



Muscogee (CREEK) Nation

August 29, 2017

Dr. Gavin Clarkson
Deputy Assistant Secretary – Policy and Economic Development
Office of the Assistant Secretary – Indian Affairs
Office of Regulatory Affairs & Collaborative Action
1849 C Street NW, Mail Stop 4660-MIB
Washington, DC 20240

RE: Revise Indian Trader Rule

Dear Dr. Clarkson,

The Muscogee (Creek) Nation (“Nation” or “MCN”) appreciates the Department of the Interior’s (“Department” or “DOI”) expeditious efforts and positive response to tribal requests to update the outdated “Licensed Indian Traders” regulations. Modernizing these regulations is critical to advancing and expanding tribal self-determination and governance. In revising these regulations, we request the Department seek to accomplish three priorities. First, uphold the inherent authority of tribes to regulate trade and commerce. Second, protect this authority from state and local infringement. And lastly, strengthen tribal jurisdiction over business activity on tribal land.

Uphold inherent tribal authority to regulate trade and commerce.

The United States has a long history of upholding tribal authority to regulate trade and commerce with tribes. Since 1790, the federal government has recognized the sovereign authority of the Muscogee (Creek) Nation and asserted its authority to regulate trade relations with tribes upon signing the Constitution just three years before. Then, after nearly sixty years and twelve treaties with the Nation, the federal government reaffirmed its authority to protect the Nation’s rights to govern and regulate activities within its jurisdiction in the *Treaty with the Creeks, Etc., 1856*. Article 15 of this treaty secures the Nation’s “right[s] of self-government, and full jurisdiction over person and property, within their respective limits” as allowed by the Constitution of the United States. As such, MCN asserts that any regulation under the Indian Traders rule should support the Nation’s right to initiate and regulate trade within its jurisdiction, particularly for tribally owned and operated enterprises.

Protect tribal authority from state and local infringement.

The Muscogee (Creek) Nation is the fourth largest Tribe in the United States encompassing more than 8 counties in east central Oklahoma. MCN has more than 80,000 citizens and an annual budget of approximately \$300 million. The Nation maintains many economic development opportunities to provide governmental services to citizens and create sustainable economies throughout rural Oklahoma. Through subdivisions of our government, we own and operate nine casinos, two travel plazas, an entertainment center and shopping district, and a golf course. Among its holdings MCN also has 8a corporations, a Community Development Financial Institution (CDFI), investment and management arm, and art gallery featuring local Tribal artists.

Together, these enterprises generate revenue for the Nation in the form of sales tax and dividends. In Fiscal Year 2016, MCN generated just over nine million dollars in tax revenue and forty-two million in gaming revenue to support ongoing governmental services. However, in order to raise this revenue, the Nation shares a portion with various governments. For instance, in 2016, MCN paid nearly \$15.3 million to the State of Oklahoma in gaming fees. Though these fees are part of regular gaming compact negotiations with the State, they do not represent indirect impact that is generated by the nearly 2,500 employees directly working in gaming facilities, state sales tax collected in restaurants, other shops operated by MCN or fees generated during other business ventures.

One exception is the Nation's investment in The Riverwalk, an entertainment and shopping district in south Tulsa. MCN has invested nearly twenty million dollars to purchase and revitalize this facility over the last five years, including recruitment and investment in locally owned businesses and startups to grow in this part of a larger metropolitan community. However, the Nation relies on lease income to support the ongoing activities at The Riverwalk. Collectively the Nation pays more than \$300,000 in property tax and collects nearly two million dollars annually in sales tax for other governments. The investment in local communities goes beyond just improving business in the failing district, the development of a sustainable district has spurred additional growth in the area, bringing additional retailers and businesses that once would have found the location less than ideal for a growing economy.

Other revenue generating investments and their resulting tax distributions to the state and local governments are too numerous to properly list and value in this letter given the length of time to respond. However, MCN is confident that federal preemption would allow the Nation to expand and create additional economic development opportunities without unnecessary burdensome regulations because the Nation already has laws and policies in place to govern trade and commerce occurring within our jurisdiction. These opportunities are underutilized because of the complex nature of dual taxation and regulations.

Strengthen jurisdiction over business authority.

In 2007, the MCN National Council passed legislation to establish a Uniform Commercial Code (UCC). The National Council found a significant need to establish the UCC within the Nation "to promote sustainable and diversified economic development" and to "create an environment that encourages lenders and non-tribal businesses to do business, not only with the Nation, but also with tribal citizens." The UCC governs many types of business transactions between the Nation or tribal citizens and other tribal nations, citizens, or non-tribal entities both foreign and

domestic. The UCC provides flexibility for the Nation to make decisions that advance economic development and benefit our tribal citizens and government while protecting our sovereign authority to govern and regulate commerce. MCN leverages the UCC to ensure businesses within our boundaries are properly protected and regulated. As such, the Nation asks that any future changes strengthen our jurisdiction and defer to tribal law whenever possible.

Today, the Muscogee (Creek) Nation implements a sophisticated code to support economic development, enters into partnerships with private and public entities to meet local needs, and seeks out unique opportunities to sustain a strong and growing population of citizens. The Nation reiterates the need for the Department to implement policies and regulations that simplify federal oversight of tribal nations and reaffirm the authority of tribal governments to govern and regulate activities within their jurisdiction.

We look forward to responding to future requests regarding the revision of the Indian Traders Regulations and appreciate the opportunity to provide this feedback. Should you have any additional questions or concerns, please contact Elijah W. McIntosh, Secretary of the Nation and Commerce, at emcintosh@mcn-nsn.gov or NationandCommerce@mcn-nsn.gov.

Sincerely,

A handwritten signature in black ink that reads "James R. Floyd". The signature is written in a cursive style with a large, stylized "J" and "F".

James R. Floyd
Principal Chief