

NWX-DEPT OF INTERIOR-NBC

Moderator: Elizabeth Appel
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Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen-only mode. At the end of today's presentation we will conduct a question and answer session. To ask a question please press star 1. Today's conference is being recorded. If you have any objections you may disconnect at this time. I would now like to turn the meeting over to Ms. Tana Fitzpatrick. You may begin.

Tana Fitzpatrick: Good morning everyone. This is Tana Fitzpatrick. I am Senior Counselor in the Office of the Business Secretary here in the Department of Interior.

I would also like to have my colleagues introduce themselves that are here in the room.

Liz Appel: Hi, this is Liz Appel. I'm also with the Office of the Assistant Secretary for Indian Affairs and I'm the Director of the Office of Regulatory Affairs.

Jim Porter: Hi, this is Jim Porter. I'm an Attorney with the Division of Indian Affairs in the Office of the Solicitor.

Tana Fitzpatrick: Thank you everyone for joining us on such short notice. Of course we are holding the consultation today because due to the inclement weather that we were having earlier this week. And so we do appreciate you calling in.

I just wanted to go briefly over the purpose of the consultation and a little bit about the background of the 25 CFR Part 140 which is the Licensed Indian Traders.

So on December 8 of 2016, Indian Affairs published an Advanced Notice of Proposed Rulemaking to get input on whether to update this Part 140 of Licensed Indian Traders. This was a direct response to proposals and inquiries the Department had received over the years from travel organizations and also from tribes requesting the Department to revise Part 140.

And we're at the very early stages of that. We haven't drafted any specific revisions, first because we wanted to hear from you - tribes and tribal organizations and any practitioners who might participate under this part, whether to leave the rule as is; whether it should be repealed, or whether it should be revised. And if revised, what should those revisions look like.

So Part 140 itself governs trade occurring on Indian reservations. It's based on a lesser known Indian Traders statute which, they're pretty old statutes. The most recent of the statutes was passed in 1903. And the statutes themselves seek to protect tribes from unlawful traders on their reservations.

Currently Part 140 revises the regulations and envisions the framework where BIA issues licenses to anyone who wants to do business on a reservation.

The Department recognizes that tribes through Indian Country fully regulate businesses operating within boundaries. And the regulations themselves have not been revised in quite some time.

They were first published in 1957, revised in 1965, and modified in 1984 in a piecemeal fashion.

So something that we're looking at for revisions - possible revisions and discussion in the ANPRM would be whether or not Part 140 itself should be revised. If it were to be revised it would be modernized in a way that would be consistent with schedule policies of tribal self-determination and self-governance to support tribal - current tribal business practices and to strengthen tribal economies across any country.

As you all know we have a new administration. And while the specific priorities of the new administration in Indian Country are unknown, we anticipate that those priorities will align with the President's priorities for economic development.

And the scope of today's consultation includes a list of questions out if the ANPRM that we would like to get input from tribes and tribal organizations.

Some of those questions are whether Part 140 should be revised in full or in part and why? Federal involvement in business practices. How to make sure traders in Indian Country are reputable and accountable. And what kind of trade and who should be regulated.

The Department is also interested in learning how tribes currently regulate trade occurring within their jurisdictions. And how revisions to this regulation

could promote economic viability in Indian Country and address taxation issues.

I'd just like to note that we are accepting comments. The comment period is open until April 10 of this year. And we're here today to listen, to get your thoughts on how to modernize these regulations to promote tribal self-determination and economic development. And look forward to hearing your thoughts.

And with that we'll take - we'll start with comments. Thank you.

Coordinator: At this time if you would like ask a question or make a comment please press star 1. Please unmute your phone and record your first and last name clearly when prompted. To withdraw your question or comment please press star 2.

Once again if you would like to ask a question or leave a comment at this time, please press star 1. Jean Swift your line is open.

Jean Swift: Good morning Bureau of Indian Affairs officials, tribal elders, and all others in attendance on this phone call.

My name is Jean Swift, Treasurer of the Mashantucket Pequot Tribal Nation of Mashantucket, Connecticut. I am speaking on behalf of my tribe.

The Mashantucket Pequot Tribal National supports and updates to regulations 25 CFR Part 140 to modernize the Indian Trader Regulations in a way that promotes and protects tribal self-governance and self-determination.

In their current form the regulations provide little value to tribes because their scope is limited and their language is obsolete. The legislative history of the

Indian Traders statutes supports the goal the tribal self-regulation and trading - in trading and general commercial activities. And as such we believe that the revised regulations should embody principles that give us authority to the tribes in their business dealings.

Due to the diversity of business transactions in Indian Country and the subjectivity of tribal economies and communities, we recommend that the regulations provide flexible guidelines that can be altered and adopted for each tribe's needs.

Similar to the new leasing regulations, required terms and commercial dealings should be normal. And general BIA oversight should be limited. This gives tribes the power to negotiate and transact on their own terms which is essential to self-governance.

An important issue related to the modernization of the regulations is dual taxation. Revised regulations may help define the role of the federal government and tribal jurisdiction and authority over business activities in Indian Country.

On the Mashantucket Pequot reservation we have seen an overreaching by state and local municipalities to impose sales and personal property taxes on activities and property within the reservation.

In a recent case involving personal property taxes, the tribe argued that the state taxes were preempted by the Indian Traders statutes but, the court rejected that argument.

Modernization of the regulations and a strong statement by the Department concerning tribal regulation of trade and business activities and the harm of state intrusion would be helpful in making these arguments.

The current situation on the Pequot reservation prevents the tribe from implementing its own tax policies and collecting revenue for the essential government services the tribe provides.

The local town provides virtually no services within the reservation. Year-to-year we understand the town is collecting approximately \$1 million in personal property taxes from on-reservation property.

We believe that an update to the regulations may help reduce incidences of dual taxation by giving tribes the power to set stronger parameters around business regulation and jurisdiction.

We are submitting more extensive comments to Acting Assistant Secretary Black via email this week. Thank you for taking the time to formally meet with tribes on this issue. And we look forward to positive resolution soon.

Tana Fitzpatrick: Thank you very much for those comments.

Jean Swift: You're welcome.

Jim Porter: Jean, this is Jim Porter. Can you give us the name of the citation for the case?

Jean Swift: Yes, I can. One moment please.

Woman: Of the Mashantucket case?

Jean Swift:

Yes.

Woman:

Give us one minute and we'll pull up that case. Okay, thank you. So it's the Mashantucket Pequot Tribe v. Ledyard 722F3D457.

Jim Porter:

Thank you.

Woman:

Thank you.

Coordinator:

Once again if you would like to make a comment at this time please press star 1. Liz Malerba, your line is open.

Liz Malerba:

Hi, good morning everybody. Thanks so much for holding this consultation. This is Liz Malerba. I'm Director of Policy and Legislative Affairs for the United South and Eastern Tribes Sovereignty Protection Fund.

I just wanted to underscore everything that Treasurer Swift said and also just broaden it out a little bit.

United South and Eastern Tribes Sovereignty Protection Fund sees state dual taxation as a major, if not the major impediment to nation rebuilding in Indian Country. An impediment to the provision of government services to our citizens.

And so I just wanted to register our support for the development of new regulations to implement Indian Traders statutes to clarify that the regulation of non-Indians engaging in commerce in Indian country is intended to protect and promote the wellbeing of Tribal Nation communities through the preemption of state and local taxation on tribal land.

So we intend to provide extensive written comments to you all on this. But I wanted to be sure to speak up on the phone this morning and let you know that United South and Eastern Tribes Sovereignty Protection Fund has a resolution on this issue. And we intend to move forward. Thank you.

Tana Fitzpatrick: Thank you.

Coordinator: And once again I would like to remind participants, at this time if you would like to make a comment, please press star 1.

Tana Fitzpatrick: While we wait for any additional comments I'd like just to take a quick moment to review the questions that are presented in the ANPRM.

There are seven questions total. The first one asked, should the federal government address trade occurring in Indian Country through an updated 25 CFR Part 140 and why?

Number 2 - are there certain components of the existing rule that should be kept? And if so, why?

Number 3 - how can revisions to the existing rule ensure that persons who conduct trade are reputable? And are there mechanisms in place to address traders who violate federal or tribal law.

Number 4 - how do tribes currently regulate trade in Indian Country, and how might revisions to 25 CFR Part 140 help tribes regulate trade in Indian Country?

Number 5 - what types of trade should be regulated and what types of traders should be subject to regulation?

Number 6 - how many revision - how might revisions to the regulations promote economic viability and sustainability in Indian Country?

And last, number 7, what services do tribes currently provide to individuals or entities doing business in Indian Country? And what role to tax revenues play in providing such services?

And what types of infrastructure do tribes currently possess and, what role do tax revenues play in building and maintaining such infrastructure?

Coordinator: And we do have (Sean Crane) on the line. Your line is open.

((Crosstalk))

(Sean Crane): Hello, this is (Sean Crane).

Tana Fitzpatrick: You may proceed.

(Sean Crane): I can barely hear you. It's kind of cutting in and out.

Liz Appel: Okay, we can hear you.

(Sean Crane): Okay. I'm with the Treasurer's Office at the Seneca Nation of Indians. So I'm at the - actually at the Seneca Allegany Casino. I just found out about this call. Is there any chance the meeting could be rescheduled so it could be in person?

Liz Appel: At this point we don't know. So this teleconference is - we weren't expecting the weather. So this teleconference is our attempt to give people a more convenient way to provide comments.

But if you do have comments that you don't feel comfortable discussing on a teleconference or providing in written forum, please let us know.

(Sean Crane): Okay. I thought it was going to be more of a dialogue or a little bit expression of opinions.

Liz Appel: Yes.

(Sean Crane): Otherwise it could be written. I don't see the point of having a phone conference.

Liz Appel: Well we definitely are interested in a dialogue. And that's why we're trying - we've listed out the questions because we'd like to get your input on the various aspects of potentially repealing or revising this rule.

(Sean Crane): Okay. I have another person here who would like to speak that has shown up at the casino for the meeting.

Liz Appel: Okay.

(Brenda Degen): Good morning this is (Brenda Degen). I'm also with the Seneca Nation - a member. And I too would respectfully request that this meeting be rescheduled as an on-site visit.

I think would be more appropriate to all of our members and the public here. And I think that should happen either - you know, as soon as possible. But an on-site visit seems to me much more appropriate.

I think we're shortcutting here which is not - I don't think in all fairness. And that maybe we're - and I understand the weather and the convenience. But however, this is an important issue. And I think it calls for an important dialogue which is done as you know in any meeting you have, is much better face-to-face.

Liz Appel: Thank you for that input. We'll check with our leadership here and see if it's possible to schedule another in-person session before a proposed rule is drafted.

I did want to mention though that if this does result in a proposed rule, (unintelligible) proposed repeal; revision, anything, we would do another round of in-person consultations following publication of that proposed...

(Brenda Degen): You know I can understand the second round, but I think the comments to help in the first round and to put together that draft document might be the more meat of the - the essence of what we would like to see done as not only a nation but as the public at-large. So once again, I would really like to see an on-site visit for this first round.

Liz Appel: Okay, great. We will take a look at whether we can do that. I did want to mention that these are intended to be government to government tribal consultations rather than public hearings. And I think you knew that but, I just wanted to clarify it for the record.

(Brenda Degen): That's fine.

Liz Appel: But we will take a look at whether we can reschedule and have another session at Seneca.

(Brenda Degen): Right. We have a - you know our Tribal Council, our executives, and you know some of our Tribal Council is very involved in the business aspect of what happens here in our territory. So that's part of the reason for my request.

Liz Appel: Okay, thank you.

Tana Fitzpatrick: Thank you.

Coordinator: Jean Swift, your line is open.

Jean Swift: Good morning again, this is Jean Swift from Mashantucket. I have a couple of questions that I wanted to pose to the DIA officials if I may.

The first is, regarding the modernization of the Federal Indian Trader Regs, what kind of issues are the Bureau looking to address? And then secondly, what are the parameters the Bureau wants to achieve?

Tana Fitzpatrick: I think that some of the issues that we're looking to address are exactly what are laid out in the ANPRM. You know, what types of trades should be covered? What types of persons or traders should be covered? What services do tribes currently provide to individuals or entities? And what types of - what role does tax revenues play in providing those services?

And, so it's all laid out there in the ANPRM as far as what we're - the scope of what we're looking for - what the Department is looking for.

Jean Swift: Thank you. And then I have a follow-up. We're concerned about dual taxation as I mentioned in my earlier comments, and its negative impact on tribal economic development within the Indian Country.

Does the Bureau intend to address taxation issues within the Indian Trader Regs as it did in the Leasing Regulations issue under the HEARTH Act?

Jim Porter: Hi Jean. This is Jim Porter in the Solicitor's Office. I think one of the things that the agency is most hoping to get from this initial round of consultation is advice - good ideas from tribes on how to accomplish that.

We all recognize the harm done to tribal interests by dual taxation. And I know we hope that there will be a mechanism by which we can address that through the Trader Regs.

The fit isn't obvious. The statutory basis for the regs is not obviously opined to the state taxation and dual taxation issue. And of course there's lots of case law on dual taxation problems.

So, while we all want to figure out a way to shed as much (unintelligible) as much as we can of state taxation of tribal activities, the exact mechanism by how we do that under the Trader Regs is not obvious. It's not clear. So we're hoping to get good guidance from tribal reps.

Jean Swift: Thank you Attorney Porter. Respectfully, I would just reiterate the comments - the opening comments that were made by the BIA officials. And one was that, in seeking to look at revising these regs, part of the purpose would be to strengthen tribal economies.

And then also, a citation that I have here is - that includes kind of the mandate of looking at this would be, how the Indian Trader Regulations would be updated to govern who trades on Indian land and how the regulations can better promote tribal self-determination regarding trade on Indian lands.

So although it doesn't directly state dual taxation, I think that one could see how there would be an indirect support of this issue. Thank you.

Coordinator: Once again I would like to remind participants, if you would like to make a comment at this time to please press star 1.

Jim Porter: This is Jim Porter again. I did want to ask a question. Do any of you - are any of you aware of any tribes for which BIA is currently issuing trader licenses now? So far in our consultation I've learned of one tribe that's using these licenses.

Tana Fitzpatrick: I think we can take the silence as none. So we're also interested in one of the questions in the ANPRM is, how do tribes currently regulate trade in Indian Country.

So we're interested in how you all currently regulate trade on your reservations? Whether that's through issuing tribal licenses, or otherwise ensuring compliance with tribal law. Because the more we understand that, the more we can make sure that any revisions would support that licensing or whatever scheme is already in place on your reservation.

Coordinator: Jean Swift, your line is open.

Jean Swift: Hi, Jean Swift again. I just wanted to answer Attorney Porter's question. There are no licenses that are being issued at Mashantucket, in response to that question.

Jim Porter: Thank you.

Liz Appel: So we encourage you to look at the questions in the ANPRM as you're crafting your written comments as well, if you plan on submitting written comments. It looks like we have another commenter.

Coordinator: Yes, Michael Conners, your line is open.

Michael Conners: Hi, this is Michael Conners, Sub-Chief of the Saint Regis Mohawk Tribe in Akwesasne. And what we do for local businesses is we issue licenses. They come in and they apply and they issue a license authorized by the tribe signed by Council.

And the people applying for the license have - the ownership has to be at least 51% Mohawk owned to ensure that its majority Mohawk owned for every business that's licensed on the territory. Thank you.

Jim Porter: Thanks Michael.

Liz Appel: Thank you.

Coordinator: I would like to remind all participants at this time, if you would like to make a comment to please press star 1.

Liz Appel: Another thing that we're looking at is the scope as far as what type of trade should be regulated. And whether that should be just commercial trading or

should it involve - should there be some regulation of natural resources, extraction, or agriculture or mineral (unintelligible).

So if you have thoughts on that, please let us know either today or in your written comments.

Tana Fitzpatrick: I think another thing -- this is Tana Fitzpatrick -- another thing that would be useful to understand is, how tribes might also regulate by way of if you - if tribes conduct background checks.

We received an interesting comment in Rapid City where the comment was really helpful is, the government helped conduct the background checks. And so that's another interesting question or thought that I think we'd like to receive comments on as well.

Coordinator: All right, Michael Connors, your line is open.

Michael Connors: Hi, this is Michael Connors again from Akwesasne. Just commenting on the federal government helping out with the background checks, I think that would be a - not an exercise in sovereignty. An exercise in sovereignty would be the tribes taking care of that on our own.

We do that here. We send some background checks to the tribal policy for software that they have. They will do the background checks. And we also have some in our HR Office. They'll conduct background checks but, our Compliance Office will do the same.

So we have - we do that on our own. We have different software programs and different departments. And we do all of it ourselves. And we should keep - all try to keep it internally to each of our own nations.

Tana Fitzpatrick: Thank you.

Coordinator: Jean Swift your line is open.

Jean Swift: Hi, I just - Jean Swift again. I wanted to echo the comments given by the tribal leader that just spoke.

We actually have the same practices here at Mashantucket. And definitely agree that relegating this task to the Feds would be an imposition of tribal sovereignty.

We do background checks both from the HR level. And with any folks that we're looking to potentially partner with or lessees that come on reservations so, they're well vetted. Thank you.

Tana Fitzpatrick: Thank you.

Coordinator: Once again I would like to remind participants, if you would like to make a comment at this time to please press star 1.

Jim Porter: Your comments really reemphasize what I've felt is going to be one of the most difficult challenges in this project is what a commenter said earlier is, there's so many different levels of complexity amongst the tribes in the United States. So many different sets of needs that making a single part of the federal regulations be applicable and relevant and appropriate for all of those different ways - for Navajo and Sioux and Mashantucket and the small tribes in California is going to be a real drafting challenge to get something that's going to work for everybody.

Liz Appel: Another thing that Tana mentioned earlier that we're interested in your input on are, we know that you provide a range of services and infrastructure to those who do business on your reservations.

So we'd like to know what kind of services you offer - law enforcement, health inspections, transportation, other infrastructure. And it sounds like from some of the earlier comments that you're not able to rely on tax revenues to provide those services and infrastructure. But we would like some more detail if that is the case.

Coordinator: Jean Swift your line is open.

Jean Swift: So I'd like to read for you a list that we have of several services that are provided by the Mashantucket Pequot Tribal Nation to those who do business on a reservation.

It includes public safety, both fire, police, and also 9-1-1 dispatch. All types of regulatory affairs including liquor control, surveillance, Gaming Commission, utilities which are water, sewer, and waste water treatment plants.

Electrical and natural gas distributions. We have a tribal OSHA which we call OTSHA. We have Land Use Commission, environmental protection, food safety inspections, building code enforcement, natural resources, regulatory permitting, and many judicial services which include a tribal court, a court of appeals, our MRO which is our Mashantucket Rights Office which ensures fair labor practices in Indian preference enforcement.

Public Works, a plethora of services under Public Works, and finally a U.S. Post Office.

Liz Appel: Thank you, that's very helpful.

Jean Swift: You're welcome.

Liz Appel: So do we have any other comments today? I want to remind everyone that the comment period is open until April 10. So there's still some time to provide your written comments. And the best way to provide those is probably by email at, consultation@bia.gov - to consultation@bia.gov.

So it looks like we have another commenter.

Coordinator: Yes, Michael Connors your line is open.

Michael Connors: Regarding the services and infrastructure provided by the SDs (unintelligible), we have many of the same services and infrastructure as Ms. Swift commented on.

We have the water and sewer plants that provide services to everybody who paid into the fees.

We also have the first responder's law enforcement (unintelligible) services. We have (unintelligible). In addition to that we also have broadband services. And that's state funded right now by our Gaming operation primarily, but there's also (unintelligible) local businesses that pay for that (unintelligible) territory.

Liz Appel: Great, thank you.

Tana Fitzpatrick: Thank you.

Coordinator: I would like to remind participants if you have any comments to please press star 1.

Liz Appel: Does anyone have any questions for us while we're - while we have the time set aside here?

Coordinator: Michael Conners, your line is open.

Michael Conners: Yes, I'm just wondering if we can get the seven questions that are being referenced, emailed to our nations and we can incorporate those questions into our comments - framed comments?

Liz Appel: Absolutely. Do you want to give us your email now or...

Michael Conners: Yes, I can do it now. It's Michael.Conners@srmt-msn.gov. That's C-O-N-N-E-R-S.

Liz Appel: We will get that off to you as soon as we get off this call.

Michael Conners: Okay, thank you.

Coordinator: And once again if you have any questions at this time please press star 1.

Liz Appel: Well if there are no more comments I think we'll wrap up the call. We want to remind you that we're looking forward to your written comments by April 10. And we will look into whether we can reschedule another in-person meeting in Seneca before that date. All right, well thank you.

Tana Fitzpatrick: Thank you for your comments.

Liz Appel: Thank you all for joining. And again, the email address to send your written comments is consultation@bia.gov. Thank you again for joining.

Coordinator: thank you for participating in today's conference. All lines may disconnect at this time.

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