Indian Affairs - Office of Public Affairs
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Ada E. Deer, Assistant Secretary for Indian Affairs announced today that a Notice of Advanced Rule Making was published in the Federal Register on May 10, 1996. This publication seeks comments on the Department's authority under the Indian Gaming Regulatory Act (IGRA) to promulgate "procedures" to authorize Class ill gaming on Indian lands when a sate raises an Eleventh Amendment defense to an action brought against it in federal court by an Indian tribe.

This Federal Register publication results from the recent Supreme Court decision in the Seminole Tribe of Florida v. Florida case (116 S. Ct. 1114 (1996)). The decision in this case held that Indian tribes could not sue a state in federal court without state consent. In accordance with the Indian Gaming Regulatory Act, Indian tribes were allowed to initiate a cause of action in federal court when a state refused to negotiate a compact in good faith. The Indian Gaming Act further provided that the Secretary of the Interior could prescribe procedures under which Indian gaming would be conducted in the event of continued impasse between an Indian tribe and a state.

Subsequently the Supreme Court granted petitions for writ of certiorari filed by four Indian tribes (Ponca Tribe of Oklahoma, Ft. Balknap Indian Community, Blackfeet Tribe, and Spokane Tribe of Indians), and remanded the cases for further consideration in light of their decision in the Seminole case. The question regarding the Secretary's authority to issue procedures remains unanswered by the Court.

The Notice of Advance Rule Making asks for comments on:

The effect of the Supreme Court's decision in Seminole Tribe on the operation of other provisions in 25 USC 2710(d)(7) when a state does not waive its 11th Amendment immunity to suit

Whether, and under what circumstances, the Secretary of the Interior is empowered to prescribe procedures for the conduct of Class III gaming when a state interposes an 11th Amendment defense to an action pursuant to 25 USC 2710(d)(7)(B);

What is an appropriate administrative process for the development of Secretarial procedures;

What procedures should be followed if a state interposes an 11th Amendment defense to an action filed under 25 USC 2710(d)(7)(B);

What procedures can be, and should be, utilized for determining legal issues that may be in dispute, such as the "scope of gaming permitted under state law. The scope of gaming issue arises when a state takes the position that it is not required to bargain with a tribe with respect to certain Class III games because IGRA docs not authorize such games on the ground that such games are not permitted by the state "for any purpose by any person," 25 USC 2710(d)(l)(B);and

How any procedures promulgated by the Secretary may, and should, provide for appropriate regulation of Indian gaming.

"This is a very important matter for Indian tribal governments," said Ms. Deer. "I encourage all Indian tribes to provide comments so that the Department can make an informed decision regarding this matter."

Written public comment on this advance notice of proposed rulemaking must be received no later than July 1, 1996 to be considered. Comments should be sent to the; Department of the Interior, Bureau of Indian Affairs, c/o Mr. George Skibine, Director, Indian Gaming Management Staff, 1849 C Street, N.W., MS-2070 MIB, Washington, DC., 20240-0001, (202) 291-4066.
