienced at having --
22 if you have submitted them and asked for us to review
23 them, what that process has turned out to be,
24 beneficial, harmful, not helpful?

25 MS. HUBER: Bernadette Huber, Iowa Tribe of

1 Oklahoma.

2 Our tribe would have a problem with the verbiage
3 to approve. We don't have a problem with review and
4 to voice concerns and to certainly notify us of
5 concerns, but when you're giving the approval of
6 those, that becomes an issue of tribal sovereignty for
7 those. I mean, that's telling us basically who we
8 can't finance with or can, and that is our right. We
9 don't have a problem with you looking at it and saying
10 this is problematic, these are concerns that should be
11 addressed, but for you to be the approving party is
12 problematic for us.

13 MS. COCHRAN: Thank you. I should also add
14 that our general counsel has been very clear about
15 asking for when things are submitted, documents are
16 reviewed not just in the context of the collateral
17 agreement. They begin from four to six weeks if
18 possible to look at the documents. These financing
19 agreements are very complex, and we certainly
20 understand the constrictive time frames that the
21 tribes may be involved with. But it certainly does
22 make the agency's operations less destructive if we
23 have enough time to properly look at the document and
24 provide the feedback.

25 MR. FLUTE: Homer Flute with the Apache

1 Tribe.

2 Along the same lines the Apache Tribe has
3 requested information on a management contract. We've
4 not received response for that yet. I wonder what --
5 what the holdup is.

6 MS. STEVENS: To clarify, are you asking
7 about a management contract that's currently in place
8 or one that you're entering into?

9 MR. FLUTE: We want to know about one that
10 is currently in place. We believe that it was
11 submitted and has been in operation without NIGC
12 taking a look at it and determining whether it is or
13 isn't a management contract. And we need to know is
14 it or is it not.

15 MS. STEVENS: Okay. And I don't want the
16 tribe to have to share your concerns about your own
17 individual --

18 MR. FLUTE: Exactly.

19 MS. STEVENS: -- your own individual
20 situation. That's why I wanted to clarify. Why don't
21 I get your information and I'll get this information
22 back over to our staff and have somebody get in
23 contact with you, okay?

24 MR. FLUTE: I'll be happy to meet you right
25 after this meeting.

1 MS. STEVENS: Okay. That sounds good. Sam.

2 MR. HORTON: Sam Horton, Ft. Sill Apache
3 Tribe.

4 This is for my education. If we don't have a
5 management contract, but if we just submitted for a
6 bond for building something on the campus but not on
7 the trust land, but it's done by the economic
8 committee that runs the casino for the tribe, which is
9 all tribal, is that a collateral agreement? The hotel
10 is going to go on the property next to the casino that
11 is not trust land, but it's backed by the -- you know,
12 it's backed by the casino, the collateral for it is.

13 MS. ECHO-HAWK: That's been one of our big
14 issues is what is a collateral agreement? It kind of
15 depends on how it's related. The way that we looked
16 at these things has kind of been so if, just
17 hypothetically, if you have a management contractor
18 and a developer and a consultant and the bond --
19 someone who's maybe cosigning or is on the bond with
20 you and they're all related through business or they
21 have the same, like, primary ownership or they're --
22 somehow or another they're all related, that's what
23 we've been looking at as a collateral agreement. So
24 it's got to be all intertwined.

25 So in this situation where it's separate, there

1 may be financing associated. If it's not sort of
2 collateral to the -- if it's not connected to the
3 management contract that we have to approve or
4 disapprove, it may not be. Now if you want us to
5 review these things, you know --

6 MR. HORTON: There is no management
7 contract. I mean, we are managing ourselves. I was
8 just curious, are there collateral agreements outside
9 of management contracts? Does this bond that we
10 submitted for make it a collateral agreement?

11 (Off-the-record discussion.)

12 MS. COCHRAN: The other thing that rather
13 than getting into the unique facts associated with,
14 you know, a situation and, again, the tribe having to
15 disclose perhaps things that need to be discussed more
16 privately, it may be worth your while to talk to your
17 regional attorney and pose that set of facts and get
18 their interpretation on whether or not they would
19 encourage you to send it or not, what its relationship
20 is to the management contract.

21 You know one of the things that we discussed
22 extensively in some of the consultations is this gets
23 difficult to define also because you're talking about
24 snapshots in time. You're talking about one moment in
25 time, one set of activities, one contract which may or

1 may not relate back. And then the tribe expands and
2 does something different and doesn't touch back, and
3 then they might enter some other lease agreement that
4 doesn't touch back to the management contract. And
5 that's why this gets to be such a complicated
6 situation to get our head around and to work with in
7 terms of defining.

8 But we should be able to give you the feedback
9 through the general counsel's office. I would imagine
10 as to whether or not you may want to submit it or this
11 would be related to your management contract -- or if
12 you don't have one, but somehow it needs to be
13 reviewed in some context.

14 MR. CUNNINGHAM: Commissioner, in his
15 situation, what tribes have done in the past is
16 sometimes if they don't have a management contract in
17 place, they submit a contract for us to say this is
18 not a management contract. And then the other issue,
19 of course, is the collateral agreements --

20 MS. COCHRAN: Right.

21 MR. CUNNINGHAM: -- when they do have that.
22 So we get both of those.

23 MS. COCHRAN: And that's why I think I
24 recommended that OGC is probably the best place to get
25 the feedback from.

1 MS. STEVENS: I do want to say that for new
2 management contracts, generally what ends up happening
3 is the tribe gives us all the collateral agreements.
4 Now as the vice chairwoman was stating, it does get a
5 little murky when there are amendments, additions, or
6 what might appear to be unrelated collateral
7 agreements. And, you know, certainly our office at
8 the general counsel, the general counsel's office is
9 more than happy to have discussions to ensure. Our
10 whole point is to make sure that there's not
11 management of the gaming facility going on. And you'd
12 be surprised at how creative some of these deals get.
13 And that's -- that's our concern.

14 It might be a challenge to define exactly every
15 situation that would be a collateral agreement because
16 they have gotten so creative. But, again, I just want
17 to say out of an abundance of caution and certainly as
18 the tribe's, you know, willingness to share agreements
19 that might be amendments or could possibly affect the
20 gaming facility, we would welcome, you know,
21 discussions about what you might have in any
22 particular collateral agreement to ensure that there's
23 not management happening.

24 Because we don't want to see and I certainly
25 don't think that you-all want to see have happen -- we

1 don't want to see an instance where there is a
2 management contract in place that was not approved.
3 Even though in the beginning of the amendment or the
4 collateral agreement, it didn't appear as though there
5 would be any gaming management going on.

6 MR. MORGAN: Matthew Morgan, Chickasaw
7 Nation.

8 I understand the reason that you're asking in the
9 series of risks that come up with management
10 contracts, at least in my past history when we've had
11 to deal with this, it has never been in the terms of a
12 management contract. It's always seemed like almost a
13 fishing expedition that we've had to deal with on some
14 of the things, and it's our concern comes into as we
15 try to conduct business and move forward in some of
16 our economic development ventures. And I think some
17 of the things you're proposing here today, closure
18 letters, you have the authority under your
19 investigation power to come in and request and look at
20 those items.

21 I think at least on behalf of the Chickasaw
22 Nation I think we would really, you know, one,
23 discourage any approvals or disapprovals coming
24 through, but that you use some of your other powers
25 that you already possess if there is a need arises to

1 come in and look at something and then we would ask,
2 you know, you expedite that review as quickly as
3 possible.

4 I know at least internally when things come to my
5 office, you know, us as a bureaucracy on the
6 regulatory side slows stuff down, but then as it goes
7 to one or two or three or four more bureaucracies,
8 it's sometimes unnecessarily slows economic
9 development down, which goes back at the end of the
10 day, hurts our members. That's where I think we stand
11 on collateral.

12 MS. COCHRAN: Are you suggesting that we
13 slow things down on the federal level? I just wanted
14 to make sure what your intentions were, what you were
15 trying to convey to us. But, no, in all seriousness,
16 thank you for those comments. And I think this
17 Commission has been abundantly clear that our intent
18 is never to interfere with economic development
19 activities in a way that's unnecessary or really
20 burdensome. We may not be able to totally step out of
21 the way, we may or may not allow that, but we
22 certainly don't need to make it more complex or really
23 burdensome or unnecessary.

24 Part 571, monitoring investigations; and,
25 Matthew, you touched a little bit on this. The

1 investigation closure letter is probably the highlight
2 of some of the amendments that we're proposing and we
3 put out for discussion. And this is to help, this is
4 to bring some certainty into the practice to do what
5 we can within our authority to allow the tribe to move
6 on from the situation to hopefully have cleared it up,
7 remedied it in whatever manner was appropriate and
8 then move forward so it's not hanging over their
9 heads. That is absolutely the intent. Are there any
10 suggestions or comments?

11 Lael mentioned, and I agree, I was asked a
12 comment whether -- the first suggestion, and I think
13 it's a good one, to look at our terminology under
14 571.4. The investigation, instead of calling it a
15 closure letter to look at maybe perhaps something
16 that's -- that more descriptive and less inferential
17 with other things that we do through the agency.

18 There was also -- a suggestion has been made in
19 the next Section 571.5, which I thought was worthy of
20 noting down, at least during the discussion. On
21 Subsection (a) when an entry of premises there was a
22 request that we look at including perhaps some
23 language, which would provide a notification to the
24 tribe prior to our entry.

25 And then there's also been a lot of discussion

1 about we did include terminology under that same
2 subsection. The Commission's authorized
3 representative may enter the premises of an Indian
4 gaming operation, or any other person. I even brought
5 it out when it came out, that's not the thing to say,
6 but it is a defined term. So under 571.2 a person is
7 defined as an individual, an Indian tribe, or
8 corporation or partnership or other organization or
9 entity. So we didn't lose our mind as far as
10 terminology goes, even though it reads rather odd.

11 MS. HUBER: Bernadette Huber, Iowa Tribe.

12 I may have missed this in the very first part of
13 this session, but in definitions when you say tribe
14 and again this reference is made this time when we say
15 tribe, I think needs to be clarified who do we mean.
16 Do we mean the tribe, tribal governing body? Do we
17 mean the Gaming Commission? Do we mean the operations
18 of the gaming facility? Do we mean the economic
19 development authority who may have control over that?

20 Speaking for the Iowa Tribe, we would like that
21 to be determined by the tribe itself.

22 That the tribe is -- the tribe spokesperson
23 should be who the tribe says, and we feel very
24 strongly about that, going back again to our
25 sovereignty, who our designee is. And that would be

1 the same as who gets notices and who -- any time you
2 say tribe, that's what tribe means. It means the
3 entity that the tribe and in that first tribe means
4 the tribal governing body has designated as the
5 official tribal entity for dealing with NIGC.

6 MS. COCHRAN: Thank you. I -- I'm going to
7 look again at the lawyers in the room. Is there a
8 general definition section that defines tribal are
9 you -- okay. We're looking it up right now.

10 MS. DITTLER: There is a general definition
11 section, but let me check to see what.

12 MS. STEVENS: Okay.

13 (Off-the-record discussion.)

14 MS. DITTLER: It's not defined. It's not
15 defined in IGRA. Oh, I'm sorry, it is.

16 MS. ECHO-HAWK: No, it is.

17 MS. STEVENS: So when actions are taken and
18 they go against the tribe, and the tribe can
19 distribute that out to whomever they have delegated
20 that authority. It's interesting because just from a
21 communication standpoint we hear a lot of different,
22 you need to be talking to me, from tribes. I have the
23 regulator saying, You need to issue that to me or you
24 need to stop giving it to the leadership. Or the
25 leadership says, I'm the governing body, quit giving

1 it to them. So we just do a blanket, but formally it
2 is, you know, our communication is with the tribe
3 itself. So we're, you know, issuing NOV's to the
4 tribe, we're approving management contracts for the
5 tribe, we're approving, disapproving ordinances for
6 the tribes, so.

7 MS. HUBER: It comes in this section in
8 particular because if you are giving notice of entry
9 then, who would you be giving that notice of entry to?

10 MS. ECHO-HAWK: The statute says -- it's in
11 Section 2703 in the definition section, Section 5:
12 The term Indian tribe includes any Indian tribe, band,
13 nation, or other organized group or community of
14 Indians, which is, A, recognized as eligible by the
15 Secretary of Special Programs and Services provided by
16 the United States to Indians because of their status
17 as Indians, and then, B -- which is, I think what is
18 key here -- is recognizes possessing powers of
19 self-government. So the tribal government in its
20 exercise of sovereignty and self-government adopts the
21 ordinance, signs the contracts, sets up the Tribal
22 Gaming Regulatory Agency. So any notice, notice of
23 entry, we're obligated to send it to the tribe itself.
24 The tribe is the entity that possesses those powers of
25 self-government.

1 Now like the chairwoman said, we make a big
2 effort to notify everybody, but our real statutory
3 obligation is something that we must do is provide the
4 notice to that entity that has those powers of
5 self-government, which is the tribal governing body.

6 MS. COCHRAN: Any other comments? Again,
7 the comment period closed on August 9th, but we have
8 not submitted any draft form of a notice so there's
9 still time and we certainly welcome continued
10 dialogue.

11 The last section under this grouping is Part 502.
12 And the NOI, as Lael pointed out, asked whether
13 definition of net revenues for management fees should
14 be revised consistent with GAAP. The essence -- and,
15 again, this is not, certainly not, intended to convey
16 every tribe's perspective, but the essence, a general
17 essence, of the conversations in the 13 consultations
18 that we've done seems to be that GAAP may not be the
19 right way to approach this.

20 And we are also concerned that when GAAP changes,
21 which is something perhaps none of us who sit in this
22 room has control over or input into, that that can
23 have a significant impact into an industry, which may
24 not have been part of the process. So the thought is
25 to perhaps deal with the net revenue side of things

1 and to look at perhaps revisions to net revenue.

2 I don't know if we have any thoughts, if you've
3 given thought to that, if your auditors have provided
4 you some feedback.

5 MS. STEVENS: This issue usually comes up
6 with the finance people in particular. Do we have any
7 of those folks here? Or if you have the opportunity
8 to bring this information or release these questions
9 back to your financial comptrollers, your chief
10 financial officers, whatever you might have, because I
11 think we are bound to some extent to what IGRA says
12 net revenue is. But it does, you know, it comes up in
13 other contexts where tribes -- I'm sure Lael and the
14 vice chairwoman pointed out which compacts and other
15 definitions that appear that don't flow the same as
16 what IGRA has laid out.

17 MS. COCHRAN: If that is the extent of this
18 particular group, I do want to give any opportunity if
19 there are any comments that need to be made again. I
20 know we're getting close to the end of the day. I
21 want to turn it back over to the chairwoman to
22 conclude our meeting. But is there any final thoughts
23 or is anybody not going to be here tomorrow that
24 perhaps needs to make a comment today before they
25 leave? All right. Madam Chairwoman, I'm going to

1 turn it back to you.

2 MS. STEVENS: All right. Thank you, Vice
3 Chairwoman Cochran. I appreciate you taking over the
4 second part of the meeting. I tried to do a little
5 tag teaming here so we don't get too tired. If absent
6 any additional comments, I do want to just quickly
7 review what will be going on tomorrow.

8 We'll be going over Group 5 to talk about
9 self-regulation for Class II, sole proprietary
10 interest, and more, if necessary, about Class III
11 minimum internal control standards. Also Group 3 will
12 be with regard to minimum internal control standards
13 for Class II, gaming and technical standards for
14 gaming and equipment in Class II games.

15 So those will be the topics tomorrow. I will not
16 be here. I have to return to Washington, D.C.
17 tomorrow, but Vice Chairwoman Cochran and Associate
18 Commissioner Little will be here to run the meeting.

19 Do we have any other comments for the record
20 either -- on any of these parts we're talking about
21 today or tomorrow?

22 If not, we're going to bring extra coffee
23 tomorrow, and we look forward to seeing you tomorrow
24 and we'll wrap up today and move on to the last part
25 of the agenda tomorrow.

1 Thank you all for attending and have a good
2 evening.

3 (Proceedings concluded for the day at 3:32
4 p.m.)
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CERTIFICATE

I, Carla S. Kimbrough, do hereby certify that
on August 18, 2011, at the Doubletree Hotel, Tulsa,
Oklahoma, that the foregoing pages constitute a full,
true, and correct transcript of the proceedings held
on the date as indicated.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal at my office in Tulsa County,
Oklahoma, this 29th day of August, 2011.

Carla Sue Kimbrough, C.S.R.
Oklahoma Certified Shorthand Reporter
Certificate No. 1237

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