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NATIONAL INDIAN GAMING COMMISSION
PORTLAND REGION
REGULATORY REVIEW CONSULTATION

TULALIP RESORT AND CASINO
10200 QUIL CEDA BLVD
CHINOOK BALLROOM
TULALIP, WASHINGTON
JULY 14, 2011
9:13 A.M.

REPORTED BY: CHERYL J. HAMMER, CCR 2512

Job No. NJ331347

1 TULALIP, WASHINGTON; JULY 14, 2011

2 9:13 A.M.

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4
5 (Opening prayer.)

6 MR. SHELDON: For those that don't
7 know, she was former chair lady and a long time
8 leader. Her and Debbie Posey, they were a team to be
9 reckoned with. They were tromping around representing
10 Indian intention in the early days. And we thank you
11 for your leadership and all that you have done and
12 what you are doing now. But thank you, Pearl.

13 I'm going to take this time to welcome
14 everybody to Tulalip, especially the National Indian
15 Gaming Commission. Chairwoman Tracie Stevens, welcome
16 home, and thank you very much for making Tulalip part
17 of your itinerary today.

18 Vice Chair Cochran, thank you very
19 much for being with us, and Commissioner Little, Dan
20 Little, thank you. Counsel Lael Echo-Hawk and Jo-Ann
21 Shyloski, thank you. Also Nimish Purohit, if he's in
22 the room, and a lot of your staff that are here.
23 Tracie, thanks for bringing the staff and coming to
24 Tulalip for some conversation today.

25 To all of our elders that are here

1 this morning, thank you very much for being here with
2 us. We appreciate your leadership and what you've
3 done with your different tribes and communities. And
4 to our veterans that are here today in attendance, men
5 and women, we thank you very much for your service to
6 our country and the rich legacy that Indian people
7 have when it comes to participating in the military.

8 Again, to all of you, welcome to Skoho
9 country. A little bit about Tulalip. We're on 22,000
10 acres here and some of it is bordered by salt water,
11 so salmon makes a big part of who we are. We are a
12 fishing community, transitioning into a gaming
13 opportunity that's been presented to us.

14 In your stay here -- is anybody
15 staying in the hotel? Okay. So hopefully it's met
16 their expectations. It's just a modest little bed and
17 breakfast along I-5 here and we have Seattle premium
18 outlets for anybody who enjoys shopping. That's just
19 north of here a little bit. And just to tell you
20 also, soon they will be expanding. They're going to
21 create 90,000 more square feet of shopping space for
22 the ladies, so we're very, very grateful for that
23 opportunity.

24 As some of you may have heard, we also
25 have a Cabela's coming on board here. We recently

1 worked out a contract to deal with them and they hope
2 to be open by April of this coming year. So I've
3 never known who Walmart was until they came to Tulalip
4 and gradually over a period of time my whole closet
5 was Walmart. Well, I can see over a period of time my
6 closet's going to be Cabela's.

7 So it's a great opportunity to, you
8 know, do a little shopping down the road. Also, too,
9 in August, which is right around the corner here, our
10 museum is going to be opened up for a big consumption
11 and we're very, very proud of that opportunity to
12 share who Tulalip is, who the Skoho people are, and to
13 share our history.

14 One of our first exhibits is going to
15 be of men and women veterans, tribal veterans, and so
16 their pictures, their stories are going to be on
17 showcase as well as the rest of the museum. So we
18 hope that in your travels you find the time to come
19 back to Tulalip and of course stay at this little bed
20 and breakfast and then do a little shopping and
21 sightseeing here.

22 So again, to all of you, I wanted to
23 say thank you for the work that you do in Indian
24 country in gaming and some of the conversations that
25 we're going to have today with the NIGC that I believe

1 are going to be positive and fruitful.

2 I think what I've seen is together we
3 can go a lot of places together and that's what we're
4 doing here this morning, is coming together to share.
5 So again, to all of you, thank you for coming to
6 Tulalip. Thank you for sharing this time with us, and
7 a safe journey when it's time to go home.

8 It's not like basketball tournaments
9 where sometimes you'd stay a little longer after the
10 tournament, but when you do get time to go home,
11 please have a safe journey. So thank you very much,
12 Chairwoman Tracie.

13 CHAIRWOMAN STEVENS: Thank you,
14 Chairman. I'd like to take this opportunity now to
15 have everyone at the table -- first of all, if we have
16 tribal leaders in the room, you're welcome to come up
17 to the table. We do try to reserve the table for
18 tribal leaders or who they designate to speak for
19 them, so please feel free. We also understand that
20 folks are shy, if you want to sit in the back, but
21 that's who we intended the table to be for.

22 I'd like to have the folks at the
23 table introduce themselves and start way down there
24 and we'll come around this way with the tribal
25 leaders. And after we do that, we'll introduce the

1 commission and staff.

2 MR. SPENCER: Good morning. Warren
3 Spencer, Yakama Nation tribal council.

4 MS. JACK: Good morning. Dolce Jack,
5 Yakama Nation.

6 MR. GEORGE: Good morning. Richard
7 George, Yakama tribal council.

8 MR. CORPUZ: Good morning. Max
9 Corpuz, Jr., Yakama tribal council.

10 MS. VYVYAN: Good morning. Dawn
11 Vyvyan, attorney for Yakama Nation.

12 MR. MINKER: Fred Minker, director for
13 Jamestown.

14 MS. JACKSON: Tina Jackson,
15 chairperson, Suquamish Tribal Gaming Commission.

16 MR. LEWIS: Bardow Lewis, Suquamish
17 tribal council.

18 MR. ARMSTRONG: James Armstrong,
19 Suquamish tribal gaming executive director.

20 MR. HANSON: Daniel Hanson, Port
21 Gamble Tribal Gaming Commission.

22 MS. HELM: Linda Helm, Port Gamble TGA
23 director.

24 UNIDENTIFIED SPEAKER: Spokane Tribe
25 of Indians, chairman, Spokane Gaming Commission.

1 MR. WYNECOOP: Dave Wynecoop, tribal
2 council, Spokane tribe.

3 MR. WHEAT: Scott Wheat, attorney,
4 Spokane tribe.

5 MS. GALLOWAY: Shannon Galloway. Good
6 morning. Umatilla Tribal Gaming Commission.

7 MR. FILKINS: Steve Filkins,
8 (unintelligible).

9 CHAIRWOMAN STEVENS: Do we have any
10 other tribal leaders that might be in the seating
11 area?

12 MS. BURCH: Shelley Burch, Snoqualmie
13 tribe. Chairwoman.

14 CHAIRWOMAN STEVENS: Next I'd like to,
15 just following along with the agenda, I'd like to
16 introduce our commission and the staff that we have
17 with us today. I'll start to my right. This is Vice
18 Chairwoman Steffani Cochran. If you want to take a
19 minute to introduce yourself.

20 VICE CHAIR COCHRAN: Good morning. My
21 name is Steffani, and I am a vice chairwoman. I am a
22 member of the Chickasaw Nation, and it's a pleasure to
23 be here. Thank you, Mr. Chairman, for having us here
24 and hosting us.

25 I did ask Chairwoman Stevens this

1 morning if the Coach outlet store had a voluntary van,
2 because I found myself going over there yesterday. So
3 thank you for allowing us to come here today and it's
4 nice to see everybody sitting here. I look forward to
5 the conversation.

6 CHAIRWOMAN STEVENS: Associate
7 Commissioner Dan Little.

8 ASSOCIATE COMMISSIONER LITTLE: Good
9 morning, everyone. I actually want to say welcome
10 everyone, and I look forward to hearing from
11 everybody. I want to make a special point to thank
12 the chairman for recognizing our veterans. As a
13 fellow veteran, and I know the chairman is a veteran,
14 you know, dedication from the native community to our
15 military efforts is not forgotten by me. So I really
16 appreciate all the veterans here.

17 I also want to remind all the folks
18 that are staying here in the hotel, the NIGC, we
19 obviously can't gamble at any of the gaming
20 facilities, so we are staying at the Holiday Inn
21 Express. So all of you that are staying here, please
22 don't prove me wrong.

23 In any event, I welcome you all. It's
24 great to see some of the folks that are here from the
25 Yakama Nation from our consultation in Coeur d'Alene.

1 It's good to see you and all the others that are here
2 from the Spokane tribe. So thank you. Welcome.

3 CHAIRWOMAN STEVENS: And my name is
4 Tracie Stevens. I'm the chairwoman of the National
5 Indian Gaming Commission. I am a member of the
6 Tulalip tribes here. This is our -- I think we're on
7 number 10 consultation. I do want to recognize the
8 staff that we have with us here today. Mark Phillips,
9 many of you know Mark Phillips. He's our regional
10 director, back there. Vida Bishop, she's a field
11 investigator. I think she's out front right now.

12 Steve Steiner, who is a field
13 investigator, back there with the transcriptionist.
14 Dan Catchpole. There he is. He's a senior auditor.
15 Rayanne Morris is also with our enforcement division.
16 She's right here. Additionally we have Nimish Purohit
17 right here. He is our gaming technology trainer, but
18 he's also our acting training director right now.

19 Jo-Ann Shyloski -- why do I just
20 murder your name -- Shyloski with our general
21 counsel's office, and also Lael Echo-Hawk down here on
22 the left here, she's counselor to the chairwoman.

23 So I do want to give a shout out to
24 all of our staff. They're critical in making sure
25 that these consultations are well organized, we are

1 prepared as a commission to hold this meeting and have
2 a discussion so that we don't worry about the things,
3 other than the discussion. Like making sure that the
4 transcriptionist has everybody's names, everybody gets
5 in here, make sure the room is in order. So I want to
6 say thank you to the staff.

7 In looking at the agenda, we've been
8 playing around with how to manage these number of
9 regulations and so we want to talk about -- before we
10 begin, we want to talk about the agenda, and this is a
11 two-day agenda that we've just begun about three weeks
12 ago, and because we have so many regulations that we
13 want to cover, we've broke them up after hearing from
14 tribes, you know, when are you going to talk about
15 regulation X and having it be more defined.

16 But also, we recognize that many
17 people come here, especially tribal leaders, who have
18 a very full schedule, have prepared statements that
19 they would like to submit for the record. And so we
20 have periods of time throughout the agenda -- and
21 just, by the way, at any time on the agenda, you know,
22 if you need to make your statement and get on with
23 your business, we certainly welcome it and it's always
24 open for anyone who needs to make a statement.

25 It doesn't necessarily have to be in

1 this order. So, you know, for example, tomorrow we're
2 scheduled to talk about minimum internal control
3 standards and other things, but if today is the only
4 day you're going to be here or this morning is the
5 only time that you're going to be here, we will
6 welcome your statements or comments that you may need
7 to make before you leave.

8 So what we'll be doing -- and Lael
9 will go over this in more detail -- is we're just
10 going to go by sections and groups and do this in
11 manageable pieces so we don't overload you. We didn't
12 want to come in and do a very long power point and
13 just hit you with a fire hose. So we're going to just
14 take sips here and talk about these particular issues
15 that are in varying stages of drafting and discussion.

16 Also, you have your packet that was
17 given to you when you came in that has any of the
18 discussion drafts that -- it contains any discussion
19 draft that we have posted on the website now or has
20 been posted, and then also you have a copy of the
21 power point so you can follow along and take notes.
22 So that's how we're structured with this.

23 Again, you know, we'll follow and do
24 bits and pieces of the regs, but you're always welcome
25 to make statements as you need to. We'll be taking

1 breaks and we'll be opening the floor for discussion
2 after we do some of the power point and open up the
3 floor for discussion after that.

4 So at this time, before we begin our
5 power point and opening up on group one, if there's
6 anyone that has some time sensitivity and needs to
7 make a statement on the record, we have scheduled time
8 for that right now if anyone needs to make their
9 statement or read a written statement. If not, do we
10 have anyone that needs to make a statement to the
11 record right now?

12 Okay. The other thing too, just so
13 you know, Mark Phillips has a microphone, so if
14 there's anyone in the back that needs to, you know,
15 make a statement or has questions throughout, we have
16 a mic runner. He is a working director. He's not
17 above running the mic and moving a chair. We were all
18 in here moving the chairs around this morning.

19 Okay. So at this time I'd like to
20 turn this over to Lael Echo-Hawk. She's been traffic
21 control on our reg review process, and we're going to
22 go through the first portion of our agenda on group
23 one and you'll see on the agenda which parts that
24 would cover. So Lael, if you could take it away.

25 MS. ECHO-HAWK: Good morning. As

1 Chairwoman introduced me, my name is Lael Echo-Hawk,
2 and I'm a member of the Pawnee Nation of Oklahoma.
3 It's very nice to be here. And thank you very much
4 for the welcome, Chairman. I worked here for six and
5 a half years and it's a little bit like coming home,
6 so it's nice to be back in the Northwest.

7 As you can see in the agenda, the
8 morning is dedicated to group one. In your packet you
9 do have copies of discussion drafts and regulations
10 included in that group. Parts 514, which is fees, and
11 part 559 of the facility licensing regs, so those are
12 in your packets if you want to refer to them
13 throughout the presentation.

14 The first thing that we need to cover
15 is we just need to emphasize again that this is tribal
16 consultation. These meetings are between tribal
17 governments and federal government. Only tribes and
18 their designees can attend and participate in these
19 meetings and they are not open to the public.

20 If you do or you are a member of the
21 public and you would like to make a comment, you can
22 send in those comments to us through email, written
23 form, but at this time these meetings are between the
24 tribal government and the federal government.

25 These consultations follow along with

1 the commission's commitment to the executive order
2 consultation in coordination with Indian tribes.
3 These consultations, particularly, also emphasize the
4 commission's commitment to talking with tribes before
5 they begin drafting, before they begin promulgating
6 rules.

7 Section C3 says that in determining
8 whether to establish federal standards, consult with
9 tribal officials as to the need for those standards,
10 and so that's a process that we're in here now. We're
11 talking with tribes before we begin the formal
12 rule-making process.

13 As the chairwoman discussed earlier,
14 we divided these groups of regulations into five
15 different groups. The number of the group does not --
16 has no bearing on the priority. It was just we looked
17 at subject matter, comments from the Notice of
18 Inquiry, estimated time and resources to review those
19 regulations. So we've had that question before and
20 the group numbers are just, that's just where they
21 fell out and it doesn't indicate priority.

22 There are three phases to this process
23 and we are in phase one today. It's the preliminary
24 drafting phase. Although you have seen two rules
25 written comments on the discussion draft at least

1 closed, following a drafting period, there may be a
2 period of time for a Notice of Proposed Rule Making.

3 The commission has committed to having
4 a minimum of 60-day written comment period if we issue
5 a Notice of Proposed Rule Making. I've had that
6 question come up. So that's just for your information
7 that there will be at least a 60 day written comment
8 period for any Notice of Proposed Rule Making.

9 And then finally, if after the Notice
10 of Proposed Rule Making it's clear that we need to
11 have a notice of or we need to have a final rule, then
12 there's the final rule making, Notice of Final Rule
13 Making.

14 All these preliminary discussion
15 drafts that you see -- and we do have a number of them
16 in your packet -- are initial working drafts. All
17 these consultations are also transcribed, so when you
18 do speak, if you have comments, if you could please
19 state your name and the tribe that you're with or
20 representing, that's very helpful to us to make sure
21 that the transcripts are accurate.

22 Additionally, all the written comments
23 that are submitted and the written transcripts are
24 posted on the NIGC website. That's NIGC.gov, and if
25 you click the tribal consultation tab, you can find

1 all this information.

2 The commitment by the commission has
3 been that every comment will be reviewed and
4 considered. I can speak from personal experience that
5 we've all looked at these. We've got binders we carry
6 around with us. We make sure that we stay up to speed
7 on the comments that you bring in, the staff does and
8 certainly the commission.

9 Any proposed or final rule will
10 include a summary of comments. We've seen that come
11 out with our Notice of Inquiry and in the Notice of
12 Regulatory Review agenda that we put out in April, and
13 the commission is committed to a clear and transparent
14 process. And so we're posting everything, we're
15 inviting everyone to speak, and we want to make sure
16 that everyone knows what's going on as we move
17 forward.

18 So the agenda today covers all five
19 groups and this is in your power point packet, so I'm
20 not going to go through all them. But today we're
21 going to be going through groups one, two and -- one,
22 two and four, and tomorrow we're going to be
23 discussing groups five and group three. So that's
24 just a sort of an index for you. That's in your
25 handout with a copy of the power point.

1 So right now, this morning, we're
2 going to be going over group one, and that group
3 contains part 514, the fee regulation, which is in
4 your packet, part 523, review and approval of existing
5 ordinances or resolutions, part 542, minimum internal
6 control standards for Class III gaming, part 559,
7 facility license notification, renewals and
8 submissions, and then finally, potential buy Indian
9 regulation or policy.

10 Again, the two handouts that are in
11 your packet are parts 514 and part 559. So if you
12 look at part 514, this draft was posted in April, end
13 of April, and all of these regulations, draft
14 regulations, are on the website as well. If you don't
15 want to carry the packet home with you, you can always
16 find this information on the website.

17 The discussion draft makes a number of
18 changes. One of the changes that we heard and was
19 made was included in this draft was that basing the
20 fee calculation on the gaming operation's fiscal year
21 instead of a calendar year could provide for more
22 accurate fees calculations. That's included in the
23 draft.

24 The fee rate is now being -- the new
25 regulation would change the publication of the fee

1 rate from February 1st to March 1st. This allows the
2 agency to get in all the fees, look at the audited
3 financials, and then make sure that the preliminary
4 rate that we set is as accurate as possible.

5 There's been some removal of
6 terminology that just doesn't really make sense.
7 Quarterly payments moving from a semi-annual payment
8 to -- back, actually, back to quarterly payments.
9 Some of you recall that the agency made the move to
10 semi-annual, and now we are going back to quarterly
11 payments. This doesn't prevent anyone from prepaying
12 or anything like that, but the statutory requirement
13 and now the regulatory requirement will be quarterly
14 payments.

15 We thought that some sections of the
16 regulations were not clear and so we clarified -- we
17 attempted to clarify those sections as we could. We
18 also added a notification period for when a gaming
19 operation changes their fiscal year.

20 One of the comments -- many, many
21 tribes commented on this new section, which proposes a
22 late payment or a late fee sort of ticketing system.
23 That's what we call it sort of in the agency, is
24 ticketing system for when a tribe submits their fee
25 statements or their audited financials with their fees

1 late. So instead of having a Notice of Violation
2 issue if a gaming operation is late in submitting
3 their fees to us, this adds a layer of sort of
4 escalation, much like just a penalty you would receive
5 if you got a parking ticket, for example.

6 It makes a distinction between what a
7 late payment is and then what failure to pay your
8 annual fees are. That is the -- if you're interested
9 in looking at that, that's on page -- it begins on
10 page 4 and 5.

11 So if you fail -- if you're simply in
12 the late payment category, then you failed to pay your
13 fees between zero to 90 days, after 90 days, the
14 definition then says that failure to pay your annual
15 fees happens on the 92nd day and at that point the
16 chair could issue a Notice of Violation if she chose.

17 Some of the other comments that we've
18 heard from tribes is that we heard some comments on
19 what the percentage should be or what the dollar
20 amount should be if a tribe is late paying their fees.
21 It is something that we're interested in hearing
22 comments on. There are blanks left in the current
23 draft for those, what the potential late fee or fine
24 could be.

25 It also allows for an appeal of those

1 assessments, and so that's something that if you had
2 comments on, we'd like to hear if you have any
3 questions.

4 We also added -- this is simply
5 formalizing what we do when the agency processes
6 fingerprints for tribes. It clarifies how we collect
7 them and that the fee will be published biannually on
8 the same dates as we publish the preliminary fee rate
9 and the annual fee rate.

10 So if we have some questions that are
11 included in the power point, just these are
12 terminology questions and we've heard that admission
13 fee doesn't really -- it's not what the industry
14 standard is; that we should change admission fee in
15 the regulation to entry fee and then perhaps put
16 terminant fees in as an example for an entry fee.

17 The terminology just didn't seem to
18 work for the industry and so we want to try and make
19 it more uniform so that it makes sense to the people
20 that are trying to calculate the fees. So if you had
21 comments on those, we'd like to hear that.

22 There's also been some discussion
23 about whether or not we should use the definition
24 gross gaming revenue, change it to a GAAP definition.
25 We've also heard that this may not -- we may not be

1 able to do this because of the definition included in
2 the statute. We didn't make that change in this draft
3 because we sort of had comments all over the board.

4 One of the suggestions that came up,
5 though, is that instead of changing the definition for
6 gross gaming revenue, that we should consider defining
7 what a wager and a payout is and that might clarify
8 it, how to make the actual calculation as you're
9 completing your fees. So if you have comment on that,
10 we'd like to hear that. I know the operations people
11 in the finance offices might have some comment on
12 that.

13 So written comment on this draft
14 closed on May 31st. It was open for 30 days, but if
15 you have comments today, we'd like certainly to hear
16 them.

17 The 523 is what appears to be an
18 obsolete regulation and we're just wondering if the
19 part should be repealed. So far all the comments have
20 come in and have said yes, it's an obsolete reg.

21 MR. OSBORNE: Marvin Osborne. I'm
22 with the Shoshone-Bannock tribes. Before we go too
23 far, I just want to get a clarification. If you're
24 going to change the GAAP -- well, what's being
25 proposed, and if we're going to look at standards that

1 we have to comply with with the general accounting
2 practices of the tribe involving federal agencies, it
3 always seems important to us that we be consistent
4 with our accounting practices and that's why the GAAP
5 -- we recommended that the GAAP be included in that.

6 If you're going to change it or
7 propose to change it, I'd suggest that you tell us
8 what and why are you proposing to change that system
9 to go back to another type of system or clarify what
10 you want to do, because then we could give our
11 accounting people and address that situation;
12 otherwise, you know, things are going to slip and go
13 through and it may not be what we want.

14 I don't know if it's on a case-by-case
15 basis or if it's every time. We'd like to be
16 consistent with the tribe, and that's a complication.

17 Just one more thing too. Enforcement,
18 back up on the enforcement issue. I didn't quite hear
19 whether or not the Colorado case was going to come to
20 a conclusion, if that was going to be addressed,
21 because we're talking about enforcement and if you're
22 going to set enforcement standards here or propose it,
23 you know, we'd like to have a clue so we can get off
24 on the right foot instead of waiting for things down
25 the way and say no, we haven't changed it.

1 (Unintelligible.)

2 CHAIRWOMAN STEVENS: Thank you, sir,
3 for your comment. There was a lot of discussion
4 around GAAP internally, and the reason that GAAP came
5 up was because tribes suggested that we try to align
6 ourselves with GAAP. But I might defer to either Lael
7 or Jo-Ann about sort of the hurdles that GAAP creates.
8 I think there's varying definitions as that apply from
9 state to state. Is that the case?

10 MS. ECHO-HAWK: I'm sorry?

11 CHAIRWOMAN STEVENS: What were some of
12 the internal conversations about the issues
13 surrounding why or why we could not use GAAP?

14 MS. ECHO-HAWK: The main issue is that
15 the act defines gross gaming revenue in a specific
16 way. It's basically wagerless payout. That's less
17 than clear and it doesn't -- it has led, that
18 definition has led to some confusion in how you
19 calculate your fees.

20 Everyone sort of defines their pay or
21 wager differently. Some people define a payout
22 differently. Sometimes you include things in wager or
23 don't or forget to take some things out of the payout,
24 so that the calculation when it all comes together
25 it's incorrect.

1 One of the suggestions internally was
2 maybe we go to GAAP. Then after we took a look at
3 that and began really evaluating what that would mean,
4 it would be different than what the statutory
5 definition is in the act and so the consensus sort of
6 as we were putting the draft together was, well, let's
7 not change it. It doesn't appear that a GAAP
8 definition, the new GAAP definition is going to meet
9 the act's requirement, but perhaps we can get at it a
10 different way.

11 Because what the goal was was to
12 provide some clarity in how you make these
13 calculations. It is a confusing process and we
14 actually have done like fee 101 calculation ourselves
15 in preparation for these meetings.

16 It's a complicated calculation to
17 make, certainly, when you are doing things such as
18 promotions and comps and all of those other kind of
19 things that maybe are included as the wager, but
20 shouldn't be included in the calculation of a payout,
21 you know, sort of wagering with the operation's money.

22 If you get, say, a match played, all
23 those sort of incidences that come up and then how do
24 you include or subtract them from the calculation of
25 the fees that come to the NIGC, which is how we got to

1 let's leave this, leave the definition of GAAP alone,
2 use the statutory definition, and then perhaps we
3 should think about defining wager and payout.

4 So that was sort of the thought
5 process behind it and we're still sort of looking for
6 how we can assist tribes in making those calculations
7 accurately so we don't have to have fee audits. And
8 if there's some way we can do that at the agency, then
9 we'd certainly like to hear it.

10 CHAIRWOMAN STEVENS: Is there anything
11 more to add, Jo-Ann?

12 MS. SHYLOSKI: The only thing that I
13 wanted to add is that GAAP also changes, is
14 susceptible to change, and so incorporating it into
15 the definition would then create instability. When it
16 changes, then the definition would change.

17 CHAIRWOMAN STEVENS: So that's the
18 background on where we're at and why we're looking at
19 GAAP and why we're looking at another way around that,
20 to avoid the problem that may happen as a result of
21 applying GAAP by using definitions of wager and
22 payout. That might get us to where we need to go, and
23 we are certainly open to your comments on that.

24 With regard to Colorado River Indian
25 tribe, I assume you mean how Class III internal

1 control standards are going to be managed? Yeah, we
2 have some enforcement regs that are up and I think
3 they're with regard to the appeal process. That's
4 really all we're looking at.

5 In terms of actual enforcement
6 regulations? Regarding Class III minimum internal
7 control standards, we'll be talking about that more
8 tomorrow, but we do want to hear about the tribes and
9 how they handle Class III, because it varies all
10 throughout the country.

11 We have tribes that have written us
12 into their ordinances to allow us Class III
13 enforcement. There are several tribes in southern
14 California, other tribes have them, our regulations,
15 Class III regulations, written into their compacts.
16 There are tribes as in Washington that don't need the
17 Class III, Class III minimum internal control
18 standards, because the state and the tribes already
19 worked out the minimum internal control standards and
20 there's not a need there, from what we understand.

21 So we would like to hear how Class
22 III, our Class III three-way regs work or don't work
23 for you or the need or no need. And then we'll also
24 be talking about how are we going to proceed with not
25 just Class III MICS, because really the question's on

1 the table right now about that are leave them in
2 place, repeal them, revise them and promulgate them
3 again, although that presents a problem, because the
4 Colorado River Indian tribe decision basically said
5 that we don't have the authority under the statute to
6 enforce nor promulgate minimum internal control
7 standards for Class III.

8 So but then again, we don't want to do
9 -- we're trying to make sure that that area is as
10 covered as it needs to be, which, you know, depending
11 on which tribe and what area and what compact and what
12 ordinance you have, is going to differ. We don't want
13 to leave anybody behind. We don't want to upset apple
14 carts, and because we have so many differing needs out
15 there, we're counting on tribes to tell us what their
16 need is and also help us come up with a solution that
17 doesn't leave anybody behind. So we'll be talking
18 about that more later.

19 Also the possibility of we have a lot
20 of regs, as you've seen, that we're looking at. Some
21 of them are a little easier to do some clean-up work
22 on, things that we're talking about today. The Class
23 III MICS and the technical standards, Class III, Class
24 II and technical standards are some sort of hefty
25 topics, very detailed and specific controls and

1 regulations.

2 And we've been hearing again and again
3 through this whole process since November the desire
4 for a tribal advisory committee to deal with those and
5 having those be on a separate parallel track, because
6 they're so work intensive and really address the
7 issues that have been lingering for a number of years.
8 It is our desire as a commission to bring some closure
9 to those.

10 I know all of you as regulators, you
11 know, the drafting, the finalization, the
12 implementation time for Class II, it's all been sort
13 of pending for years and that doesn't help your
14 operation, your facilities, your regulatory bodies.
15 It does not give certainty. We really want to bring
16 this to some closure.

17 So if we need to take those three kind
18 of hefty items and move them down a separate track
19 parallel to all these others that are really a little
20 easier to manage, we're getting really good feedback,
21 we're willing to do that. We're looking at other
22 options to make sure that we can address those, but
23 we'll be talking about that tomorrow and getting
24 thoughts. If you have thoughts about those as we
25 proceed, we're open to hearing those.

1 I hope, Mr. Osborne, that that helped
2 clarify when we're going to get to the MICS. I think
3 that was the question around Colorado River Indian
4 tribe.

5 MR. OSBORNE: (Unintelligible) feel
6 like we're wasting our time and we had certainty.

7 CHAIRWOMAN STEVENS: Right. I agree
8 with you and I think the commission, we fully agree
9 with you, as having come from tribes ourselves, that
10 uncertainty makes it hard for you to do your job and
11 that doesn't help the industry and we do want to bring
12 it to some finality.

13 So with that, I'll have Lael continue
14 on. We were on the repeal of the prior to 1993, the
15 existing ordinances. We haven't heard anything but
16 just pull it back. It's not needed. So she'll
17 continue from here on 559 facility licensing.

18 MS. ECHO-HAWK: You should have 559 in
19 your packet. As you can see, we did strike a number
20 of the provisions. The Notice of Inquiry asked if we
21 should revise this part and we received a lot of
22 support. There was a significant concern about how
23 the part was adopted and perhaps we needed to open it
24 back up for consultation. There were comments about
25 what authority, questioning the authority the NIGC had

1 over the Environmental Public Health and Safety issues
2 as well.

3 So we looked at the draft or we took a
4 look at the reg and we made some changes. We included
5 a change. The time frame that currently allows for
6 120 day notice fee NIGC and the facility license. We
7 changed that from a 60 day -- to a 60 day extension if
8 the chair, if the chair needs the extra time at her
9 discretion. It also includes a provision for
10 expediting the process when circumstances permit. And
11 this is all on the first page of the draft.

12 Newly issued or renewed licenses to be
13 sent to the NIGC within 30 days. An attestation that
14 says that the construction and maintenance of the
15 facility and operations conducted in a manner which
16 adequately protects environmental health and public
17 safety. This attestation replaces the requirement in
18 the previous reg that the tribes send in all this
19 information.

20 There was a lot of concern about the
21 information. That it was duplicative. That other
22 government agencies had it. Why do tribes have to
23 send it into the agency as well. So the new reg just
24 simply requires a certification attesting that that
25 construction is constructed in a manner that complies

1 with IGRA.

2 We also included a provision that
3 notice to the NIGC be given within 30 days when the
4 license is terminated or expires or a facility closes
5 or reopens. One of the things that we ask in the --
6 well, we include in the regulation, and we left as a
7 blank, is if there's a seasonal closure, there's no
8 need to send in the Notice of Closure, but if it's a
9 temporary closure, for example, if someone's replacing
10 a roof or there's an entire remodel of the facility
11 going on and the tribe needs to close that operation
12 for X number of days, months, we're looking for some
13 input on how long should a temporary closure be before
14 a notice needs to be sent to the NIGC that the
15 operation is closed.

16 Obviously, we need to be aware of what
17 operations are running. Our enforcement, the region,
18 they need to know, you know, the facility is running
19 or if it's closed. But at what point, sort of what's
20 the trigger, and so that's why there's a blank left in
21 that particular section of the draft.

22 Written comment on that regulation
23 closed on June 17th, but if you have comments, we
24 would certainly love to hear them.

25 Finally, we were considering, and we

1 still are thinking about internally, because it turned
2 out to be a little more difficult -- easier said than
3 done -- if you go through the official route of a buy
4 indian regulation much like the BIA or the IHS has.
5 So we're trying to figure out a way that the NIGC --
6 to require the NIGC to buy Indian when purchasing
7 goods, services and property.

8 It's certainly supported by the act
9 and it obviously is something that we've heard from
10 Indian country and that the commission coming from --
11 each of them coming from tribes recognize that it's
12 important to tribes that federal agencies be required
13 to purchase Indian, qualified Indian products and
14 contract with qualified Indian businesses when doing
15 business.

16 So something that we're thinking about
17 and we've heard general support of and if you have
18 ideas or thoughts on that, then we would also like to
19 hear them.

20 Finally, for group one, as the
21 chairwoman said, and I won't repeat in nauseating
22 detail, the question for Class III MICS, what do we do
23 with Class III MICS? How do we address it? This
24 impacts tribes differently across the country. You
25 have tribes that have written the NIGC MICS into their

1 compacts and their ordinances and in fact all the
2 rights by law, the tribal law, the NIGC to enforce the
3 Class III MICS.

4 You have other tribes, a number of
5 them in Oklahoma, who reference Class III, the NIGC
6 Class III MICS in their compacts. How do we address
7 this sort of varying trend of Class III MICS and
8 regulatory authority and where should the commission
9 take action.

10 So it's something that the commission
11 is thinking about and we'd love to hear more comment
12 on it. I think the chairwoman sort of summarized how
13 we're thinking about it internally and we certainly
14 will talk about it more tomorrow as well.

15 We heard a lot of comment. These are
16 included in your packet and I won't go over them again
17 here because I think the chairwoman did that earlier.
18 So that's sort of the summary of group one and we are
19 -- I'll give it back to the chairwoman. The rest of
20 the morning is dedicated to these topics.

21 CHAIRWOMAN STEVENS: Thank you, Lael.
22 I want to thank everybody for patiently waiting as we
23 go through one portion of the power point. So those
24 are the topics that are up for discussion right now.
25 Certainly, again, I want to reemphasize if there's

1 other topics that you're needing to discuss because of
2 your schedule, certainly do so.

3 If you have any questions about what
4 we've talked about so far or any of the drafts that
5 you have in front of you, please let us know. If you
6 have comments, please feel free to make them now.
7 We're basically going to open the floor for comments,
8 questions, any prepared statements. So we have an
9 open mic.

10 I do want to reemphasize, as the vice
11 chairwoman just reminded me, all the drafts that you
12 have right now are discussion drafts only. We've made
13 a concerted effort to make sure that that's on this
14 paper.

15 We're doing something that you may be
16 familiar with. The senate committee has done this in
17 the past. None of these have started to go into the
18 formal rule-making process yet. In an effort to
19 comply with Executive Order 13175, consultation
20 coordination with tribal governments, we want to get
21 your input before we start the rule-making process and
22 that's what has informed the draft that you have in
23 front of us is the number of consultations prior,
24 comments we've received prior to the issue of this
25 discussion draft only.

1 So just a reminder these are not in
2 any official rule-making process at this time. We
3 want your input before we go into Notices of Proposed
4 Rule Making.

5 Jim Bob, you look like you have
6 something to say.

7 MR. ARMSTRONG: I do. I was reviewing
8 this facility license notification rule and
9 submissions, and the previous documents stipulated
10 that you could renew your license every three years or
11 had a requirement to renew every three years. When we
12 do a renewal, is there a time frame on when the tribe
13 has to renew a facility license? Number one, it looks
14 like it's geared for a new facility and not an old
15 facility. So I need a little clarification on that.

16 CHAIRWOMAN STEVENS: Thank you, James,
17 for your comment. I'm sorry. Do I sound like your
18 mother? We get a number of questions about that
19 particular area because of the current regulation that
20 does stipulate renewals and renewal time frames.

21 What this draft does is it defers to
22 the tribe and the tribals, the tribes, what the tribe
23 requires. That may be different, but we ask that when
24 there is a renewal, that you just let us know. So the
25 deference is to the tribe and what they set for their

1 licensing. You just need to let us know. Then I'll
2 let Lael follow up.

3 MS. ECHO-HAWK: The old regulation
4 required a gaming operation to -- you could only have
5 a three-year facility license, basically. This
6 changes that. You can have a facility license for as
7 long as you have a facility license. You only need to
8 notify us if you close that facility license or if the
9 facility license expires and then is renewed.

10 The time frame, there is none. We
11 just need to know if you're open or if you're closed.

12 MR. ARMSTRONG: What we had done
13 earlier before is the old regulation we put a lifetime
14 expectancy on that license until that regulation came
15 into play. So that's what needed a clarification.

16 MS. ECHO-HAWK: This regulation would
17 allow for that.

18 CHAIRWOMAN STEVENS: Any more?

19 MR. ARMSTRONG: Yes. Now I'm going to
20 the annual fees and the licensing fees and the --
21 currently, you're going to change, let's say, the
22 fingerprint fees. Are you currently billing on a
23 monthly basis at this time or are you billing a
24 different standard at this time to enable this change
25 on a monthly basis?

1 CHAIRWOMAN STEVENS: Are you talking
2 about fingerprints or the annual fee?

3 MR. ARMSTRONG: Fingerprints.

4 CHAIRWOMAN STEVENS: I think
5 fingerprints are based on when tribes submit. When do
6 we have them pay? It's monthly now, for the tribes
7 that have us do that work.

8 MR. ARMSTRONG: And previously they
9 would accept a bulk payment at the beginning of the
10 year and work it down from there. So maybe you could
11 have some language in there that we could make an
12 annual bulk payment at the start of the year and work
13 it down so that and find the balance at the end of the
14 year.

15 For example, give me \$30,000 at the
16 beginning of the year and you just deduct from that as
17 we go throughout the year and if we go over or under,
18 we still have money in the bank.

19 CHAIRWOMAN STEVENS: Okay. We can
20 check with our comptroller on that and we appreciate
21 that. I don't know that we've heard that response
22 yet, but we would need to make sure that we can still
23 do that and that we have mechanisms in place
24 internally so that if you're over or short, that we
25 have mechanisms to either send the money back or get

1 more money if the fees are greater than what you've
2 paid.

3 MR. OSBORNE: (Inaudible.)

4 MS. ECHO-HAWK: This section was only
5 meant to formalize what we currently do. So it
6 doesn't make any changes. We just wanted to put it
7 out if there was nothing on the regulation that
8 explained how that works and so that was what we were
9 trying to do here.

10 MR. ARMSTRONG: And I think that we
11 could have language added to that where it's at the
12 beginning of the year the tribes could pay in bulk and
13 then you can credit it out to the next year if you
14 have to. Talk to your accountant or to your
15 comptroller what you can do.

16 MS. HELM: I think what Jim Bob is
17 referring to is what we do at Port Gamble is periodic
18 \$600 deposits. So we'll use up the \$600, then we send
19 in another \$600 deposit.

20 CHAIRWOMAN STEVENS: Do we have any
21 other questions? Yes? No. If you could state your
22 name for the record.

23 MR. WHEAT: Scott Wheat.

24 CHAIRWOMAN STEVENS: Maybe can you
25 bring the mic over a little bit?

1 MR. WHEAT: Are you recording this or
2 is it because I'm not loud enough?

3 CHAIRWOMAN STEVENS: No. I know
4 you're loud enough. This is for the
5 transcriptionist's sake. I just want to remind
6 everybody, if you can speak into a microphone and
7 state your name and who you're with for the record,
8 that would be great. Thanks.

9 MR. WHEAT: Again, Scott Wheat,
10 attorney with the Spokane tribe. I just want to
11 commend the commission. You probably have been
12 getting these accolades, but facility licensing was a
13 very long, difficult struggle with, you know, your
14 predecessor, and most tribes, including every tribe we
15 represent, was vehemently opposed to those
16 regulations.

17 That is a C change, and I say, you
18 know, bravo to the commission for considering going
19 this route. It was an unnecessary intrusion and an
20 attempt to vault the NIGC from a well-defined, limited
21 role in tribal gaming into this all-inclusive
22 expansive role of tribal governments in which you're
23 theoretically reviewing, you know, Occupational Health
24 and Safety regulations, environmental regulations and
25 on and on and on and on.

1 As you know, the comments were
2 universally opposed to these regulations in Indian
3 country. So I just want to thank the commission for
4 stepping up, hearing our concerns and erring what I
5 think we all believe to be a significant error of the
6 predecessors. So thank you.

7 CHAIRWOMAN STEVENS: Thanks, Scott,
8 for that comment. We would like to -- and many of the
9 comments that we've received during this process, many
10 tribes explained to us what other federal agency, what
11 other agreement they had with a state or local
12 government or what they had in their own tribal law
13 that covered many of the areas that you mentioned on
14 public health, safety, environmental, and that it was
15 duplicative.

16 Duplicative meaning also costing
17 tribes more money and also creating some confusion as
18 well about, you know, which federal agency am I
19 supposed to be, you know, complying with.

20 So we welcome any tribal comments on
21 the record or in your written comment detailing to us
22 or, you know, clarifying to us how it is that you all
23 covered those areas in whatever manner that you do.
24 We know Indian health is out there. We know some
25 compacts have -- some state compacts require

1 compliance with some state laws. We know that there
2 are memorandums of agreement with local agencies. We
3 know OSHA's out there. We know labor's out there. So
4 feel free to let us know for the record, you know, how
5 these things are covered.

6 MR. WHEAT: And if I could move on to
7 maybe a little bit more difficult issue, the Class III
8 MICS. As I understand, this is the time to comment on
9 that.

10 CHAIRWOMAN STEVENS: If you need to
11 because of your time constraints, feel free to, yes.

12 MR. WHEAT: Well, maybe a point of
13 clarification then. As I read the agenda, the group
14 one discussions where --

15 CHAIRWOMAN STEVENS: Yes, you're
16 right.

17 MR. WHEAT: Okay. So I think I can,
18 you know, from many tribes here in Washington, you
19 know, I'm going to speak for Spokane, but I've got a
20 feeling that you're going to hear some similar views
21 on this.

22 The Spokane tribe litigated in print
23 from the ground up. We spent a lot of time presenting
24 those arguments, which ultimately the federal courts
25 agreed with us on, that the NIGC just simply does not

1 have authority to enforce Class III MICS, period, and
2 I think as you know, and certainly as your lawyers
3 know, the whole administration, you know, back to the
4 well, to the DC circuit court a couple times, trying
5 to say, well, you know, you said we couldn't, you
6 know, have MICS authority this way, how about this
7 way, and the court basically said, you know, what part
8 of no do you not understand.

9 So as a matter of law, you just simply
10 don't have the authority to be doing it. So the first
11 preference of the Spokane tribe is to just get out of
12 the business of promulgating Class III MICS. We
13 believe that that is the correct legal answer.

14 Now, we also understand that this is
15 just, you know, more than technical legal issues in
16 play here. There are tribes in other states that
17 have, you know, kind of put themselves, I should say,
18 with all due respect, in a very tenuous position.

19 We have known in Indian country for
20 years that the authority of the NIGC to found a Class
21 III MICS was in serious question. CRIT has been
22 litigated for many years throughout the administrative
23 level and on up and the tribes prevail.

24 So to the extent that folks knowing
25 that risk made deals with the state, I don't quite

1 understand why that puts the NIGC in the bind to carry
2 the water for what was ultimately a bad decision. I
3 think part of, you know, self-determination is also,
4 you know, the responsibility that comes with cleaning
5 up after a bad decision. We all make our mistakes.

6 That being said, you know, I don't
7 mean to offend those tribes that are stuck, but the
8 position of Spokane is that that shouldn't be
9 Spokane's problem and it's not the NIGC's authority to
10 take on the problem.

11 That being said, I think the other
12 concern -- and this is more of a pragmatic policy
13 concern, and it's no less poignant -- is that if the
14 NIGC is inclined, legal issues aside, to continue
15 promulgating these MICS, whether you call them
16 guidelines or regulations, it doesn't matter, you're
17 still spending staff money and time to promulgate.

18 The courts don't care what you call
19 them, because they don't think you have the authority
20 to promulgate them in the first place. But if you're
21 going to continue to do that on behalf of those
22 limited number of tribes who are in need of those MICS
23 due to obligations in their compacts, then the rest of
24 us shouldn't have to pay for them, period.

25 So if those tribes and the NIGC, you

1 know, I think that's something Spokane could probably,
2 you know, understand and accept. It wouldn't be their
3 first preference on this issue, but it would certainly
4 be, you know, a strong preference to kind of soak in
5 the rest of the tribes with that expense of the NIGC
6 having to promulgate those and update them.

7 It should be a, you know, pay to play
8 kind of thing for those tribes who are committed. So
9 I think that wraps up our comments on that issue.
10 Thank you.

11 CHAIRWOMAN STEVENS: Thank you, Scott.
12 Yes, sir.

13 MR. HARRIS: Robert Harris, eastern
14 Shoshone. This particular area is a primary concern
15 to Eastern Shoshone. The Eastern Shoshone tribe
16 recognize that the internal control standards are
17 extremely important to the Indian gaming industry and
18 more particularly to our tribal gaming due to its
19 intent to provide the protection of tribal assets as
20 well as providing for the integrity of the tribe's
21 gaming operations.

22 In addition, the Eastern Shoshone
23 recognizes the need for consistency in the auditing
24 process of internal control standards in the Indian
25 gaming operation.

1 Experience has shown that many tribes
2 that offer Class III gaming have used the NIGC's
3 bulletins as clear direction to follow certain
4 guidelines and have used said bulletins as primary
5 guidelines for purposes of regulating Indian gaming.

6 Eastern Shoshone believes that tribes
7 that offer gaming are just as technically
8 knowledgeable and professional as most non-Indian
9 gaming commercial entities and are aware that if they
10 did not develop and institute their own tribal
11 internal control standards that they would in effect
12 be opening itself up to illegal activity.

13 Eastern Shoshone looks to industry
14 standards in the gaming area and if it does not
15 have the expertise or technical ability in certain
16 gaming areas, it retains the expertise to carry out
17 what is needed to protect its gaming operation for the
18 benefit of its tribal members.

19 It is our tribe's belief that it
20 performs the due diligence required in relation to
21 following industry standards, whether or not a
22 regulation requires it. Should part 542 Class III
23 MICS be eliminated and replaced with guidelines, it is
24 Eastern Shoshone's opinion that the tribes will
25 continue to institute industry standard internal

1 controls in the area of Class III.

2 As to those tribes who have
3 incorporated 542 Class III MICS in the ordinance or it
4 is a part of their compact, there may be resulting
5 challenges, but we believe that most tribes have
6 appropriate internal controls in place and that the
7 internal control guidelines would be used to supplant
8 what is in previously adopted ordinances.

9 In summary, Eastern Shoshone would
10 recommend that said internal control standards be
11 issued as guidelines and that they would be provided
12 to the tribes in a bulletin format and be updated on a
13 regular basis as technology changes. Technology is
14 change so quickly that a government notice and
15 rule-making process is not only too slow to keep up
16 with the said changes, but may be prove to be more
17 costly in the long run. Possibly internal control
18 standards could be addressed in recommended changes to
19 tribal ordinances.

20 CHAIRWOMAN STEVENS: Thank you, sir.
21 Feel free, if you'd like, if you want to give us a
22 copy of your statement so that we are certain that we
23 are accurate, that would be helpful.

24 We're up for break right now. Any
25 other comments? We'll take one more right back here.

1 Come right up. Have a seat. After this comment we'll
2 go ahead and take a break.

3 MR. MILHULLEN: Thank you very much.
4 Elliott Milhullen. I'm here on behalf of Seminole
5 tribe of Florida. I have one, I'd like to echo the
6 comments of Mr. Wheat applauding the NIGC for the
7 revisions it's made to the facility licensing
8 regulations. Those are regulations which the tribe
9 also, like many across the country, adamantly opposed
10 for their unnecessary intrusion into areas which are
11 not within the NIGC's purview.

12 We do have one question regarding a
13 new section that has been proposed through these
14 regulations, and the tribe has already submitted
15 comments on this regard and we wondered if we might
16 perhaps get some feedback from the NIGC. 559.2 B
17 suggests that there is a process that the NIGC will
18 follow in verifying any land status, as well as a
19 procedure in which once the status is verified the
20 chair shall notify the tribe.

21 The concern is that this provision
22 could be interpreted as requiring an Indian land
23 status determination or that there's a process for
24 making such a determination prior to some sort of
25 approval of the facility license. The IGRA of

1 coursing recognizes the role of tribes as the primary
2 regulators of Indian gaming and recognizes that tribes
3 are the ones with the authority to issue the licenses
4 and does not provide a mechanism for NIGC to approve
5 of them.

6 So we wondered if we might get a
7 little bit of clarification as to the intent of this
8 provision and hopefully confirmation of the
9 interpretation or the potential interpretation I just
10 mentioned is incorrect.

11 CHAIRWOMAN STEVENS: I'm going to look
12 at Lael or Jo-Ann. I think primarily, you know, one
13 of our responsibilities under the act is to ensure
14 that gaming is taking place on eligible Indian land
15 and ensuring that that happens preferably before a
16 facility opens, because that causes all sorts of
17 problems, and we've seen in the not too distant past
18 in verifying that the land is in fact eligible for
19 gaming.

20 MR. MILHULLEN: Let me just add one
21 more point, which is that of course the NIGC has the
22 discretion to make that determination on a
23 case-by-case basis, but our concern is that this new
24 regulation might suggest that you are somehow tying
25 your hands and requiring yourselves to do that in

1 every case.

2 MS. SHYLOSKI: Well, we certainly
3 appreciate your comments and the commission is well
4 aware of the Ninth Circuit's ruling in the North
5 County case, which held that general ordinances that
6 aren't site specific do not require Indian land's
7 determination. So again, thank you for your comments.

8 CHAIRWOMAN STEVENS: Lael.

9 MS. ECHO-HAWK: One of the comments I
10 received very extensively when we put out the Notice
11 of Inquiry, and we've seen even now, is that tribes
12 were concerned about the 120 days. In the current reg
13 there's 120 day requirement or the tribe has to send
14 in their facility license to the NIGC within 120 days.

15 Now, there's no nothing sort of
16 following that, no action indicating the reg that the
17 chair needs to take, but the 120 days was concerning
18 to tribes. So what that section attempted to do was
19 to tell the NIGC to move it along. If you're
20 conducting these reviews to go ahead and hurry that
21 up. We included a provision for expediting that.

22 We may have framed it incorrectly and
23 so if you have -- if you have some suggestions on
24 language, we'd like to hear that. But that was the
25 intent of that particular section and we do hear your

1 concerns and appreciate the commenting. If you have
2 observations or suggestions on how to work that issue
3 out, then we'd like to hear it.

4 CHAIRWOMAN STEVENS: So we've been in
5 here for about an hour and 15 minutes. Let's take a
6 15 minute break, get up and stretch, return those
7 phone calls. We'll be back in 15 minutes. Thank you.

8 (Recess taken.)

9 CHAIRWOMAN STEVENS: Let's open the
10 floor back up for any questions or comments. Yes,
11 sir.

12 MR. HARRIS: I'd like to make a
13 comment on facility license, commissions and renewals.
14 The revised language of the facility license
15 regulation provides the tribal gaming commissions and
16 regulatory agencies the ability to exercise their
17 front line regulatory responsibilities in regard to
18 facility licensing and that we believe was the
19 original intent of the Indian Gaming Regulatory Act at
20 25 USC 2701(5), which states, Indian tribes have the
21 exclusive right to regulate gaming activity on Indian
22 lands if the gaming activity is not specifically
23 prohibited by federal law and is conducted within a
24 state which does not, as a matter of criminal law and
25 public policy, prohibits such gaming activity.

1 Thank you for this opportunity. If
2 you have questions please contact the Eastern Shoshone
3 Gaming Commission.

4 CHAIRWOMAN STEVENS: Thank you, sir.
5 Any other questions or comments about fees, facility
6 licensing, buy Indian? What we might do, which we've
7 had some relative success with, is do you have a copy
8 of this, any of the drafts that we can put up and we
9 can start asking specific questions? I know everyone
10 has a copy, but it's helpful to have it up here so
11 that we're talking about a section.

12 So some general questions that we do
13 have. We're not hearing much back about changing it
14 back to quarterly payments. That's just something
15 that we've heard tribes say that that's been helpful
16 to them to have it quarterly, as they pay a number of
17 things quarterly. We have a variety of tribes.
18 Sometimes tribes pay us in advance, you know, once a
19 year in full.

20 We certainly accept those, but, you
21 know, we wanted to put in place what the minimum
22 requirement is. And so if you have any comments on
23 going from semi-annual to quarterly, just to give you
24 some background on that, and I know Lael will brief
25 you in the power point, but it's really to help us.

1 It makes more sense for us and we don't really know
2 why we went to semi-annual prior to our arrival, but
3 it has been havoc making at our office and it works
4 better this way.

5 And also, we want to know and so far
6 we've been getting really good feedback, positive,
7 supportive feedback on going to based on the tribe's
8 fiscal year as opposed to a calendar year. That's
9 where we see the greatest number of fee audits and
10 problems with assessing fees, if your fiscal year is
11 different than calendar year.

12 And really, what this does is helps
13 us. If tribes are turning into us their financially
14 audited statements for their fiscal year, then we can
15 base their fees on that and we don't have to do the
16 extra leg work and you don't have to do the extra leg
17 work to calculate a separate calendar year for your
18 fees and that was meant, really, to make it easier for
19 tribes.

20 Yes, sir.

21 MR. OSBORNE: Well, I think you have a
22 preliminary fee and so a lot of the tribes will work
23 that preliminary fee based upon the audit because ours
24 is a fiscal year, but then in the spring they'll have
25 the final fee rate and that final fee rate, you know,

1 could adjust the difference between the preliminary
2 and the final.

3 So we end up having problems with
4 overpayment or a credit, and, according to your
5 regulations and stuff, that should be applied to your
6 next year's fee, but in our situation it's almost like
7 it starts all over again in your assessment.
8 Preliminary, again, you go back in your final fee.
9 It's almost like the previous amounts are not
10 documented and released to us. That last year's fee
11 is overpayment; therefore, we're applying it to your
12 next fiscal year or your next year's fee adjustment.

13 CHAIRWOMAN STEVENS: Well, thank you
14 for your comment. One thing that's of a concern to me
15 and I've written down and I want to check to see what
16 happened. It is a concern that you're not getting
17 your credit, so we'll be getting ahold of our finance
18 people and asking, really, sort of -- we'll follow up
19 with you on that.

20 MR. OSBORNE: It did get resolved, but
21 we still have a lot of paperwork to do.

22 CHAIRWOMAN STEVENS: We'll follow up
23 specifically for your tribe. But one of the things on
24 I think it's line 7 and 8 there, it says number two.
25 We moved from making our preliminary fee from February

1 1st to March 1st, so that we have -- we're more
2 accurate when we do the final fee rate later in the
3 year.

4 We were not getting some statements.
5 We didn't have enough time from the time statements
6 were coming in and February 1st to get a good
7 understanding of what the fee needed to be, and so we
8 gave ourselves an extra month so that we can be more
9 accurate and then we set the fee rate sooner rather
10 than July 1st. June 1st, so that you all have more
11 time and we're clearer.

12 Like this year, we didn't adjust the
13 fee. Our goal is not to have to adjust the fee when
14 it goes final, because we know how disruptive that is.
15 It's disruptive to us. It's disruptive to you. So if
16 we can get it right in the preliminary, that's what we
17 would prefer.

18 If the numbers come in and we're
19 seeing a decrease in the industry, then we need to
20 know that, but we're implementing, you know, something
21 like this and other things internally that help us be
22 more accurate about predicting the revenue in Indian
23 country.

24 One other portion of this I think we
25 need to talk about --

1 MR. SMALL: Excuse me. I have a
2 question, and maybe it's probably already been
3 answered and discussed prior to, kind of like the one
4 from a while back. But why is it that you're imposing
5 fee from Class III gaming activities, when we really
6 don't have any regulatory over Class III games? I can
7 understand Class II, but why is Class III now being
8 considered or is considered now a fee the tribes could
9 take?

10 It's my understanding that the fees to
11 be paid is to help regulate the activity, gaming
12 activity. So if you don't have any like regulatory
13 over Class III, why are you charging fees for that?

14 CHAIRWOMAN STEVENS: I'm going to look
15 at Jo-Ann on this one. I think there's some statutory
16 language and, if not, there are a number of other
17 things that we do outside of minimum internal control
18 standards enforcement around Class III.

19 MS. SHYLOSKI: Yes. The act gives our
20 agency quite a bit of authority in terms of Class III
21 gaming in terms of approving Class III gaming
22 ordinances, approving Class III management contracts.
23 The chair also has the authority to enforce any of the
24 provisions in the act.

25 So there are quite a bit of other

1 authorities that the chair possesses having to do with
2 Class III that don't have to do with the Colorado
3 River Indian tribe's case, which was focused on
4 minimum internal controls, Class III minimum internal
5 control standards.

6 CHAIRWOMAN STEVENS: And they've
7 always been part of the fee, correct?

8 MR. SMALL: No. When the fees first
9 came out, there was no fees concerning Class III
10 originally. Like I said, I don't know when that came
11 into effect. Just maybe out of my own personal
12 knowledge I don't know when that happened and why it
13 happened.

14 CHAIRWOMAN STEVENS: We can look into
15 it and get back to you.

16 MR. SMALL: I'm sorry. My name is
17 Nathan Small. I'm with the Shoshone-Bannock tribes.

18 CHAIRWOMAN STEVENS: Thank you.

19 MR. SMALL: One more thing, not
20 necessarily to do with the fees. The licensing and
21 facilities. I know there was a lot of issues about
22 the off reservation gaming and before that could
23 happen there was the land had to be put into your
24 trust. What about fee land within the boundaries of
25 the reservation or in seeded lands that were

1 originally found (inaudible) that are still in fee but
2 are under ownership of the tribes? Is that a place
3 that can be licensed as long as it's in the name of
4 the tribes?

5 MS. SHYLOSKI: If your question is
6 whether fee lands are within -- that are within a
7 current day, present reservation, whether they
8 constitute Indian lands under IGRA, the answer is yes.

9 MR. SMALL: What about seeded lands
10 for the tribe that has retaining a lot of rights
11 within the areas that were originally a part of the
12 reservation but due to other mistakes of the United
13 States, you lost that land? Can you still retain a
14 lot of the rights in the area and repurchase land or
15 land was given back to the tribe? I'm wondering the
16 status of that. Could that be a licensed facility if
17 the tribe decides to build there?

18 MS. SHYLOSKI: Are you talking about
19 lands within a current day reservation?

20 MR. SMALL: No. Lands that were past
21 but were seeded out.

22 MS. SHYLOSKI: That's a more
23 complicated analysis.

24 CHAIRWOMAN STEVENS: We would probably
25 take that by a case-by-case basis. We do have tribes,

1 when they have those kinds of questions, talk to our
2 Office of General Counsel. We do operate under a
3 memorandum of understanding with the Department of
4 Interiors Solicitor's Office to help us with those
5 Indian land determinations for complicated land
6 questions such as this.

7 So if there is a question for your
8 tribe, I think that we would work with you on that
9 separate and apart from our reg review.

10 MR. SMALL: Thank you.

11 CHAIRWOMAN STEVENS: The other part, I
12 think, this is the percentage and how much, I think
13 it's on page 5 on fees. Page 5, we're at line 13
14 through 20. As Lael has stated, rather than going
15 straight to a Notice of Violation, which there are a
16 number, especially in 2009, a number of NOV's issued
17 from the NIGC for late fee payments, late fees, we
18 were looking at something, as you see starting at line
19 13, in a 30, 60, 90 day time frame.

20 In the blanks you see a dollar sign
21 and a percentage. Should we be applying just a hard
22 dollar amount for 30 day, 60 days, 90 days, or a
23 percentage based on what their fee would have been?
24 We are hearing a number of comments back about this.
25 So that it would be elevated and escalate as time goes

1 by.

2 And I will share, in the absence of
3 any comments on this, the feedback we have received --
4 and correct me if I'm wrong, Lael -- most tribes want
5 a percentage, because it seems like it would be fair,
6 based on the size of their operation. You know, a
7 flat fee might be quite a bit for one very small
8 operation and really nothing for a very large
9 operation and percentage base would more accurately
10 and fairly assess a late fee based on how big or small
11 their operation is.

12 Are there other parts of the fee reg
13 that we were looking for some answers? Okay.

14 MR. ARMSTRONG: For the record, James
15 Armstrong, Snoqualmie Tribal Gaming Commission. I'm
16 looking at section -- or on page 1, it says line
17 number three, we're establishing the amount of the
18 annual fees and could you please define the operations
19 audited financial statements? More of a clarification
20 and not a question. Is that the one that's due 1st of
21 May?

22 CHAIRWOMAN STEVENS: Yes. Whenever,
23 yeah, and then it would be based on -- wouldn't it be
24 based on the fiscal year instead?

25 MR. ARMSTRONG: So up on line 7 and 8

1 is where you made the adjustments, so you have a
2 chance to review the audited financial statements
3 before making a determination on the amount of fees?

4 CHAIRWOMAN STEVENS: Yes.

5 MR. ARMSTRONG: Thank you.

6 MR. OSBORNE: Madam Chair, could I get
7 a clarification? Do you want the accounting
8 (inaudible) that are regulatory and try to stay within
9 the acts or do you want to see some different ideas
10 and methods that would be more comfortable? Because,
11 you know, I'm hearing two things. I can get back with
12 my staff and we can do a lot of accounting details
13 into what, you know, these things mean to us, but then
14 I'm hearing also we've got to comply with this act and
15 it's more favorable toward the act. So can I hear
16 something to make that more clear to me?

17 CHAIRWOMAN STEVENS: Well, I think
18 that's the desire of this and really are mandated to
19 stay within the bounds of the act and so we do use
20 that as a guide. If there are some ideas that you
21 have that help us do that or, you know, what we're
22 proposing is not going to be helpful to you, we'd like
23 to know.

24 On the fees in particular, we find
25 that a number of tribes, the regulators go to their

1 finance department or their comptroller or their CFO
2 and say what would this mean for us. So far what
3 we're hearing is this is actually going to be helpful
4 and makes it easier for tribes to assess their fees,
5 turn their fees in, and know with some, you know,
6 certainty or relevant certainty.

7 When the preliminary rate is set,
8 we're going to be more accurate, which helps them plan
9 and budget. So I would certainly encourage folks to
10 talk to their finance people who pay your fees for you
11 to see if this works for them, or any suggestions if
12 it doesn't or if we're missing something.

13 If there's no more on fees. One thing
14 that we haven't talked about yet, and I want to give
15 -- oh, yes.

16 MR. ARMSTRONG: Again, in this draft
17 here, we'll go back to your line items on page 5, 13,
18 15 and 17 and 19, where you have the percentile in
19 there. So when you write this up, you will have an
20 established percentile in here or will it vary
21 throughout?

22 I mean, I understand the reason behind
23 the smaller establishment and a larger establishment,
24 so that allows you to fluctuate that percentage. I
25 understand that, but I believe when (inaudible) and

1 understanding of the rules and so what I'm thinking is
2 that based on knowledge that this percentage should
3 remain the same for everybody throughout.

4 CHAIRWOMAN STEVENS: I think that's
5 what we intended and we probably should have clarified
6 that. If we put a percentage in there, it's a
7 percentage for everybody, regardless of how much their
8 fees are, how big, because then it becomes fairer. So
9 if you're a tribe that only pays \$61 a year in fees,
10 the percentage is applied to that. If you're a tribe
11 that pays hundreds of thousands, it's applied. It's
12 across the board.

13 As with other areas of all of our
14 lives, late payments are discouraged, and the later
15 you are the more penalty there is and so that's what
16 we're looking at. So we should have been clear that,
17 yes, we would just set a percentage if a percentage is
18 the way that we go and it applies to everybody across
19 the board.

20 So if there are no more comments on
21 fees, one thing we haven't really talked about yet is
22 the buy Indian act. I haven't heard any comments on
23 that. We don't have a draft for that. It's not an
24 existing regulation. It's not an existing policy and
25 I want to clarify right off the bat that this is

1 intended to impose the purchase of goods and services
2 from Indian-owned businesses on the NIGC when we do
3 procurement, when we buy supplies, when we travel, on
4 us.

5 We're not trying to impose this on
6 tribes. I want to make that clear on the outset.
7 We've had some folks interpret this discussion to mean
8 that we're trying to impose it on tribes. It's not at
9 all what we're trying to do. Because we only serve
10 Indian country, we're funded by Indian country, as is
11 the case with BIA and IHS, we should be making an
12 effort to purchase our goods from Indian country,
13 whether that's conference room space, whether that's,
14 you know, any services we might need to move our
15 office, you know, whatever services we might need to
16 procure, the NIGC should endeavor to buy Indian.

17 Now, we hear different things about
18 how to address this. I think we have a mixed bag of
19 doing a reg, doing an internal policy. The thing
20 about the buy Indian is that the way that it's
21 written, you know, I would have to have the secretary
22 grant me the authority to institute buy Indian and
23 that would -- you know, I haven't really looked to see
24 what kind of effort that would take in order to
25 institute buy Indian.

1 We've looked at the BIA regulations.
2 We looked at the IHS regulations. We actually worked
3 through the Department of Interior, because we are
4 within the Department of Interior. So we use the
5 national business center's procurement operations when
6 we procure goods and services and they are already
7 schooled in applying the buy Indian act for the BIA.

8 So we would welcome thoughts from you
9 on whether we should do this and if there's a
10 preference. There's also the supporting language
11 under IGRA that gives the authority to procure goods
12 to the commission and to the chair. That would also
13 allow us to do that. So we'd like to hear any
14 comments on that.

15 MR. OSBORNE: Madam Chair, does that
16 mean developing a procurement method, limitations on
17 how much you want businesses to get more active and
18 involved? We have a vendor licensing that we've
19 established that could play a part, but, you know, I
20 guess it's discretionary. If you want to dig in
21 deeper to buy Indian act and our Indian preference
22 issue, that the BIA or IHS, I mean, they get pretty
23 off the wall.

24 CHAIRWOMAN STEVENS: We would have to
25 have a procurement process. We have one right now

1 that exists under the Department of Interior and we're
2 bound by those federal processes now. They're not
3 necessarily the processes that they use for the buy
4 Indian. So certainly we would need that and there
5 would probably be thresholds that would have to be
6 written into, you know, a reg or a policy.

7 Do any tribes have entities,
8 Indian-owned entities? Have you had any experiences
9 with federal agencies on procuring Indian?

10 MR. OSBORNE: The Tribal Employment
11 Rights program, TERO, has a lot of -- usually have a
12 list of the Indian-owned businesses. For us to
13 establish a gaming license and come on a premise,
14 things of that nature, we'd almost have to have, you
15 know, a fairly good background or even a policy that
16 we have to abide by and make sure that whatever they
17 procure in general with the licensing to come on the
18 premises, but there is a lot of practices done with
19 TERO, that kind of comply and meet IHS and BIA
20 standards.

21 CHAIRWOMAN STEVENS: Thank you. Any
22 other thoughts on this? Maybe if we want to just --
23 do you want to talk about any specific questions on
24 facility licensing? We've heard some comments. I
25 might, if I may, have the other commissioners, because

1 I think you may all be getting tired of me and I'm
2 starting to lose my voice, maybe prompt some questions
3 under facility licensing questions that we need to
4 examine.

5 VICE CHAIR COCHRAN: Well, I know that
6 there were some comments earlier favoring the proposed
7 revisions that are included in this draft, and I guess
8 we can pick up from there. This isn't an absolute
9 attempt to what the Chairwoman has talked about over
10 and over again, which is to make sure that this agency
11 is operating within the purviews of what we're allowed
12 us to do.

13 One of the things that we attempted to
14 do in this is to recognize the inherent right of
15 tribes to license their facilities and to bring those
16 down to a manageable system that will take out the
17 duplicity and also keep us within our lane in terms of
18 IGRA.

19 In 559.2, we did reduce the amount of
20 days from 120 to 60 days notice before opening the
21 facility. And again, that was an attempt to recognize
22 that tribes needed that time, that additional time to
23 get notice to us. And part of the overall objective
24 of the section, as you know, is who to provide
25 information to the commission which will help us

1 verify the land status.

2 I know that Scott had some comments
3 about the revisions that we made in subsection B of
4 this and I'm going to open it up, because if there are
5 follow-up thoughts to that or if we have similar
6 comments or differing views, we'd like to hear from
7 you on how this is worded and if you have ideas that
8 you want to offer on revisions to it.

9 MS. VYVYAN: Dawn Vyvyan on behalf of
10 the Yakama Nation. In reference to 559.2, sub B, one
11 of the questions I have about the first sentence that
12 qualifies the expedited process for verifying Indian
13 land status, you have the words circumstance permits,
14 and I think the sentence may be a little awkward. I
15 had to read it a few times to see what circumstance
16 permits was qualifying, but it looks like whether or
17 not you can meet that expedited process. Is that
18 correct?

19 VICE CHAIR COCHRAN: Correct.

20 MS. VYVYAN: Then if you could spell
21 out what those circumstances might be so that we can
22 get better clarification about what that -- what may
23 occur where you would not be able to meet that 60 day
24 verification process. So in other words, what does
25 circumstance permits mean?

1 VICE CHAIR COCHRAN: That's a good
2 observation. Thank you.

3 MS. ECHO-HAWK: The intent of that
4 was, well, like we mentioned earlier, that the intent
5 of this section was to basically put some time frames
6 on the agency to respond to tribes when they send in
7 the facility license. Sort of what has happened is
8 that when a facility license has come in, the agencies
9 use that as the trigger to start looking at the land
10 status and making a determination.

11 Now, as Jo-Ann mentioned earlier,
12 that's not a requirement, and so I think what Elliott
13 was referring to also earlier was that there is no
14 such requirement, that are we creating a new
15 requirement and thus a new process.

16 The phrase when circumstance permits
17 was intended to mean, you know, if someone is building
18 a facility or putting a facility in the middle of a
19 reservation where it's very clear what the status of
20 that land is, then under those circumstances the chair
21 would respond more quickly. If there was additional
22 time that was needed to look at the status of the
23 land, which, you know, we see more frequently now,
24 then the chair could elect that one-time extension so
25 that it would still be the 120 day time frame.

1 But if we phrased this incorrectly or
2 this isn't what -- you know, if this is not a process
3 that we should be doing, then maybe we clarify that.
4 I also think you raise a good point and one that we've
5 been talking about internally, is that what happens if
6 the chair doesn't respond in this scenario and are
7 there -- you know, so the chair doesn't respond. What
8 next? And this reg doesn't say what next.

9 MS. VYVYAN: The second thing that
10 we'd like some possible amendments for is when the
11 chair does elect the one-time extension of an
12 additional 60 days that there be a notification and
13 consultation process given to the tribe so that the
14 tribe can assist in expediting that process, because
15 holding up a facility opening for another two months
16 could prove to be an economic hardship on the tribe.

17 So one of the recommendations, I
18 guess, would be that before the chair does elect to
19 postpone for another 60 day extension, that they first
20 consult and notify the tribe so that any clarification
21 could get worked out about, you know, in terms of
22 verification of the land status.

23 VICE CHAIR COCHRAN: Thank you.

24 MS. VYVYAN: And then I'd like to also
25 comment on behalf of Yakama Nation in terms of you

1 were talking about it earlier, the buying Indian, that
2 that be at the discretion and decision on the tribe
3 and that may not be necessary to address that in the
4 regs.

5 CHAIRWOMAN STEVENS: Are you clear
6 that -- I'm sorry.

7 VICE CHAIR COCHRAN: I was going to
8 ask the same question. The buy Indian act wouldn't
9 apply to tribes. It would only apply to the agency
10 and how we purchase goods and services.

11 MS. VYVYAN: No, that wasn't clear.
12 Thanks for clarifying that.

13 VICE CHAIR COCHRAN: Absolutely.

14 CHAIRWOMAN STEVENS: I have a
15 question. Are there some tribes here that do seasonal
16 closures?

17 MR. OSBORNE: Madam Chair, it's sort
18 of related to the facilities. (Inaudible) our concern
19 to talk about among our commission, and that is when
20 you license a facility, really what it's boiling down
21 to is the jurisdiction of a person's responsibility,
22 mainly the tribe's.

23 You know, we read a lot and we hear a
24 lot and we see a lot of articles being printed where
25 many tribes are trying to get land and build casinos

1 or things of that nature, but they don't have a land
2 base structure or the jurisdiction, the law
3 enforcement, all the things that are required for
4 facility licensing.

5 (Inaudible) our reservation for
6 emergency operations, all these things that are
7 required in this 552, but when you start dealing with
8 things off the reservation, our concern is the
9 lawsuits that may end up out there, which ends up in a
10 Supreme Court issue, which affects us. We just feel
11 that we're very uncomfortable about initiating and
12 supporting such an effort if it's going to come back
13 on us.

14 That's one of our major concerns and
15 that's why we feel that needs to be looked at very
16 carefully.

17 VICE CHAIR COCHRAN: Thank you. As
18 was discussed earlier as well, we have also
19 eliminated, or proposed eliminating, I should say,
20 559.3, which deals with the renewal, the three year
21 renewal provisions. And again, it's an attempt to
22 allow tribes to renew their licenses or take actions
23 on their licenses as they deem appropriate.

24 The chairwoman also talked earlier
25 about seasonal closures or temporary closures and that

1 has spurred a lot of discussion in other areas of the
2 country. I don't know if anybody present had any
3 additional thoughts on that.

4 MR. SMALL: Nathan Small with Fort
5 Hall. If we're going to do some major renovations and
6 there's a closure, does that have to require a
7 relicensing or is that just... If it's been licensed
8 before but we're going to do a major renovation and
9 it's going to be closed for maybe up to a year, is
10 that going to be a requirement to get a relicense?

11 CHAIRWOMAN STEVENS: Well, that's what
12 this is about. We're asking you. We know there's
13 some seasonal closures. Some facilities close six
14 months out of the year and that a relicense, they
15 would be exempt from this process if we define a
16 certain amount of time, or a remodel or a fire or a
17 roof collapsed because of a tornado, which we've seen,
18 whatever the reason, that doesn't require this
19 licensing issue, like it has to be reissued, because
20 you're going to stay in the same location but you're
21 just going to be closed while you take care of
22 whatever it is or you just close for the season
23 because it's winter.

24 You know, is a year too much, is six
25 months three months too short, you know, do we need to

1 break it out for seasonal closures as opposed to
2 temporary closures due to other factors. I think we
3 heard somewhere, you know, sort of breaking out what
4 those instances might be, although I'm pretty sure we
5 wouldn't be able to capture everything that could
6 happen.

7 You know, should those be separated?
8 You know, how long does a remodel take? I mean, what
9 are your thoughts on it? Say, for example, if you
10 were going to remodel your facility, how long is it
11 going to take?

12 MR. SMALL: I would think that it
13 would be incumbent upon your local commissioners to
14 oversee that and if they see a need to include the
15 NIGC then I think that it would be incumbent upon them
16 to do that, but I think it should be local, with your
17 local commissioners to focus in those renovations or
18 closures or those kind of things. That would be my
19 thought.

20 VICE CHAIR COCHRAN: Again, this is
21 discussion language that we're offering up on the
22 temporary closures, like the renovation that you're
23 discussing. We're suggesting a duration point. Would
24 you suggest a revision to that which might say -- I
25 don't know. I'm trying to think of how it would

1 incorporate your thoughts or to take your thoughts to
2 something that would show up in this instance here.

3 I apologize. I'm not trying to put
4 you on the spot. I'm just trying to understand so I
5 walk away with a very clear picture in my mind of what
6 you're describing.

7 MR. SMALL: I don't know. Maybe,
8 again, I would think that maybe it would be the
9 responsibility of your own tribal commissioners to
10 make that determination. If they feel it's going to
11 be closed long enough or if it's going to require a
12 total, maybe a total teardown of a place and the
13 rebuilding of it, maybe that's something that you
14 might want to look at, but if it's going to be just a
15 temporary closure for the renovation, I would think
16 that, you know, some of those things would probably
17 take more than a year.

18 CHAIRWOMAN STEVENS: So I'm sorry.
19 Not to belabor the point. I just want to make sure
20 I'm clear that maybe you're suggesting that the
21 language should be changed so that there's deference
22 to the tribal the TGRAs to determine what is or what
23 is not a designated, acceptable amount of time for a
24 facility to be closed before it needs to be
25 relicensed?

1 MR. SMALL: Fair enough.

2 CHAIRWOMAN STEVENS: Thank you.

3 MS. HOUSE: Madam Chairwoman, I was
4 trying to be quiet.

5 CHAIRWOMAN STEVENS: That's all right.

6 MS. HOUSE: With all due respect, my
7 name is Sharon House, and I'm an attorney with the
8 gaming commission for Eastern Shoshone as well as I
9 work with the Shoshone-Bannock Tribe.

10 One of the areas that you have that's
11 not right here what we're talking about is the
12 ordinances and that's, I think, what you may want to
13 consider is putting together another bulletin -- my
14 traditional bulletin recommendations -- that
15 identifies what should be in ordinances and one of
16 them is is that there should be guidelines and
17 rationale that a regulatory agency, a local regulatory
18 agency needs to identify whenever there's a temporary
19 closure, a seasonal, you know, whatever closure it is,
20 and I think we're missing part of that language in the
21 ordinances themselves, is something that identifies.

22 If there's internal issues, that
23 probably would be a good idea to have guidelines and
24 rationale before you would look at it, you know, that
25 it's not somebody that's just trying to take advantage

1 of not sending in a time frame. And I know of no
2 tribes that would ever do this, but in order to avoid
3 that, perhaps something in the ordinance and
4 recommendations to that effect that are similar to
5 what is just being discussed. Thank you.

6 CHAIRWOMAN STEVENS: Thank you.

7 VICE CHAIR COCHRAN: I'm going to go
8 back just a little bit now to the provisions that we
9 put in the discussion draft, which would take out most
10 of 559.5, which is now renumbered as 4. So page 3,
11 starting on page 3, line 36. This particular
12 provision would eliminate the reporting requirements
13 that currently exist for Environmental Health and
14 Public Safety.

15 Internally, one of the discussions
16 that we've had is if we eliminate these provisions, it
17 will trigger a need for us to look at another CFR,
18 which has to do -- which is 502.22, which does deal
19 with the construction and maintenance of a gaming
20 facility and it does provide that the operation of the
21 gaming is conducted in a matter which protects the
22 environment and the public health and safety.

23 Has anyone given thought to that, how
24 we might address that particular provision, or would
25 you like to comment on its relationship to that

1 provision?

2 CHAIRWOMAN STEVENS: Just to clarify.
3 Right now we're asking for an attestation from the
4 tribe. In the absence of it being here in this
5 requirement, which is the current reg, we would
6 request that the tribe attest, basically, that those
7 are -- those, all of those things we took away -- the
8 words being highlighted right now -- that there are
9 provisions that the tribe has in place that adequately
10 protects EPHS.

11 We're taking out the requirement and
12 we're putting in an attestation from the tribe saying,
13 yes, we got it covered.

14 MR. ARMSTRONG: Madam Chairman, James
15 Armstrong. I believe each tribe individually has all
16 of the questions in hand pertaining to construction,
17 hazardous materials, health factors. I think they
18 have that all in hand and are required to submit with
19 other federal agencies that they have met these
20 qualifications.

21 I believe in the previous regulation
22 you had to supply all the documents to NIGC and
23 therefore the attestation made by the tribe could just
24 be a supplement of one page that would say, yes, we
25 abide by the UBC, we have OSHA standards and we have

1 this. For clarification, then NIGC could go to look
2 and do a review, if need be, to make sure that we meet
3 these standards and the other departments at the
4 federal entities should be able to provide you with
5 that information.

6 CHAIRWOMAN STEVENS: Thank you.

7 MS. BLUELAKE: Yeah, I had a specific
8 comment on the 502.22. My name is Lisa Bluelake, and
9 I'm with the Confederated Tribes of Grand Ronde. I
10 actually did a written comment on this and we
11 mentioned this in our written comment. The 502.22 is
12 actually the definition of this big long phrase of
13 what it means to be conducted in a manner that
14 protects, et cetera, et cetera. That definition as it
15 is currently written includes all of the language that
16 you took out of 559.

17 Our recommendation was that you just
18 eliminate that definition altogether and let the
19 individual tribes determine what they believe that it
20 means to be conducted in a manner that protects those,
21 all those items.

22 VICE CHAIR COCHRAN: Thank you.

23 CHAIRWOMAN STEVENS: If there's no
24 more on facility license, we have a few more minutes
25 and one last subject in group one. We have already

1 had tribes this morning talk about how to handle Class
2 III minimum internal control standards. We'll talk
3 about it more tomorrow, but it is within group one.
4 There's no reg up on it.

5 We asked the question in NOI, the
6 Notice of Inquiry, and when we put out the Notice of
7 Regulatory Review in April we were asking the same
8 questions, because as we said, it affects tribes
9 differently.

10 We heard from a couple of tribes on
11 the record today that Class III authority and
12 promulgating regs should not be something that the
13 NIGC should be doing. So that's what we've heard so
14 far this morning and how should we proceed with Class
15 III and any thoughts on the method by which we use to
16 do that. That's this, how should we address these?

17 Do we have tribes here that -- I don't
18 think we do -- any tribes that have written Class III
19 authority into their ordinances, enforcement authority
20 to the NIGC for Class III minimum internal control
21 standards? We have about 16 tribes, I think, in
22 California that have done so, and most of the tribes
23 we're seeing here today are Washington, Oregon, Idaho.
24 Somebody over there is saying they want lunch. That's
25 Spokane.

1 MR. ARMSTRONG: Yes, Madam Chairwoman.
2 I think on the Class III MICS we will be looking at a
3 unique situation for each jurisdiction and each tribe.
4 California and Washington have two separate identities
5 when it comes to Class III MICS.

6 So then what I'm looking at here is
7 the consultation process may need to go a little bit
8 more in depth when you're dealing with tribes in
9 certain regions, region one, two, three, four and
10 five, because it'll be a separate process for each
11 region.

12 But what I've seen here, there's a lot
13 of mentions of Class III MICS in every one of these
14 regulations, so then we're going to have to look at
15 the MICS in depth to see what -- and I'm not getting
16 on you -- see what authority you have in implementing
17 anything pertaining to Class III.

18 For example, when you do your external
19 audit or the tribe does an external audit there's a
20 requirement in there that says that they must audit to
21 the MICS. So if we take and work on the MICS, the
22 Class III MICS, eliminate them or make adjustment to
23 them, then you're going to have to make an adjustment
24 to the auditing process on the Class III MICS as well
25 for the fact that most tribes in Washington State are

1 dealing with compacts.

2 So I think we might want to look at
3 how we're going to deal with the audit process too at
4 the same time. When we're talking about MICS, we're
5 talking about a consultation authority and when you're
6 looking at the new regime versus the old regime of two
7 consultation process in a written format similar to
8 regulations following the executive order, but what
9 you will do pertaining to the consultation process.

10 CHAIRWOMAN STEVENS: Yes.

11 MR. GEORGE: Thank you, Tracie.
12 Richard George, Yakama Nation. I just want to make a
13 little statement on the discussion this morning. I
14 think Yakama agrees with the changing of the calendar
15 to the fiscal year.

16 Another statement on your buy Indian.
17 I think that's got to be an internal policy for NIGC.
18 Another question I have is what constitutes a closure
19 of a facility? We did a internal IT. It was supposed
20 to be six hours and it was three days. Does that
21 classify notification to NIGC? I agree with Scott
22 from the Spokane tribe on the MICS issue.

23 I just had a question. Why would a
24 tribe want to go under NIGC for the MICS? You said
25 California did that? What's their reasoning for that?

1 CHAIRWOMAN STEVENS: Well, I would
2 hate to speak for the tribes in California. I can
3 only tell you what they've told us. I'm going to look
4 around at the staff that's here. It was just, from
5 what I can understand, some issues they had with their
6 state and that their preference was that the NIGC
7 perform the enforcement on MICS and use the NIGC Class
8 III MICS.

9 I would not want to speak for them and
10 why they chose to do that. Does anyone else? That's
11 about what we know. Their preference was the NIGC as
12 opposed to the state.

13 MR. LEWIS: The Class III issue keeps
14 coming up. There's an issue of concern to varying
15 degrees. We've got a group here from the Northwest
16 and the group travels all over and I wonder what the
17 opinions are of people in other geographic areas,
18 different tribes way out, and the last part of it is
19 is maybe getting some thoughts that gets you talking
20 on where your group may be steering this off of the
21 input that you're receiving from all the respected
22 tribes across the US, not just the Northwest.

23 CHAIRWOMAN STEVENS: Well, we were
24 just talking about that and that maybe we should share
25 not just what's going on in California, because there

1 are 16 tribes in California with us written into their
2 ordinance with enforcement authority, but there are
3 others. And I'll let some folks talk about what we've
4 heard so far.

5 VICE CHAIR COCHRAN: There are other
6 situations as well where some of the tribes in
7 Oklahoma, for example, have made a decision to use our
8 MICS as well. There are secretarial procedure in
9 tribes, which, based on their own unique set of
10 circumstances, may be in the jurisdiction of Class
11 III.

12 So really, there's not a whole bunch
13 of them, but there are different reasons that the
14 tribes have elected to do it outside of what's often
15 talked about, which is California, because you have
16 such a large bulk of them and theirs was a more recent
17 decision in their compacting processes.

18 MS. SHYLOSKI: And in that regard, the
19 Oklahoma tribes, actually it's their compacts that
20 include compliance with the NIGC MICS as a
21 requirement.

22 CHAIRWOMAN STEVENS: Any other
23 comments on Class III? Is most everybody going to be
24 here tomorrow to talk about the other groups? Because
25 I do want to talk about at some point -- and I know

1 we're getting up to the lunch hour here -- about
2 tribal advisory committees, your experience with them,
3 your thoughts on past.

4 The only reason we want to talk about
5 what's happened in the past is so that we can inform
6 our future endeavors and how to proceed with MICS
7 generally, two and three, and the technical standards.
8 So we'd like you all to give us some thoughts about
9 that.

10 Tribes have been very vocal about
11 previous tribal advisory committees, how they have
12 functioned and I don't mean just the former commission
13 right before us, but other advisory committees that
14 took place 10, 12 years ago, and what can we learn
15 from those, what worked, what didn't work, and how we
16 can, as Mr. Osborne said, bring some closure and
17 finality to MICS so that we have a set of standards
18 that you can use and you can implement and not leave
19 you hanging in uncertainty if they're going to be
20 modified.

21 So absent any additional comments,
22 let's break for lunch and we'll come back at 1:30 here
23 and we're going to move on to the next section of the
24 agenda. I think that's a part for a lawyer. So if
25 you're a lawyer and you love process, this is your

1 topic.

2 (Deposition recessed at 11:51 a.m.,
3 to be reconvened at 1:30 p.m.)

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AFTERNOON SESSION

1:42 P.M.

--oOo--

CHAIRWOMAN STEVENS: I'll probably be deferring to Vice Chairwoman Steffani Cochran to run group two, and we'll be going through, again, the power point and then we'll open the floor for comments.

I think right now I do want to offer the opportunity for anybody who has written testimony that wasn't here earlier the opportunity. If you have prepared statements, if you weren't here for the group one discussion, we're opening the floor for comments before we dig into group two.

Yes, sir.

MR. SMALL: Just for the discussion, I mean, something happened this morning a little bit (inaudible) that there should be a regulation of Class III MICS for all the tribes. If the 16 or 20 tribes who have the MICS in their ordinances want to be regulated by the NIGC, then it should be voluntarily and a separate fee should not be assessed for them -- and a separate fee should be assessed for them and (inaudible), but all the other tribes that don't agree

1 with that shouldn't have to be assessed those fees or
2 be regulated by the NIGC on Class III. Thanks.

3 VICE CHAIR COCHRAN: Are there any
4 other comments to be made? Please.

5 MR. HARRIS: Robert Harris, Eastern
6 Shoshone Tribal Gaming Commission. A recommendation
7 is don't draft regulation on the Class III MICS that
8 would apply to all tribes. We, Eastern Shoshone
9 Tribal Gaming Commission, agree with the
10 recommendations of the Shoshone and the Chairman
11 Nathan Small, that those tribes who want the NIGC to
12 enforce the Class III MICS, then let them pay for
13 those services so the rest of the tribes are not
14 assessed those fees.

15 CHAIRWOMAN STEVENS: Thank you. Yes.

16 MS. HELM: Linda Helm, Port Gamble
17 S'Klallam, executive director. I would just like to
18 add our comments that we agree with the previous two
19 gentlemen.

20 CHAIRWOMAN STEVENS: Thank you. Any
21 others? Any follow up from this morning, group one,
22 or any prepared statements? With that, I'll turn over
23 group two to Vice Chairwoman Steffani Cochran, and I
24 think we're just going to probably jump into the power
25 point, but...

1 VICE CHAIR COCHRAN: Yeah, let's go
2 ahead and start with Lael, if you would walk us
3 through.

4 MS. ECHO-HAWK: Okay. So this section
5 of the agenda is sort of focused on group two, which
6 includes the list of regulations that you see in front
7 of you right now. Included in your packet is a
8 discussion draft regulation for part 573, the
9 enforcement regulations.

10 The other parts, which are the
11 regulations which concern proceedings before the
12 commission, we don't have a draft out yet, although we
13 anticipate having one very soon, but for now, the only
14 handouts you have in relation to this is a discussion
15 draft on part 573.

16 The discussion draft -- and we've
17 added section numbers in here. The discussion draft
18 does a number of things. One of the comments that
19 we've heard from tribes -- we heard this over and over
20 from tribes -- was that compliance should be the goal
21 of the commission and voluntary compliance and using
22 technical assistance and training and the other tools
23 that we have at our disposal to make sure that tribes
24 are able to be in compliance and an enforcement action
25 should only be a sort of a last resort or when things

1 are not going as they should.

2 So part 573.1 does add voluntary
3 compliance as a goal of the commission. The rest of
4 the new language outlines a preenforcement action
5 process. 573.2 states that -- provides that a letter
6 of concern and/or a noncompliance notice may be
7 provided to the respondent. Now, this is before a
8 Notice of Violation issues.

9 A letter of concern indicates that
10 there is something that may be a violation. A
11 noncompliance notice would confirm that there actually
12 was something that's out of compliance and that some
13 sort of corrective action needs to be taken. So
14 there's sort of two different instances where -- or
15 two different situ -- the letter of concern addresses
16 a situation that could be different than a letter or a
17 noncompliance notice.

18 Neither of these letters or notices
19 are agency action. We included that in that statement
20 in the regulation, and that they may provide a time
21 period for the respondent or the tribe to come into
22 voluntary compliance. If the corrective action isn't
23 taken, then enforcement action may be taken as well.

24 Now, this doesn't constrain, this
25 process doesn't constrain the chair's discretion to

1 issue an NOV at any time, and I think that's important
2 to note because there may be situations that are very
3 serious that are just simply not possible for the
4 commissioner -- for the chair to issue the letter of
5 concern or noncompliance notice.

6 Those are the primary changes made to
7 that section. The written comment period closes on
8 August 9th. You can find that draft also on our
9 website and it's included in your handouts.

10 The other issue that was included in
11 the notice -- or in group two, the NOV, proceeding
12 before the commission. There's a lot of -- what we
13 heard from tribes is that there was a lot of
14 ambiguities. There was not clarity in the process.
15 So there's some issue concerns about due process
16 rights. The rules are sort of in different places but
17 not together.

18 So the Notice of Inquiry asked whether
19 or not we should take a look at these regs and think
20 about revising them. There was some concerns about if
21 we create a more formal process it's going to be more
22 burdensome, more costly, and could delay review of the
23 issue.

24 The other, a couple of the other
25 comments, that there's a presiding official

1 proceeding, which I have recommended eliminating that,
2 and then also adding an informal hearing option for
3 ordinance and management contract appeals. The
4 commission is looking at those regs and we're
5 interested in hearing more from you, if you have any
6 concerns on where we're at with those, but those are
7 the primary comments that we heard.

8 Again, we don't have a draft out yet,
9 but we do anticipate one fairly soon and if you keep
10 an eye on the website and our regions are trying to
11 notify the tribes here, the gaming operations in their
12 region, when we do have a new draft put up.

13 So that's the quick summary of group
14 two.

15 VICE CHAIR COCHRAN: Thank you, Lael.
16 I think we'll start with part 573. This was an
17 important discussion that the commission had
18 internally, and it really has to do with clearly
19 articulating that we're looking for voluntary
20 compliance in the industry and we think that that's
21 absolutely a possibility, that many of the issues that
22 come up can be worked through and that tribes very
23 much want to work through them as well.

24 So the provisions to the 573.1,
25 outlining that purpose is, I think, a very clear

1 statement of how the commission's commission looks at
2 our role. Is there any comment or any clarity that
3 needs to be added to that purpose or any thoughts you
4 want to add to it? Yes.

5 MS. HELM: Linda Helm, Port Gamble,
6 S'Klallam tribe. In 573.2, line 25 you have, and/or
7 noncompliance notice may be provided. I understand
8 from Lael's comments why you have may rather than
9 will, but I wonder if you could list out the more
10 serious violations that were talked about so that we
11 understand if it's a lesser violation we would receive
12 the letter of concern and it would be nice to know
13 what those serious violations are.

14 VICE CHAIR COCHRAN: I like that idea.
15 Thank you. That would add some clarity, which we're
16 absolutely interested in achieving, so we'll take that
17 back and thank you.

18 MS. HELM: Thank you.

19 VICE CHAIR COCHRAN: Is there any
20 general comments or thoughts also? Yes, please.

21 MR. MATHERLY: Andrew Matherly,
22 Spokane tribe. Under 573.2, the question I have is
23 the letter of concern or the noncompliance notice.
24 Under C it provides may provide a time period. I
25 think that time period needs to be spelled out.

1 Sometimes these notices when previous have been given
2 to tribal council, but a lot of your tribal council
3 aren't actively involved in the day-to-day regulation.

4 So I think it needs to be given to the
5 appropriate tribal official, which most of the time is
6 your gaming commissioner, but that time period be
7 spelled out. Just we have several examples from our
8 tribe that were given a Notice of Violation and then
9 some of the corrective action was you have 10 days to
10 remedy the issue and if we don't get it and six days
11 will pass, you know, we're kind of put in a bind.

12 So I think that needs to be spelled
13 out, provide a time period, and even though given the
14 option to the chair, I think by spelling out what the
15 time period would be so that we can provide that to
16 the NIGC.

17 VICE CHAIR COCHRAN: Would it be
18 helpful to also then allow -- because each
19 circumstance can be so unique, the set of facts can be
20 so unique, and a tribe can give 110 percent to try to
21 come back into compliance. Would it be helpful to
22 allow also still under extraordinary circumstances
23 some type of escape for the chair to say, here's your
24 deadline, but under these circumstances?

25 MR. MATHERLY: Exactly. Andrew

1 Matherly, Spokane tribe. An example was several years
2 ago NIGC changed the procedure on the submissions of
3 the external audit, but we're bound by an external
4 audit firm and if they don't get the information
5 submitted on time the tribe's held liable.

6 That's happened in our case, being 18
7 days late or 16 days late and we're potentially
8 looking at \$25,000 fine per day, you know. Obviously
9 that's out of our hands at that point, but just some
10 time frames would be helpful.

11 VICE CHAIR COCHRAN: Thank you. Yes.

12 MR. SMALL: I agree with that
13 statement about the verifying your gaming commission
14 of any of these proposed violations or letter, because
15 they're the ones that are delegated to oversee all of
16 our gaming and then they in turn will report to the
17 business council, but I believe that's where it should
18 go in the first place.

19 We've had an incidence in the past
20 where we were issued notices and then it was given to
21 the tribal chair and the tribal chair at that time
22 didn't take heed to that and as a result we ended up
23 getting Notices of Violation of the NOVs and then of
24 course we had to step into high gear and get the local
25 seats taken care of once our commission found out

1 about it.

2 So I think it's imperative that these
3 notices go directly to your gaming commissions rather
4 than to the tribe so that they can be addressed
5 quickly and appropriately.

6 VICE CHAIR COCHRAN: We're just
7 sitting here talking that under the service
8 provisions, part 519, we're wondering if we can
9 actually do both, if we can cover both the leadership
10 and the gaming commission, so that everybody gets
11 them.

12 MR. SMALL: That would be fine, as
13 long as the gaming commission was delegated that
14 authority in the first place under your business
15 council.

16 VICE CHAIR COCHRAN: Thank you.

17 CHAIRWOMAN STEVENS: I just want to
18 clarify. We do want to make sure we cover all of our
19 bases when we provide service and basically notice to
20 tribes on anything that we're doing. And it varies
21 from tribe to tribe. Some tribes want their council
22 to have it and they respond accordingly. Some want
23 their regulators, either their commission or their
24 agency to have it.

25 So we might just make sure that it

1 goes both places to accommodate the varying roles of
2 tribes across the country. So if we do both, that
3 might cover it for everybody.

4 VICE CHAIR COCHRAN: Any other
5 thoughts?

6 CHAIRWOMAN STEVENS: Glen, you look
7 like you're going to say something.

8 MR. GOBIN: Well, Glen Gobin, vice
9 chair, Tulalip tribes. Just so we're assured that
10 both the council and the agencies would be notified
11 for sure. So we feel strongly that it's the tribe
12 doing the gaming. It's the council leadership that
13 develops the ordinance and submits it. It's the tribe
14 that delegates the authority and it's the tribe that's
15 going to be held responsible.

16 So in the first instance it needs to
17 be the tribe that's notified, but I also recognize the
18 regulators' responsibilities as well and they need to
19 be notified as well. Just so we're assured that both
20 would be notified in these cases.

21 VICE CHAIR COCHRAN: Thank you. Well,
22 I think the only other thought that I would add to
23 this to share with you as far as the thought process
24 and how we kind of reached the discussion draft that
25 we did was also a commitment by this commission to

1 make sure that we as an agency are obligated to very
2 clearly communicate with the tribes about what the
3 potential issues are, what we are looking for for
4 compliance.

5 Again, to extend that open transparent
6 process between the tribes and dealing very one on one
7 with the issues and very directly with the tribes. We
8 try to, again, reflect that in here.

9 All right. The next part, part 577 --
10 excuse me.

11 CHAIRWOMAN STEVENS: Thanks, Steffani,
12 for allowing me to interrupt for a moment. In
13 particular, this particular draft for 573, the comment
14 period closes on August 9th. If you haven't had the
15 opportunity to take a look at this, the section in
16 particular that we want you to take a look at, if you
17 would, is page 1, 573.2.

18 This is a new, as we said, this is a
19 new section that goes through basically a step
20 process. Instead of going straight to an NOV, there's
21 a letter of concern or a noncompliance notice, so the
22 tribes have the opportunity to come into compliance.

23 This may be new to everybody today,
24 but when you do take it back, take a look at it and
25 provide some comment to us. Again, this is a

1 discussion draft only. Submit your comments by August
2 9th if you could and any suggestions, clarifications
3 you might need.

4 MR. MATHERLY: Just one more comment.
5 Andrew Matherly, Spokane tribe. Is there going to be
6 a time frame when a tribe's issued a letter of concern
7 for a noncompliance within a rolling calendar year or
8 fiscal year and so if that incidence's been taken care
9 of, the next year that same concern or something comes
10 up, it's in a different nature, it's going to go
11 straight to an NOV or can we have a time period where
12 we can wipe those off, a clean slate?

13 VICE CHAIR COCHRAN: Something like
14 this is a warning and if you behave yourself for six
15 months the warning goes away?

16 MR. MATHERLY: Yeah.

17 CHAIRWOMAN STEVENS: Or moreover, a
18 closeout of an investigation -- we heard that already
19 -- that says we've been investigating this matter.
20 The matter is now closed. We would probably put
21 language in there that would preserve the right of the
22 commission, should it get new information or if it
23 continues, that we may reopen the matter. Is that
24 what I'm hearing?

25 MS. ECHO-HAWK: In one of our drafts

1 it will be talking about there is a provision. It's
2 571, and it's in your packet, and this may help
3 address your concern. 571.4 is an investigation
4 closure letter, and that's on page 2 of your draft,
5 line 28. So this may address some of your concerns.

6 And your concern is something that
7 we've heard repeatedly. So I don't know if this
8 addresses what you were talking about. Okay.

9 MR. PHILLIPS: I think we have a
10 question down here as well.

11 MR. SPENCER: Warren Spencer, Yakama
12 Nation. Could you elaborate on the legal enforcement
13 action?

14 VICE CHAIR COCHRAN: I'm sorry.
15 Where?

16 MR. SPENCER: Section C.

17 VICE CHAIR COCHRAN: Where are you at
18 in the draft?

19 MR. SPENCER: Line 39, 573.2.

20 MS. SHYLOSKI: This provision actually
21 is not agency action, so it wouldn't be considered an
22 enforcement action. It is more of a sort of heads-up
23 letter of concern, we want to let you know and
24 possibly talk about the timing of addressing concerns.

25 MS. JACK: Dolcee Jack, Yakama Nation.

1 I think what we're more concerned of is the legal
2 enforcement, that we want an elaboration on. What
3 kind of legal enforcement action would be taken?

4 MS. SHYLOSKI: We have a separate part
5 of our regulations, which is 575, which discusses
6 Notices of Violation that can be issued by the chair.
7 So this is separate and distinct from that.

8 CHAIRWOMAN STEVENS: These are
9 intended to be the steps prior to issuing a Notice of
10 Violation. We've heard over the past year that we've
11 been in office that there should be some effort made
12 by the commission in a formal way to bring tribes into
13 compliance, they know what the steps are, prior to
14 issuing a substantial violation through a Notice of
15 Violation and that the legal enforcement action is
16 spelled out in 575.

17 Once we do get past this and it
18 doesn't remedy, then we go to the NOV so that the
19 tribe has an opportunity to correct.

20 VICE CHAIR COCHRAN: Does that address
21 your question?

22 MS. JACK: Yes. Thank you.

23 VICE CHAIR COCHRAN: All right. Let's
24 turn our attention now to the regulations that are
25 grouped together by proceedings before the commission.

1 Part 519, we'll start with that one, as it's not real
2 hefty. This has to do with service and this is how
3 the agency and parties serve official notices and
4 orders.

5 It does require a designation of an
6 agent for service and then sets forth the various
7 types of service that can be used. So for the lawyers
8 sitting in the room, I see your ears perk up. The
9 proposed change that we've looked at has to do with
10 including email service as part of an authorized
11 method.

12 Right now it does allow us to hand
13 deliver to designated agents, hand deliver to the
14 person in charge of the gaming operation, mail, and to
15 fax. With the, again, changes in technology, email
16 being one of the ways that the service should be
17 accomplished.

18 I should preface, again, this
19 discussion with where the commission's thoughts were
20 in looking at this particular group of regulations.
21 We are looking for ways to bring clarity to our
22 regulations where we can. We're also looking for ways
23 to eliminate some duplicative processes that the
24 tribes are experiencing.

25 We also are looking for ways to ease

1 some of the burdens that are not only on the tribes
2 but on our own internal processes to make sure that
3 due process is afforded properly and that's kind of
4 the underlying theme that you'll see throughout all of
5 these revisions.

6 So while it's not particularly sexy,
7 if you will, to talk about emailing service, again,
8 the attempt here is to get away from more costly
9 methods of service, which include the mail and Federal
10 Express and some other things, and to use technology
11 to ease those expenses. As you all know, what we see
12 in our proceedings can be very voluminous.

13 Is there any reason why we shouldn't
14 include email? All right. Good.

15 MS. VYVYAN: Can I ask for
16 clarification? What type of service? I mean, give me
17 some examples of what you're saying.

18 MS. SHYLOSKI: In court practices
19 today, many courts are allowing filing of pleadings
20 electronically and so what we're wanting to hear from
21 you all is what you think about allowing the same
22 thing within the NIGC. So once an initial agency
23 action is served in a very traditional way, whether it
24 be mail, and we do it now by fax as well, whether
25 after that initial service, whether you all think it

1 would be okay for the parties to exchange pleadings
2 and other filings via email.

3 MS. VYVYAN: I would just comment that
4 as long as there's agreement between the parties that
5 email exchange would be okay, but I think there should
6 be agreement up front, because, you know, computers
7 electronically have glitches and you want to make sure
8 that, you know, timelines were kept and met and that
9 sort of thing, so...

10 VICE CHAIR COCHRAN: Do you have the
11 same type of issues coming up on the fax side?
12 Technology and faxes can create problems.

13 MS. VYVYAN: Well, if it's the
14 original pleadings that are being served on someone, I
15 wouldn't. I mean, faxes get shut down at night and on
16 weekends for that very reason, because law firms
17 generally don't want fax services when they're not
18 present in the office. I mean, yeah, I mean, in
19 answer to your question, faxes can be problematic as
20 well.

21 MS. SHYLOSKI: And that's what we've
22 heard from tribes, is that when we initiate service of
23 an agency action via fax, that sometimes faxes get
24 lost or they don't get to the right person and so
25 we've received those types of comments.

1 VICE CHAIR COCHRAN: Would it be then
2 your recommendation that after the initial pleadings
3 are filed, that it be by agreement between parties as
4 to the types of service that would be accepted?

5 MS. VYVYAN: I think it would be safer
6 to have an agreement between the parties, you know, on
7 how they want to notify each other.

8 VICE CHAIR COCHRAN: Thank you.

9 MS. SLAPE: Hi. Debbie Slape,
10 Nisqually tribe. Why not, if people and tribes agree
11 to the email and the fax, that it be followed up with
12 a hard copy? State in the email, blah, blah, blah,
13 hard copy to follow, and then that way you've got both
14 of them covered and hopefully no miscommunications.

15 VICE CHAIR COCHRAN: Thank you. The
16 other sections that are included in this overall group
17 include the appeals of ordinances under 524, the
18 appeals of management contracts under 539, and appeals
19 before the commission under 577.

20 The general question that the NOI
21 asked here has to do with how are these existing
22 appellate rules working, because we know on our end
23 the problems that have come up over time. I have no
24 doubt we've heard from the tribes about some of the
25 problems that have presented themselves in the

1 existing rules. Plus there were a lot of gaps that
2 simply didn't give the agency or the tribes guidance
3 on where to go in a particular appeal.

4 The thoughts here are to look towards
5 some type of more comprehensive set of rules or at
6 least something which gives greater detail. Does
7 anybody want to begin? Do they have thoughts on the
8 existing? We can walk through them one by one, or
9 somebody has thoughts in general about any of the
10 processes.

11 You know, I'm an attorney by
12 profession, and I know my fellow attorneys are not by
13 nature quiet. I'm a little surprised. Maybe what we
14 could do is --

15 CHAIRWOMAN STEVENS: I know we do have
16 some summary of the initial comments we received on
17 the Notice of Inquiry. Maybe we could provide just a
18 verbal summary of those.

19 MS. ECHO-HAWK: So when we sent the
20 comments out, when we sent out the Notice of Inquiry
21 and we asked the question about whether or not we
22 should be, you know, taking a look at these
23 provisions, we heard quite a bit from tribes that
24 there were some due process concerns, that time frames
25 are not, are not clearly spelled out in the -- the

1 time frames aren't clearly spelled out in some of the
2 proceedings.

3 A number of the comments, in fact, 22
4 of the comments -- we received 35 comments on this
5 particular group on this particular issue. Four of
6 those -- well, of those, 20 commenters said that we
7 needed to have a more formal procedural -- we needed
8 to have more formal procedural rules for appeals and
9 that those rules need to guarantee due process.

10 What's interesting here is that we've
11 done a number of sort of final agency actions that all
12 have some sort of level of appeal. So you have your
13 gaming ordinance approval, your management contract
14 approval. You have situations where an enforcement
15 action's been taken and a tribe wants to appeal that.

16 So there's a number of proceedings
17 that could end up on appeal, and when that happens,
18 what's the time frame? How is it going to work? Part
19 577 right now consolidates the hearing before private
20 presiding officials and the sort of proceedings before
21 the commission where there's no hearings but there's
22 just written submissions. All of these are in kind of
23 different places.

24 So a couple of the suggestions were
25 that we put all the proceedings, all these appeals

1 proceedings together so that it's easy to find it.
2 You have a management contract that's been
3 disapproved. Where do I go to find the rules for how
4 to file an appeal of that? So that was the approach
5 that we took or that we're taking as we look at these,
6 how can we address the concerns that were given to us
7 by tribes.

8 Some of the other concerns that we've
9 heard was that there's issues tribes have had with the
10 chairman sitting on the commission during an appeal
11 and, unfortunately, that is, or, I guess, however you
12 look at it, the commission is defined as including the
13 chairperson. So when there are appeals before the
14 commission, the statute requires that the chair be on
15 the appeal as well and that's why we have three
16 commissioners and that's pretty standard for a
17 commission, an administrative commission such as the
18 NIGC. So that was one thing that we heard and we
19 looked into and it's just that statutory definition.

20 That's the bulk of the comments. You
21 know, there are some things that can be clarified,
22 definitions. You know, we're looking at sort of what
23 does days mean, you know, all those things that as
24 lawyers you're really interested in but perhaps your
25 clients might not be as thrilled about.

1 VICE CHAIR COCHRAN: The comments
2 also, some of them addressed provisions or the need
3 for provisions to consolidate appeals or to allow
4 intervention of parties in certain types of appeals
5 and right now, again, looking at clarity in our rules,
6 whether or not we can achieve that in these particular
7 provisions as well.

8 CHAIRWOMAN STEVENS: We should have a
9 draft out next week, I'm thinking, of what -- our
10 effort to be responsive to comments we've heard, both
11 in the NOI and what we've heard so far on the road and
12 I know speaking about these in the abstract is
13 difficult to make comment. So we'll get that out.

14 Again, I want to emphasize that is a
15 discussion draft. It will not -- that the intent is
16 to get feedback before we enter into this formal
17 rule-making process, the Notice of Proposed Rule
18 Making, to help inform that draft and try to get it as
19 -- to the right place out of the gate as we can.

20 So the proceedings before the
21 commissioner should come out next week and we'll be
22 continuing to talk about them. We may or may not see
23 some of you as we go along. We encourage you to write
24 in comments once you see that draft.

25 MR. ARMSTRONG: Before moving on,

1 Madam Chairman, James Armstrong, Suquamish Tribal
2 Gaming Commission. In review of the enforcement
3 section on issue of the notification, notification of
4 violation. I'm looking at the last page. I'm sorry.
5 My document eyes aren't as fast. The last page of the
6 annual fees it says that in section number 12, line
7 25, statements and/or fee payments over 92 calendar
8 days late constitute a failure to pay an annual fee as
9 set forth in NIGC regulation 25 CFR 573.6A2.

10 In accordance with 576.6 of the tribe
11 management contract, the operation failing to pay
12 their annual fee, the chair may issue a Notice of
13 Violation and (inaudible) to a Notice of Violation a
14 temporary closing order.

15 In looking at 573 section .6A2, there
16 is no such number in that regulation. So I don't know
17 if I'm seeing a typo there or if you've eliminated
18 573.6A2.

19 MS. ECHO-HAWK: Yes. Because we are
20 -- the fee drafts went out first and before we began
21 sort of working on the 573 draft, when we began making
22 these changes, go back through and review the
23 citations, that particular section is probably
24 referenced above and I'm going to -- I think that it
25 is and now what is now 573.4.

1 So, yeah, that's an excellent point.
2 Some of these cross-references are incorrect,
3 especially when they're referring to another draft.
4 But if you look at the rule, the current rule that's
5 on the books and not the discussion draft, then that
6 provision in there, we'll have to adjust that when we
7 go forward with the drafting process.

8 MR. ARMSTRONG: Thank you.

9 VICE CHAIR COCHRAN: Are there any
10 other comments on this group before we move forward?
11 Madam Chairwoman.

12 CHAIRWOMAN STEVENS: Thank you. So
13 let's go on to group four if the group is ready to
14 just keep rolling along here. We're going to talk
15 about background investigations, licensing, and other
16 issues under group four. So I'll turn it over to Lael
17 to discuss group four.

18 MS. ECHO-HAWK: Thank you, Tracie. So
19 once again, we do have -- we actually have four drafts
20 in this group and you have them all in your handout.
21 Part 558, part 556 and 558 are the most recent. They
22 actually just went out publicly the other day, but
23 they are in your handouts. Then part 571 you have a
24 handout for that and part 537 as well.

25 So group four was sort of one that had

1 miscellaneous things. It seemed to be somewhat
2 related to background investigations, licensing,
3 management contract, that type of thing. And the
4 first one -- this is actually the most recent
5 regulation, but it's sequentially the first to address
6 -- is the pilot program. As most of you know or
7 already participate in, the NIGC has a pilot program
8 that is very, very old. It's probably 10 years old, I
9 think, and one of the -- some of the comments that we
10 received during the Notice of Inquiry was that we
11 should consider amending those regulations to
12 formalize the pilot program.

13 Now, what the pilot program does is it
14 allows tribes -- and about over 90 percent of the
15 tribes that game today do participate in the program
16 -- it allows tribes to submit a Notice of Results to
17 the NIGC instead of having to send an entire file with
18 all the investigative material and background
19 information. A tribe would just send the Notice of
20 Results to the NIGC and then maintain for yourself the
21 application and investigative reports.

22 All the commenters that commented on
23 this particular issue support formalizing the program
24 either into a regulation or a policy. So that's what
25 we've attempted to do in parts 556 and 558.

1 Part 556, part of formalizing this
2 pilot program, what we try to do is separate and draw
3 a line in the regulations between everything, all the
4 procedures that happens before a gaming license is
5 issued -- and that's included in part 556 -- and then
6 everything that could occur after the gaming license
7 occurs and we put that into 558 to try to be clear
8 about where we're at in the licensing process.

9 I want to reiterate that this is only
10 for primary management officials and key employees and
11 it's something that I know your TGAs are very familiar
12 with, as are our regions.

13 So briefly, the discussion draft just
14 lays out -- what we've just tried to do is formalize
15 what the process already is. A tribe that's looking
16 to license a key employee or primary management
17 official must notify the NIGC of the applicant's
18 background results no later than 60 days after the
19 applicant begins work.

20 It also provides -- one of the things
21 that we've heard from tribes is, hey, look, we've got
22 an individual here who's already worked for a tribe.
23 Just we have all their information. We just want to
24 update it. Is that okay. Can we do that. And so
25 this regulation allows for a tribe that has that

1 information to simply update the materials and provide
2 us with a Notice of Result, so they don't have to go
3 in and repeat what's already been done.

4 Now, part 558, so after -- this all
5 happens before the gaming license is issued. Moving
6 on to 558. After the gaming license has been issued,
7 the tribe -- and the tribe has provided the agency
8 with the Notice of Results, the tribe can license a
9 key employee or the primary management official. At
10 that point the tribe has to notify the commission that
11 the license has been issued.

12 Now, I guess, these points are a
13 little bit backwards, perhaps, chronologically. Once
14 the NIGC has received the Notice of Results, we have
15 30 days to request additional information from a tribe
16 on the licensee. This was an issue that we had, we
17 talked quite a bit about, because sometimes we get
18 Notice of Results that just don't have all the
19 information.

20 So one of our concerns was when does
21 this 30 day period start. So you'll see in the draft
22 that it says upon receipt of a complete Notice of
23 Results, with all the information that the agency
24 needs in order to do a complete review.

25 So once the licensee has been issued a

1 license, the tribe has to notify the commission within
2 30 days and then the NIGC has 30 days to either
3 request additional information from a tribe or to
4 object -- or to object to an issuance of the license.

5 Now, this gets a little bit tricky,
6 because if the NIGC -- if the tribe sends the Notice
7 of Results to the agency before they issue a license
8 and the NIGC sends back some notice that there's an
9 objection, then the tribe takes another look at the
10 licensee and then makes a decision about whether or
11 not they want to issue the license.

12 However, if the tribe issues a license
13 to the licensee before the agency has objected or
14 before the 30 day period and the license has been
15 issued and the NIGC then says, hey, we have an
16 objection, the tribe has to suspend the licensee's
17 license, and then that licensee has a right to a
18 hearing. Most of you are familiar with license
19 revocation hearings held by the tribe.

20 Then at that point the tribe decides
21 whether or not that employee can keep their license
22 and then you have to notify the NIGC.

23 One of the things that has sort of
24 changed from the pilot program is that the statute,
25 the IGRA, Indian Gaming Regulatory Act, requires that

1 there be two -- that the tribe notify the NIGC twice.
2 You have to send us the Notice of Results and then you
3 have to send us a notice that you've licensed the
4 employee.

5 That has been sort of the second step,
6 the notice that the tribe has issued the license, has
7 been sort of overlooked, I think. In some regions
8 it's not been a uniform sort of process and it is
9 something that's mandated by statute and so you will
10 see it in the regulations. It is one thing we wanted
11 to point out to tribes, because it is a bit different.

12 You have to send in the Notice of
13 Results and you also have to send in a notice that the
14 employee -- the license has been issued to the
15 licensee.

16 We're thinking of ways using
17 electronic, mail or email and other ways to make that
18 not a big process. It goes to the region. Your
19 licensing people, I'm sure, are very familiar with
20 working with the regions and the licensing process,
21 but we're trying to think of ways that we can do it so
22 it's very manageable and it's not an extra burden.
23 But again, it's required by statute, so we needed to
24 put it in the regulation.

25 The discussion draft also says that

1 there may be electronic submissions can be -- if you
2 work with your region. We need to figure out our own
3 capabilities at the agency and make sure that it's
4 something that can be done easily.

5 And then in the future, ordinances,
6 any ordinance that you submit to amend, that ordinance
7 needs to address this issue, but today, if we were to
8 adopt this today, then as long as you have a gaming
9 ordinance, you don't need to make an amendment
10 immediately just to comply with this part, just only
11 in the future as you amend your ordinance.

12 So that's the pilot program. The
13 comment period closes on August 10th and that is on
14 the top of the draft. The draft is also available
15 online.

16 Group four, we also asked and received
17 some inquiry whether or not the NIGC should allow
18 access to fingerprint processing for any employee
19 designated by the tribe, and comments support this and
20 it's something that we're looking into, but because we
21 work with the FBI on that, we're talking with them,
22 but so far we haven't heard any objections from tribes
23 on that issue.

24 Part 537, this is a draft. You have
25 this in your handout. The Notice of Inquiry asked

1 whether or not we should clarify that management
2 contractors of Class II and Class III facilities must
3 have a completed background information. Most people,
4 most commenters supported this clarification. It's
5 not changing anything, but it's just formalizing it in
6 the regulation, that if you're a management contractor
7 with Class II and a Class III, you still need to have
8 a completed background investigation. Yes.

9 MR. OSBORNE: I have a question about
10 the backgrounds and the timing of it. Of course we
11 have to deal with other outside agencies, tribal
12 court, different human resource levels. What happens
13 when we don't get the information back in time?

14 MS. ECHO-HAWK: Don't get the
15 information from who?

16 MR. OSBORNE: Tribal courts that do
17 background checks on tribal members.

18 MS. ECHO-HAWK: We don't have a time
19 frame on that. I mean, if you're looking to
20 background a key employee or a primary management
21 official, you have to follow the process included in
22 your ordinance for licensing employees and then you
23 just provide us that information and then the NIGC has
24 a 30 day statutory time frame to respond to you.

25 MR. OSBORNE: So does that mean that

1 we allow a new employee to continue on until we get
2 some kind of notice?

3 MS. ECHO-HAWK: I know some ordinances
4 do provide --

5 MR. OSBORNE: We don't do that. We
6 don't allow them to go in until everything's
7 satisfied. Looks like it changed a little bit.

8 MS. SHYLOSKI: Our current regulations
9 mandate that someone cannot work beyond 90 days
10 without having a license.

11 MS. ECHO-HAWK: Some tribes do have a
12 process for a temporary license and it's usually that
13 90 day period, because obviously if it's a key
14 employee or a primary management official, they want
15 to get that person in to work, but there is only a 90
16 day window, like Jo-Ann just pointed out, and we
17 haven't changed that.

18 CHAIRWOMAN STEVENS: More
19 specifically, I think it varies from tribe to tribe on
20 whether they're going to issue a temporary license.
21 We know of some tribes -- and correct me if I'm wrong
22 -- who don't let that person go to work until at least
23 the 30 days or objection pass. We've heard that.

24 That's completely up to the tribe
25 whether they want to do that or not. I understand

1 there are reasons why tribes would do that, because
2 once you issued them a license, they are now in your
3 licensing process, their due process rights and
4 licensing of your ordinance.

5 If you don't put them to work, then
6 those don't exist, and so if you have to pull them
7 back from application as opposed to pull them back
8 from a licensing situation, those may have two
9 different effects on the tribe based on how they
10 process their licenses. So some tribes will put them
11 to work temporarily, some tribes don't. So that's
12 really all up to how, I think, the tribe is organized,
13 isn't it, in their ordinance?

14 MS. ECHO-HAWK: Yes.

15 CHAIRWOMAN STEVENS: Except if you
16 want to put them to work on a temporary basis. It's
17 just with the understanding that there may be an
18 objection from us.

19 MR. OSBORNE: We don't allow anybody
20 on a temporary basis.

21 MS. ECHO-HAWK: So moving back on to
22 537. This is the background investigations for a
23 management contractor of a Class II and Class III
24 facility. It's a clarification point. It's included
25 in the discussion draft under 537.

1 We did receive some other comments
2 about background investigations for approval
3 management contracts asking how the process can be
4 streamlined, and if you look on the draft on page --
5 it's the third page, part 537.14 or 1D, there is a
6 section there that says that the chair can exercise
7 discretion and reduce the background investigation to
8 be conducted if it's for a tribe or a wholly-owned
9 tribal entity, a national bank or institutional
10 investor that's already federal regulated.

11 So it does streamline the process for
12 some entities. If you have questions or if you have
13 comments on that, we'd like to hear if that's an
14 appropriate way to handle this or if something else
15 needs to be considered. That's the language there.

16 Written comment period on this
17 discussion draft closes on August 9th, and you can
18 send all of these comments into reg.review@NIGC.gov,
19 and that will be -- that's on the last slide too, but
20 reg.review@NIGC.gov. Any comments that are sent in,
21 if you are interested in seeing what other people have
22 to say, are also posted on the website.

23 Another issue that we considered in
24 the group four section was whether or not the -- the
25 Notice of Inquiry asked whether the NIGC should

1 require submission and approval of collateral
2 agreements. The majority of comments supported
3 requiring submission of collateral agreements with
4 management contracts when they're submitted for
5 review, but there was a lot of disagreement in the
6 commenters regarding whether or not collateral
7 agreements should be approved, should be part of the
8 management contract approval process.

9 Comments said that requiring the
10 approval by the NIGC of collateral agreements could
11 discourage private investment. Additionally,
12 commenters said that the NIGC doesn't have the
13 authority to approve collateral agreements, that this
14 would be secondguessing business decisions, and that
15 it should be left to the discretion of the tribe.

16 On the other hand, we had commenters
17 that said that the trust's responsibility requires
18 review and approval of these other agreements and that
19 this approval would protect tribe's sole proprietary
20 interest and that it could discourage a business or
21 even management contractors or whoever from attempting
22 to take advantage of the tribe and that these
23 approvals then reduce risks to both parties.

24 We don't have a draft on this and
25 we're still taking comments and considering carefully

1 about whether or not this is a way for the commission
2 to go and if it's an appropriate exercise of their
3 authority.

4 Part 571. You have a draft of this in
5 your packet. This asks whether to clarify the NIGC's
6 access to books, papers and records included at sites
7 and maintained by third parties. We had a lot of
8 comments, some saying that revisions were unnecessary,
9 some saying you already have the authority, but if you
10 think -- you have subpoena authority, but if you think
11 you need to clarify the regulation, then go ahead.

12 One commenter said that if you just
13 require tribes to maintain all records onsite that
14 would eliminate this issue. Another commenter said
15 that the regulation should be revised to clarify the
16 NIGC does not have access to Class III records.

17 So you'll see in our draft, discussion
18 draft, first of all, we did include, as was referenced
19 earlier, an investigation closure letter proceeding.
20 So when the NIGC's concluded its investigation and
21 decided it's not going to begin an enforcement action,
22 the commission can issue a letter telling the parties
23 that the investigation has been concluded.

24 We clarify that that notification
25 would not be a finding that there was no violation,

1 but that -- and that that notification doesn't
2 preclude further action by the NIGC. It's just simply
3 a letter saying that we concluded that investigation
4 and we're not beginning an enforcement action at this
5 time.

6 It was an issue that's been brought up
7 from a number of consultations. Tribes have been
8 concerned about an investigation that might have
9 happened a year or two ago and there was no further
10 follow-up and so this would provide the NIGC the
11 ability to provide that follow-up and maybe some
12 clarity to tribes that they're not under investigation
13 anymore.

14 The draft also clarifies in 571.5 that
15 the commission may access those records, books,
16 papers, held or maintained by a person other than a
17 gaming operation. That's something that we've heard
18 comments on that the NIGC already has the subpoena
19 authority to do that, but considering -- we include it
20 in the draft because there is a number of comments
21 that say, well, perhaps it's a point of clarification.
22 Written comments on that also close on August 9th.

23 Sort of the last thing that we --

24 CHAIRWOMAN STEVENS: I think we have a
25 comment here.

1 MS. HOUSE: Sharon House for Eastern
2 Shoshone. I have a question. If you could take a
3 look at 571.4, investigation closure letter. When I
4 first read that term closure, it was almost talking
5 about investigation closure letter. My first thought
6 was that you were talking about an investigation on
7 closing the facility and I guess the recommendation
8 would be to just clarify that, use termination or
9 conclusion, I'd recommend.

10 And then the other section that I had
11 a concern about is where it says entry of premises,
12 inspection of books and records right under that. A,
13 the commission's authorized representative may enter
14 the premises of an Indian gaming operation or any
15 other person. You ain't entering any other -- no.
16 I'm sorry. With all due respect, you're not entering.
17 No.

18 Then it says, well, go back up and see
19 what the definition is, and it says, person means an
20 individual, Indian tribe, corporation, partnership or
21 other organization or entity, and ordinarily that's
22 appropriate, but down here it doesn't sound real good,
23 I guess. It doesn't look good and it probably just
24 needs clarification. I know Lael probably put that in
25 there. I'm just kidding. Your legal term.

1 MS. ECHO-HAWK: It was Larry. Yeah,
2 Larry from Oneida.

3 CHAIRWOMAN STEVENS: We can always
4 thank Sharon for lightning up a heavy afternoon. But
5 thank you for pointing that out.

6 MS. HOUSE: And then I wanted to point
7 out. 571.6, B, where it's real clear right there, B,
8 or other facility. Entering of gaming operation or
9 other facility, that's real clear as opposed to the
10 person that you're entering. I don't know.

11 VICE CHAIR COCHRAN: Sharon, we had a
12 very similar discussion internally about the
13 terminology. Not quite as humorous, but we...

14 MR. GOBIN: So we had the same concern
15 there on that. It was confusing as to what it meant.

16 CHAIRWOMAN STEVENS: I think the
17 intent here was to clarify that there are records that
18 are not kept at the facility, maybe at a management
19 contractor's facility, somewhere else in the
20 Neverlands, far, far away in the Neverlands, that we
21 make clear to them that we have access. Just because
22 it's not in the gaming facility or on tribal land, we
23 still have the right to have access to those records.

24 MR. MATHERLY: Andrew Matherly,
25 Spokane tribe. On that same part B when it talks of

1 commissions, authorized representatives shall present
2 official identification upon entering a gaming
3 operation, and it goes on. I know we talked earlier
4 about transparency and working with the primary
5 regulations and that's the tribes, they're
6 self-governed. The only thing I'd recommend is that
7 upon communication with the tribal representative. It
8 was discussed earlier whether that tribal council or
9 the gaming commissioners, the tribal gaming
10 commissioners.

11 I just think I know you have the
12 authority to go in and do random checks and whatnot.
13 We've experienced in the past -- and I'll just use one
14 example -- the NIGC representative that came into one
15 of our facilities -- this has been probably over a
16 decade ago. Maybe not that far -- and asked if we
17 have a sprinkler system and asked a security guard and
18 the security guard said yes.

19 So they walked away, NIGC submits the
20 complaints for the year and has a checkmark. Several
21 years pass and they come in and ask another employee,
22 do you have a sprinkler system, and the answer was no.
23 The tribe openly got an NOV, but the security guard's
24 question was do you have a sprinkler system, and yeah,
25 we did. It was out in the RV park. It didn't apply

1 to the facility.

2 So I think that transparency reporting
3 to the proper authority is going to help the
4 commission, the NIGC itself, because sometimes
5 inquiring to certain information for audit purposes or
6 whatnot, if you ask the wrong personnel, because
7 that's not their normal day-to-day, it's not something
8 they're delegated, then you're going to run into that
9 issue all the time, so...

10 MS. ECHO-HAWK: So the final point or
11 the final issue that we looked at in group four was --
12 let me get to the page -- the issue of net gaming
13 revenue and whether or not that definition for the
14 calculation of management fee should be revised to be
15 consistent with the act and we talked about this
16 earlier, what the issue is with defining net revenues
17 utilizing GAAP and that has remained a concern and
18 that was also supported in the comments.

19 So you do not see a draft in front of
20 you now. If you have comments about that or concerns
21 about that, then we'd like to hear that, whether or
22 not we do need the clarification and then how can we
23 make that clarification while remaining in compliance
24 with IGRA.

25 MS. HOUSE: Again, my name is Sharon

1 House for Eastern Shoshone. Recently, a new guideline
2 -- what is it -- for casinos, auditing for casinos,
3 just recently came out and there's issues in there
4 also that are discussed about net win and right now,
5 because of working in California, they're having
6 issues over that already and they're calling it a
7 continuum, but in order not to get to that point it
8 may be something you want to deal with and look at
9 from that auditing, if they've changed it.

10 I haven't looked at it, but I know
11 they've changed it, is to look at it and just see if
12 it could impact on the definition of net win or maybe
13 even make it more consistent with what's really
14 happening in the industry.

15 MS. ECHO-HAWK: That's all of group
16 four that we had.

17 CHAIRWOMAN STEVENS: We have a few
18 minutes before the break. I don't know if you want to
19 all take a break and digest some of this. If there
20 are any comments right now on all the parts that we've
21 discussed in four.

22 MR. WHEAT: Does this cover the
23 definition of allowable uses? Does this comment
24 period address to that 502 definition?

25 CHAIRWOMAN STEVENS: Say that again.

1 Restate your question.

2 MR. WHEAT: Scott Wheat, attorney for
3 the Spokane tribe. So is the definition of allowable
4 uses kind of in play? We know that some commentators
5 have suggested that they want to see some specificity
6 with respect to putting cash reserves aside and
7 whether that was an allowable use of tribal gaming
8 revenues.

9 I'm just wondering, since we're trying
10 to wade our way through a thicket of regulatory
11 review, is this a time to discuss that topic or is
12 that for tomorrow?

13 CHAIRWOMAN STEVENS: Did we open that
14 question? I think we were only talking about this
15 when we asked for the Notice of Inquiry. Are you
16 suggesting that we do have that be part of the play
17 here?

18 MR. WHEAT: Well, it's in our comments
19 because we know that some people have suggested that,
20 whether in order with the -- whether you've asked for
21 those comments or not, we've reviewed them, we've
22 reviewed your comments on this epic journey we're all
23 taking.

24 So I would just like to get it on the
25 record that Spokane would oppose tinkering with any

1 kind of definition of what an allowable use is. We
2 note the concerns maintaining adequate reserves in
3 cash flow, but we think that's already an allowable
4 use under other economic development under IGRA. So
5 to the extent that the commission wants to entertain
6 those suggestions, that there be cart offs and further
7 definitions of allowable uses for net revenue and we
8 would just humbly request that you all not go there.

9 VICE CHAIR COCHRAN: Madam Chairwoman,
10 if I could, because it is a monumental task and we are
11 covering a lot. Just to refresh your memory, it did
12 ask about allowable uses, so your comment is in the
13 right place; however, we're doing those tomorrow,
14 so...

15 MR. WHEAT: Thank you.

16 CHAIRWOMAN STEVENS: Just waiting with
17 baited breath. Let's get up and take a stretch here,
18 a little break, and we'll come back and that'll give
19 everyone some time to think about any additional
20 comments or for Jim Bob to. You look like you're over
21 there studying. So give you some time to do some more
22 of that.

23 MR. ARMSTRONG: I am.

24 CHAIRWOMAN STEVENS: So give you time
25 to do some more of that. We'll come back in about 15.

1 (Recess taken.)

2 CHAIRWOMAN STEVENS: If we can go
3 ahead and resume. So we do want to open the floor
4 back up to comments on the parts that we've just
5 discussed, either in group two or group four, and also
6 if anyone has anything to say about group one, you
7 know, we're just trying to keep it open.

8 So Jim Bob, were you able to finish
9 your thoughts?

10 MR. ARMSTRONG: Yes, ma'am. Okay.
11 Under the guidelines of the Washington State compact,
12 once we've done a preliminary review of background
13 investigation, we're allowed to provide the new
14 employee a temporary license to work at the casino,
15 and looking at 558.2, notification to NIGC, license
16 issuance and retention obligations, in section A it
17 says, after the tribe has provided a notification of
18 the results of the background check to the commission,
19 a tribe may license a primary management official or
20 key employee.

21 So basically, we bring the review to
22 our tribal gaming commission and they find them
23 suitable and that license has already been issued and
24 you go down to section B and it says, within 30 days
25 of issue of the license a tribe shall notify the

1 commission of the issuance.

2 So my question here is the way we do
3 it, I don't think it is necessary to notify you in 30
4 days, because the notification of results of the
5 background check is our notification to you that a
6 license has been issued. So I'm probably looking for
7 a little clarification on that.

8 MS. ECHO-HAWK: And that was something
9 that we look for clarification for ourself on, because
10 most tribes do that. They send us a Notice of
11 Results. That means not only have they completed the
12 background investigation, but they're also issuing a
13 license.

14 Unfortunately, the way that the act is
15 written, it requires two separate steps, and that's
16 the extra step that I was referring to earlier. And
17 so we're trying to figure out a way to do that that's
18 easy to manage, because the statute says that the
19 tribe not only has to issue us the notice of the
20 background investigation results; they also have to
21 notify us once they issue a license, and that's
22 statute, so we can't do anything about that.

23 It hasn't been done uniformly in the
24 past. Under the pilot program we haven't required
25 that in some cases. Not for any other reason but I

1 think perhaps oversight. So we tried to remedy that
2 in the draft.

3 MR. MINKER: Fred Minker, Jamestown
4 Tribal Gaming Commission. Take care of that one form
5 and you have to parts on it where they could check a
6 box for each and be done with it? It's just a form we
7 send.

8 MS. SHYLOSKI: Right. And what we
9 found was that IGRA says that tribes must notify the
10 NIGC of the results of a background check before the
11 issuance of a license, and IGRA specifically uses the
12 term before, so hence is why the two notifications.
13 Once background results are in and then another once
14 the license is issued, but one has to be before the
15 other.

16 MR. MINKER: But one happens 30
17 seconds before the other.

18 MS. ECHO-HAWK: Exactly. But
19 unfortunately -- and we went over this, because that
20 was my thing, one of the things that we looked at, can
21 you just use one form, and because the way the statute
22 was written, whether it's a drafting error or an issue
23 or just a little it was less than clear or weren't
24 sure how it was all going to play out at the time they
25 drafted this, the words were written that way and so

1 we have to draft the regs to meet those requirements.

2 MR. MINKER: Just as you start reading
3 the form at the top and then we'll have it.

4 CHAIRWOMAN STEVENS: Pause. Pause
5 here. Linda, do you have...

6 MS. HELM: Yeah. I just wanted to
7 say, could we have a standard form for the second
8 notification? I assume that you're planning on that?

9 CHAIRWOMAN STEVENS: Yes. What we
10 found was that the regions were all doing it a little
11 bit differently. We were asking for the same
12 information, but the forms were not uniform across the
13 regions and that's what we will work on as an internal
14 practice, ensuring that what we're doing and the
15 manner in which we request this and process this
16 information, the forms you all have to fill out, are
17 consistent across all of the regions.

18 MR. ARMSTRONG: So I take it there's a
19 process in place where we submit the NOR
20 electronically to NIGC. So my recommendation at this
21 time would be to also have that issuance form of a
22 license set up electronically so when we do submit the
23 NOR, we can almost immediately at that time send you
24 an issue of the license.

25 CHAIRWOMAN STEVENS: That's also

1 something that we've heard. Some regions see a lot of
2 electronic activity. There's some regions who do not,
3 simply because the tribes may not have that technology
4 open, so we want to leave those avenues open. But
5 certainly electronically would be part of this process
6 and would continue to be.

7 MR. SMALL: Excuse me. Nathan Small
8 with the Shoshone-Bannock tribe. It was discussed in
9 the '90s, and I don't know if it's ever been put
10 together, but do you have a list of people that are
11 considered like undesirables and once their name comes
12 up that the tribes are notified immediately that not
13 to deal with them? I think at one time there was
14 tribes were asking if that list could be made
15 available to the tribes.

16 CHAIRWOMAN STEVENS: I don't believe
17 that we do. I know I was just on the Nevada website
18 the other day and I note they have a list of
19 unsuitables or they've been revoked, denied, suspended
20 for whatever reason.

21 We actually had this discussion last
22 week, didn't we, about, you know, to what extent are
23 we able to share information. It comes into the same
24 arena as the NIGC sharing other tribe's information.
25 We've been asked, you know, can you be some sort of --

1 can you help us somehow so that we're not going
2 through the same processes. If another tribe has
3 licensed someone, shouldn't we be able to know more
4 about them.

5 If you use the tribal access portal,
6 the TAPs program, and many folks do, what comes up is
7 just information about where that licensee has worked
8 before and it will tell you the name of the tribe and
9 then you can go and call that tribe and get that
10 information. And we've been asked can't you do more
11 than that? Can you tell us the status? Are they
12 unsuitable? Have they been licensed there, revoked,
13 suspended for any reason?

14 There's a number of problems, I guess,
15 we've encountered and I probably want to talk to the
16 legal ones first or I might punt to Jo-Ann here about
17 why we may be limited on how much information that we
18 can share.

19 MS. SHYLOSKI: One of the practical
20 concerns is the NIGC having up-to-date information
21 about individuals, and under our current regulations I
22 believe that when someone is not licensed, tribes may
23 but don't have to necessarily share that information
24 with us and so for us to have the information on why
25 someone has been denied a license, we need that

1 information.

2 But this all gets into the privacy act
3 and whether we can share this type of information with
4 tribal regulatory bodies and so we are taking a look
5 at it, but we have to deal with both the practical and
6 legal issues involved.

7 CHAIRWOMAN STEVENS: We understand
8 that that would probably make things a lot easier for
9 you, but we do want to be careful about what our
10 authorities are and that we're not causing other
11 problems in doing so.

12 Do we have any other comments on the
13 pilot program, the 556 or 558? Yes, Linda.

14 MS. HELM: I would just like to thank
15 you, Tracie, and the rest of the NIGC staff, Mark, for
16 the opportunity to share our comments with you today
17 and for your openness to hear what the tribes have to
18 say about these proposed regulations. It's most
19 appreciated.

20 CHAIRWOMAN STEVENS: Well, thank you
21 very much. Yes, Scott.

22 MR. WHEAT: Scott Wheat. I do have
23 some comments on behalf of Spokane with respect to 558
24 issues or kind of 558. It ties back into
25 fingerprinting. One of the things, and you may have

1 heard this from other tribes. I wouldn't be surprised
2 if you have. As all the commissioners or staff in the
3 tribes grew up in this industry, you know that all
4 tribes are -- you know, obviously we have to
5 fingerprint and background PMOs and key employees.
6 The state requires us to do that, but some tribes as a
7 matter of self-government choose to engage in
8 backgrounding of a broader base of their facility
9 employees and certainly it's appropriate for them to
10 do so, self-governing entities.

11 However, we get into practical
12 difficulties in trying to adequately background folks.
13 You know, for instance, here in Washington State.
14 Some states are different. Washington tribes can get
15 decent access to the state and criminal database, but
16 that doesn't help us in Oregon and that doesn't help
17 us in Idaho.

18 Representing Spokane, you know,
19 Idaho's not that far away from the Spokane reservation
20 and you can have someone that looks like a saint in
21 Washington but, you know, they may have done some
22 things not so saintly over in Idaho, and that
23 information can be real hard to get to.

24 So Spokane requests that the
25 commission consider if tribes request fingerprinting

1 or at least NCIS criminal history checks, that coveted
2 nationwide criminal database, that the commission at
3 TGA's request accommodate those backgroundings. We
4 also understand that it costs money.

5 So we would propose that tribes that
6 want to do that beyond, you know, what IGRA requires,
7 that they be required to pay an additional to cover
8 the costs to the NIGC for that, but just practically
9 speaking for tribes that want to do that and there are
10 sound policy reasons to do that, it's very difficult
11 and onerous and federal access to that national
12 criminal database is very helpful. So we would just
13 request that the commission consider that.

14 CHAIRWOMAN STEVENS: We had some
15 tribes, I'm not sure that it's gone quite like that,
16 that sort of situation where you're having issues with
17 other states and getting backgrounding information. I
18 know we've been asked about if -- other than key
19 employees or vendors, tribes have said can we run them
20 through your fingerprint data system and we have --
21 I'm looking at Jo-Ann. This would fall into that
22 category?

23 MS. SHYLOSKI: Yes, it would.

24 CHAIRWOMAN STEVENS: So we'd pay to
25 play on the fingerprinting, and I guess that would be

1 a possibility. I'm trying to think of how we could do
2 that or a tribe would have to do it through their
3 ordinance or just an agreement or if they utilize
4 that.

5 MS. SHYLOSKI: We would have to take a
6 look at our statute and we would also have to
7 coordinate with the FBI on the issue. One of the
8 things that was done a few years ago was to change our
9 regulations to allow tribes to deem anyone that they
10 think falls within the PMO or key employee category as
11 a primary management official or a key employee.

12 MR. WHEAT: But see, that gives us
13 problems. I mean, vendor is like one category that's
14 eligible or in a pool of folks that the tribes might
15 want to background. So are casino employees who
16 aren't PMOs or are primary management officials. So
17 the tribes may not want to impose the more stringent
18 kind of, you know, qualifications, have you ever been
19 convicted of a felony, this or that.

20 What I'm trying to say here is there's
21 tribes that are looking sometimes to help people that
22 may not have the impeccable background of a PMO or key
23 employee but still a good, solid person that they want
24 to have on the facility staff somewhere, but they want
25 to do a real cursory background check to just make

1 sure that they haven't done some of the big, insane,
2 murder, chaos, mayhem, and make sure they're safe on
3 that level, but don't want to put them in this elite
4 tier of PMO or key employees.

5 This is really where I get most of my
6 tribal clients asking, you know, we'd like to do this,
7 but we always run into a problem. It's not
8 necessarily the states are uncooperative; it's just
9 difficult to do a 50 state search on somebody. It's a
10 lot easier to punch it through the FBI's database.

11 MS. SHYLOSKI: Right, right. And
12 we've heard this comment from other tribes in terms of
13 wanting to background vendors and contractors and
14 others.

15 MR. WHEAT: Right. But I guess I'm
16 saying that treating them as a key employee or
17 designating them under your gaming ordinance as a key
18 employee or a PMO doesn't necessarily appease all of
19 the issues that are resulting in that.

20 MS. SHYLOSKI: Right. I understand
21 that. I just wanted to mention that as sort of an
22 aside so that folks know about that change.

23 CHAIRWOMAN STEVENS: But it does give
24 us something to think about. If we can or what the
25 barriers would be to not -- to do what you're asking

1 but not through that higher level scrutiny, higher
2 scrutiny process.

3 MR. WHEAT: Let me just give you an
4 example. Like folks like Sharon, if she's still here,
5 who represents commissions could probably appreciate
6 this. You're sitting around the table. You're
7 thinking about drafting, you know, tribal licensing
8 criteria and you get to your non-PMO and your nonkey
9 employees and they say, well, we'd like to hire folks,
10 but we just want to make sure that we don't have like
11 a murderer or a pedophile on our staff.

12 I mean, goodness gracious, what if
13 something horrible happens and we didn't know because
14 we didn't even do a background check. That's real
15 practical. You know, as a lawyer, I can really
16 appreciate that concern and I think that's a big
17 reason where the ask is coming from. Just how much
18 you would facilitate those kind of checks and make it
19 much easier for the facilities and I think they have
20 sound policy reasons for it.

21 CHAIRWOMAN STEVENS: Thank you, Scott.
22 So that was 556, 558. Any others on monitoring and
23 investigations aside from Sharon House's fun
24 observations?

25 Actually, I'm considering other words

1 besides closure. It looks as though this has to do
2 with temporary closure or permanent closure of a
3 facility, so we'll examine some other terms we might
4 be able to use instead that would show that we're
5 terminating an investigation.

6 I do want to open the floor up for
7 anything that may have come up earlier today in group
8 one on fees, facility licensing, issues with Class III
9 minimum internal control standards or processes by
10 which we should undertake addressing Class III minimum
11 internal control standards.

12 Anyone who wasn't here this morning,
13 this would be a good time to speak.

14 MR. GOBIN: I'll raise my hand. I
15 wasn't here this morning. Glen Gobin. I understand
16 that there was some discussion on Class III and the
17 authority of NIGC to issue regs, and, again, just want
18 to state that from Tulalip's perspective, we would ask
19 that NIGC repeal any promulgation of any regulation
20 regarding Class III MICS, and as the CRIT decision
21 clearly defines that NIGC does not have the authority
22 for that and accept that and move forward in a
23 positive manner acknowledging that.

24 CHAIRWOMAN STEVENS: Thank you.

25 MR. GOBIN: That being said, I would

1 just like to make an overall statement that we've
2 participated and commented a number of times on
3 amendments to the regulations and we would encourage
4 the NIGC to move forward with the promulgation of
5 formal rule-making process to move forward with the
6 good and practical changes that have been made,
7 recognizing the tribe's concerns that have been raised
8 and the issues that have been raised and move forward
9 and start to bring a conclusion to this process here
10 and encourage you to move forward in that.

11 And again, I just want to thank you
12 again for your commitment to get this done and the
13 consultation process and schedule that you have, but
14 it's time to move forward into that final stage and
15 bring it to a conclusion. I encourage you to do that
16 and just commend you and thank you for upholding the
17 true meaning of consultation and listening to tribal
18 concerns and comments and addressing that with a
19 positive manner.

20 CHAIRWOMAN STEVENS: Thank you, Vice
21 Chairman. I appreciate your desire to move these
22 forward. One of the things we are doing and it may
23 seem because it is such a departure for this agency
24 and this commission or for the NIGC, we are adding
25 extra steps, where we're talking first before we're

1 drafting and then having a discussion draft.

2 It does seem a lot, you know,
3 repetitive, but we do want to be honorable and
4 respectful in the way we consult in honoring executive
5 order 13175 where we discuss the need for change
6 before making the change and having tribes at the
7 table when we draft.

8 It does add some extra time, it does
9 add extra steps, but we hope that what it does is when
10 we get to Notice of Proposed Rule Making and when we
11 get to final, we have a more finished product. That,
12 in theory, when we address the concerns as we go
13 along, the comments will shrink and there's more
14 likelihood that they'll go through more smoothly.

15 But I'm with you. I think we'd like
16 to speed this along, but we do have to be mindful of
17 trying to include everybody. You keep seeing us
18 around and meeting to meeting to meeting and trying to
19 reach out to as many regions and tribes as we can at
20 each step of the process. And it does seem like a
21 lot, but I think we're going in a pretty good clip in
22 government time.

23 So I appreciate that. I think you
24 just chop chopped us and said hurry up. We hear you.
25 Thank you.

1 MR. WHEAT: I just wanted to...
2 Consultation's an interesting thing and, you know,
3 when it works its best, on the best day we're talking
4 about how you might be able to do the right thing,
5 bringing a conclusion. So there's talking about doing
6 the right thing, but where I'm from I was always
7 taught that the real key is doing the right thing, not
8 just talking about it.

9 And on that note I really wanted to
10 express my deep appreciation for the tremendous work,
11 Madam Chair, that you've done on the Fond du Lac NOV
12 that was issued just recently. We haven't discussed
13 it today, but I want to encourage all of the attorneys
14 in the room and all the folks in the room that have
15 attorneys to talk to between now and tomorrow before
16 we get to the issue of sole proprietary interest
17 tomorrow, that you review that NOV.

18 It's a very strong analysis of sole
19 proprietary interest and the taxation and agreements
20 in which a state or a city may be getting whopping
21 percentages and type of gaming revenue and whether or
22 not that violates IGRA or basically the requirements
23 that tribes have the sole proprietary interest in the
24 gaming operation.

25 So that's been the talk of the legal

1 community today and so I'd encourage you all to get on
2 the TAP where the NOV is posted and get a good look.

3 But I just want to thank the
4 commission. That's been a long-standing issue. Since
5 before IGRA was even enacted these agreements were in
6 place and it's been a long time coming but the day's
7 finally come where the commission's taken action.
8 Thank you.

9 CHAIRWOMAN STEVENS: Yeah, we will be
10 having a discussion tomorrow on sole proprietary
11 interest. And in terms of the Fond du lac NOV, that
12 was an issue that I, as the chair, issued two days
13 ago. We will not be able to speak to any specifics on
14 that NOV. I think that we have posted on our website
15 the redacted? The redacted. Although my
16 understanding is what has been in the news was the
17 actual NOV that was released by some other party. It
18 was not released by the NIGC.

19 But, you know, we won't be able to
20 speak to it because it's an open matter. There's time
21 frames around the issuance of NOVs where the parties
22 have due process rights under appeal and so we cannot
23 talk about it publicly, nor should we. So please
24 don't talk about it tomorrow or ask questions about
25 it.

1 The NOV speaks for itself, so feel
2 free to read what we have on our website or whatever
3 version you might have that we did not release, but we
4 will talk about sole proprietary interest tomorrow as
5 we talk about group five.

6 Any other comments on anything we've
7 talked about today? Yes, Dawn.

8 MS. VYVYAN: Thanks. I have a
9 question about the collateral agreements and what
10 prompted the discussion or the policy reasons behind
11 why you may want to consider looking at approval of
12 collateral agreements.

13 CHAIRWOMAN STEVENS: I think it was
14 tribes. Tribes brought it to our attention and sole
15 proprietary interest. I know Jo-Ann and Lael want to
16 talk about that more of what kinds of instances that
17 have been brought to our attention.

18 MS. ECHO-HAWK: We get requests from
19 tribes all the time to take a look at these agreements
20 and it's sort of hindsight, right, so they come to us
21 much later and they say, look, if you look at all
22 these agreements that are collateral to a management
23 agreement, you put them all together and we're paying
24 80 percent of gross out.

25 Maybe the true impact wasn't known at

1 the time they entered into the agreement, but one of
2 their concerns was why aren't you looking at these,
3 why don't you approve them. So we get -- it was a
4 request that came from tribes, something that we
5 looked at. There was enough sort of disparity in the
6 comments from the Notice of Inquiry that we put it
7 forward for additional review.

8 Because there's not -- you know, a
9 number of these regs in the instances of the comments
10 that came to us, they were all pretty uniform.
11 Everyone was like, yeah, okay, or, no way. In this
12 case there's a lot of sort of disagreement about which
13 way we should go and concerns about sole proprietary
14 violations and what our trust's responsibility is
15 given that we have to approve or disapprove management
16 contracts and should that also include those
17 agreements that are collateral to that.

18 So there was enough disagreement that
19 the commission felt like it was something we should
20 take a closer look at in this process.

21 MS. VYVYAN: Will you give me an
22 example, because I'm thinking of a management
23 contract, there are subcontractors involved. So
24 something that's collateral to a management contract
25 would be...?

1 MR. WHEAT: Financing, loan
2 agreements, consulting agreements leading up to the
3 management contract, for the scoping, design,
4 engineering, environmental work leading up to the
5 facility that they may one day manage, is what you
6 typically see coming across their desk. And they're
7 all tied into, you know, the interest rate's X if we
8 get to manage your facility and the interest rate's Y
9 if we don't. So they're all tied into that end
10 management agreement.

11 But oftentimes the other side of that
12 coin is you get tribes that you need money to develop
13 these things and so you're balancing the trust's
14 responsibility to ensure that there's no violations of
15 IGRA and other instances with a sovereign need to be
16 able to contract to find money to develop tribal
17 resources. So it's really a pretty weighty issue
18 that's on the table here.

19 MS. ECHO-HAWK: We also get some
20 pretty crafty contracts. So, say, you have a person
21 who's a developer, who also provide a loan, who also
22 has like his son is like the owner of the management
23 contract and then they also lease the slot agreements
24 to the tribe at X amount of rate and you see some very
25 -- some maneuvering out there, so that, really, it's

1 maybe one or two people that are benefiting, but
2 they're getting so much money.

3 You see stuff like that come across
4 too. So it's pretty complicated and a lot of times we
5 don't see those agreements until 10 years down the
6 line and all of a sudden the tribe hands us this stack
7 of agreements and says, hey, look, this violates the
8 sole propriety interest. These agreements are all
9 collateral because they all relate back to the
10 management contract that you approved.

11 So it's pretty complex, but, you know,
12 we're trying to find the balance, I guess.

13 CHAIRWOMAN STEVENS: And is there a
14 need to define that, you know, we'll talk more about
15 sole proprietary interest tomorrow so that it's clear
16 for those going into business with tribes what we're
17 looking for. Right now it's just what our management
18 contract say. Most of the banks or the developers or
19 consultants and all the people involved with these
20 scour our approved management contract or declination
21 letters to see what the pattern is.

22 We do, I think, have some guidelines,
23 have some regs, but, you know, with regard to
24 collateral agreements, do we need to be clearer about
25 what those are so that we don't run into the executed

1 10-year-old collateral agreement.

2 MS. VYVYAN: I guess I'm just thinking
3 if there are other laws in place that would govern
4 that type of activity. I don't know. Maybe not.

5 MS. SHYLOSKI: The Senate Indian
6 Affairs Committee a few years ago contemplated
7 revising IGRA to have the NIGC address --

8 MR. WHEAT: All the contracts.

9 MS. SHYLOSKI: -- all different types
10 of contracts. So it has been an issue that's been
11 lingering.

12 CHAIRWOMAN STEVENS: What we've been
13 trying to do is just contract by contract and really
14 asking questions, are there other collateral
15 agreements. And it may be true that we see everything
16 on the front end.

17 MS. SHYLOSKI: IGRA gives the chair
18 the authority to approve or disapprove management
19 contracts, but we have issued a bulletin -- and we
20 issued it years ago -- where if folks are unclear
21 about what type of contract they have entered into or
22 are contemplating entering into, they can submit it to
23 the NIGC and our Office of General Counsel will issue
24 a legal opinion about whether it constitutes a
25 management contract or whether it violates the sole

1 proprietary interest mandate statute.

2 CHAIRWOMAN STEVENS: And speaking of
3 lending instruments. We're asking that if there are
4 -- you know, in the face of the Lake of Torches
5 decision, one, for those lending documents that have
6 been executed, we've had some tribes and we've been
7 very consistent about we're not going to address those
8 that are already executed. They've already gone
9 under. They're on the road. While this is under
10 litigation, we will not revisit those at this time
11 until we see what happens in the courts.

12 We've had tribes -- and we've been
13 very clear about this -- send us 20 page briefs about
14 why we need to revisit it, right in the middle of this
15 litigation. Save your money on your lawyers. I'm not
16 sure how much that cost the tribe to do that, but
17 we're not at a point when this is still in litigation
18 to be making determinations on already executed
19 lending instruments and looking for management
20 provisions.

21 However, going forward, banks are now
22 asking for a declination letter from our Office of
23 General Counsel, not from me, not from the
24 commissioners, to see if there's any provisions in the
25 lending instruments for management. We ask, please,

1 give us six to eight weeks on unexecuted instruments.
2 We encourage you to share some of your language with
3 us before you make your deal.

4 What we've seen is tribes make the
5 deal and then we had a problem with language and now
6 you have to renegotiate your terms. So before you get
7 to signing on the dotted line and finalizing your
8 terms, please work with us and give us six to eight
9 weeks, please, to help you with the terms and make
10 sure that we, the Office of General Counsel, can give
11 you a declination letter.

12 MR. WOOLSEY: Hi. Tim Woolsey from
13 Colville tribes. So let me just ask. Are you also
14 contemplating a separate analysis of sole proprietary
15 interest from the management contract context or is it
16 all going to be under the umbrella of a management
17 contract?

18 Is there going to be any separate kind
19 of analysis for sole proprietary interest through some
20 other instrument or agreement the tribe might be?

21 CHAIRWOMAN STEVENS: Where are we at?
22 I'm just thinking, because we're on tomorrow's agenda
23 now.

24 MR. WOOLSEY: We can talk about this
25 tomorrow if I'm being premature.

1 MS. ECHO-HAWK: I think the quick
2 answer is that yes, that that is, that is a mandate of
3 IGRA and it's not solely in the context of a
4 management contract. Just, I mean, you can see that
5 from some of the information that's on our website.

6 Lately, it has mostly primarily come
7 up in that context, but I think that there are other
8 situations contemplated that that analysis -- that the
9 agency would want to do that analysis.

10 CHAIRWOMAN STEVENS: Yes.

11 MR. GOBIN: I'll probably get in
12 trouble now. Well, I understand it so that what I
13 hear the commission saying is that they're going to
14 wait until a court decision comes out from the lending
15 lawsuit, the fire --

16 CHAIRWOMAN STEVENS: Lake of Torches.

17 MR. GOBIN: -- Lake of Torches and so
18 you're going to wait for that decision. Well, there
19 is a decision in the CRIT decision, and so we're still
20 talking about regulations when the court has decided
21 there's no authority. Just so we're looking at those
22 in the same manner.

23 CHAIRWOMAN STEVENS: Got you. The
24 other thing, too, I was reminded that I wanted to make
25 an announcement that we are having training in

1 Alabama. Where are you at, Nimish? Can you let us
2 know the next training that's taking place so we can
3 invite everybody to come out?

4 MR. PUROHIT: Can I have it tomorrow
5 morning? I'll have all the list. I'll put it up on a
6 web page.

7 CHAIRWOMAN STEVENS: It's RGT training
8 in Alabama.

9 MR. PUROHIT: There's back in Tulsa
10 too the week after next, I believe.

11 CHAIRWOMAN STEVENS: So we have
12 regional trainings that are coming up. I think we
13 might even have some machine gaming training coming
14 up. Please check our website and our calendar. We
15 invite you all to attend and if you have any requests
16 for training, you can always contact the region and
17 they will address your concerns and we'll figure out a
18 way to address your request for training.

19 So if there's nothing else, then I'd
20 like to go ahead and break for the day. Tomorrow
21 we'll be back and we'll talk about group three and
22 five. Group three being Class II minimum internal
23 control standards, technical standards for Class II
24 gaming machines, and then group five is the
25 self-regulation regulation. And I'm not stuttering.

1 That is the self-regulation regulation for Class II
2 and the possibility of sole proprietary interest
3 regulations or how we address that.

4 So those are the fun-filled topics for
5 tomorrow. We invite you to come back, and in the
6 meantime, you all have a good day. Thank you again.

7 (Adjourned at 4:04 p.m.)

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I, CHERYL J. HAMMER, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the state of Washington, do hereby certify:

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WITNESS MY HAND this 25th day of July 2011.

CHERYL J. HAMMER,
Washington State Certified Court Reporter, #2512
chammer@yomreporting.com

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