Meeting
February 28, 2017

BIA INDIAN TRADER REGULATIONS
TRIBAL CONSULTATION

TUESDAY, FEBRUARY 28, 2017
8:43 A.M. - 9:31 A.M.

MICCOSUKEE RESORT & GAMING
500 S.W. 177TH AVENUE
MIAMI, FLORIDA 33194
TRIBAL REPRESENTATIVES PRESENT:
ELROD BOWERS, SEMINOLE TRIBE FLORIDA
PETE HAHN, SEMINOLE TRIBE FLORIDA
KEVIN WADZINSKI, POWERS PYLES – TUNICA BILOXI TRIBE
LOUISIANA

STAFF PRESENT:
MILES JANSSEN, COUNSELOR TO THE ASSISTANT SECRETARY OF
INDIAN AFFIARS
JAMES W. PORTER, OFFICE OF THE SOLICITOR, DIVISION OF
INDIAN AFFIARS
CALL TO ORDER:

THE MEETING WAS CALLED TO ORDER ST 8:43 A.M. BY

MILES JANSSEN.

MR. JANSSEN: We're going to get started. Let's start the triable consultation for the advanced notice of proposal we're making on Indian trader regulations. I guess we can start and introduce ourselves. My name is Miles Janssen. I am the counselor to the assistant secretary of Indian affairs, a member of the central counsel of Tlingit Indians in Alaska.

MR. PORTER: I'm Jim Porter from the Solicitor's Office of the Department of Interior.

MR. JANSSEN: Those guys can introduce themselves.

MR. WADZINSKI: Sure, I'll start. I'm Kevin Wadzinski from the law firm in DC called Powers Pyles Sutter & Verville. I'm here on behalf of the Tunica Biloxi Tribe of Louisiana.

MR. BOWERS: I'm Elrod Bowers. I'm here on behalf of the Chairman's Office Seminole tribe of Florida.

MR. HAHN: Peter Hahn, Seminole Tribe of Florida, treasurer.

MR. JANSSEN: Thank you. So I'll go over a
little bit about what this consultation will be about. So on December 8, 2016, Indian Affairs published an advance notice of proposal making to get input on whether to update 25 CFR Part 140 -- License Indian Traders. This was a direct response for proposals inquiries the department received over the past few years from tribes and Tribal organizations, expressing interest in potentially revising Part 140 and asking the department to take a look at that. So right now, we're at the very early stages of this process. We haven't drafted any revisions yet because we really want to hear from Indian Country on, basically, what -- how Indian country uses, whether to leave the rule as is, whether to repeal the rule, or to revise it, and if the answer is to revise it, then what should that revisions look like? So a little bit of background on Part 140. So Part 140 covers trade currently on Indian reservations. And if have you a copy of the Part 140, it is pretty comprehensive. Part 140's based on the lesser known Indian trader statutes. The most recent of those statutes was passed in 1903, but it goes back. One of the statutes was also passed in 1876. So, obviously, they're very old statutes. And those statutes saw
to protect tribes from unlawful traders on their reservations. So in era of Indian law that was back then, that was the intent of those statutes. So Part 140 of the regulations that we passed, were first published in 1957 and then revised in 1965, and then modified in a peace compassion in 1984, and in the divisions of framework in which would be BIA would issue license to anyone wanting to do business on a reservation. The department recognizes the tribes currently employ regulated businesses operating in their borders -- in their matters currently. So we wanted -- so we understand that there might be a disconnect currently. So our goals -- so we're looking into, you know, whether and how Part 140 can be revised.

One, we want to look into modernizing the implementation of the Indian trader statutes in a way that it is consistent with the federal policies of Tribes self-determination and self-governance, supports current Tribal business practices, and then also in a way that strengthens Tribal economies around the Country. So a little bit about the new administration and its priorities, the specifics of the new administration priorities to the Indian county are unknown, but we anticipate
that they're going to align with the president's priorities for economic development, so this, obviously, would play into -- that. In the scope of consultation, the handouts that you received when you came in include a list of questions that we would like input on, and they're the same exact questions that were in the Advanced Notice of Proposed Rulemaking, and we'll be going through each of those questions today. But, briefly, we address whether Part 140 should be revised in full or in part and why; the federal involvement in business practices; how to make sure that traders in Indian country are reputable and accountable; and then what type of trade and who should be regulated? The Department's also interested in learning how tribes currently regulate trading, currently, their jurisdiction, and how it revisions to this regulation could promote that tribe viability in Indian Country, and also to address any taxation issues. So we're also accepting written comments and comments to -- the period to that will run to April 10, so we're comments until that day, April 10, 2017. But today I'm here to listen and get your thoughts on how to modernize the Indian trader registrations to hold
tribe self-determination and economic development, and I look forward to our discussion today. And then, actually, one more thing, there might be some questions and you may have heard on the two for one requirement for regulations. That was an executive order issued by the president that requires two existing regulations to be repealed for every new regulation that is promulgated. There have been some questions of whether this would fall into that. OMB's issued interim guidance and saying that this rule only applies to rules that OMB determines is significant, and in order to determine whether a rule is significant, it's based on executive order 12866, and it's based on monetary policy thresholds; and ultimately OMB will decide whether a rule is insignificant. And right now, we're at such an early stage in the process, we don't know whether our changes in those rules would be significant. So currently that's something down the road that we would have to look at, but it's not in effect right now, but we have to that we're thinking about. So with that, I will open up the comment period to those. Thank you.

MR. HAHN: This was a lot of information to kind of digest in a short period of time, from when
I was notified. So now, is this addressing taxation within Indian country as well?

MR. PORTER: I guess the most honest answer is we're trying to figure out what it's going to address. We recognize there's a final interest of Indian country and the trader regs may be a mechanism to help clarify those issues, but we don't know yet, and so we're -- the history of a taxation of business in Indian Country is complex, and I'd say that we have adverse rulings already that make it a challenge to figure out how to get help through this process. So we're hoping that, you know, good minds in Indian country can help us figure out if there's some way that that could be done. It's not obvious that it is, but it's not as good for everybody.

MR. HAHN: Okay. And part of the reason that I asked that is, there are certain products that are trying to sell, for instance, fuel, cigarettes, that are charged a state tax, so is there a possibility by ending the CFR that they could impact that to where there is less chance of taxation or we'll go ahead and impose our own tax that the states no longer collect it?

MR. PORTER: I don't think it would be
responsible to say there's no chance, but I think we all recognize that the laws that enable the states to tax those things now -- it's not obvious how our regs on this can change that legal structure. We're all trying to figure out how that might be done, but it's not -- I think we don't think we can just say -- and if you're a licensed trader, you will never pay state tax.

MR. HAHN: Right.

MR. PORTER: That seems like too counter to practice.

MR. HAHN: All right.

So either way it's most likely that there would become an agreement between the state and the tribe and possibly these federal regulations.

MR. JANSSEN: So I think right now the -- like I said before, I mean, we're at a point where we're just trying to just kind of gather information. I think the regulations can take many forms. And so you're with --

MR. HAHN: Seminole Tribe of Florida.

MR. JANSSEN: Okay.

MR. HAHN: Peter Hahn, treasure of Seminole Tribe of Florida.

MR. JANSSEN: That's all right.
MR. WADZINSKI: Kevin Wadzinski. Let me just say, first, I would not take the small audience as a lack of interest in Indian Country on this issue. I think you're continuing with Mardi Gras. You're down South -- for starters. But also, I think that there's a common misperception out there about this particular law and these regulations. And -- I've been practicing for 20-plus years and with a focus on economic development in Indian country. And, surprisingly, over those two decades, I've run across these regulations only a few times. And I think in part that's because they're there, they're on the books. I don't think they're enforced. I think if you looked around Indian country and look at the business transactions taking place in Indian Country, very few actually involve a licensed Indian trader.

MR. PORTER: Do you guys know of any tribes that still use licenses?

MR. WADZINSKI: Off the top of my head, I do not, no. I know that our tribe, for instance, issues its own vendors licenses for doing business on the reservation.

MR. HAHN: And I think there's this a good reason why that is the case. And I think if you go...
back and look at the original purpose of the original laws, as well as the regulations, I think the intent was the federal government said, "it needs to regulate business on Indian reservations;" a very paternalistic view in part to protect Indians such that they don't get the short end of the stick in the business transaction.

I think today, though, when you look at Indian policy and the evolution of Indian laws promoting the economic development, the focus is really on creating an environment and an arena where businesses can actually thrive on Indian reservations and promoting the self-economic determination. And it's not so much the focus on - - let's not have bad actors come in. It's that there's a realization now that tribes are fully able to prevent that from happening. What my client would like to see is other clients, as well -- we need to use this opportunity to really change the policy towards those new policy objectives, meaningful economic development on reservations. How does the federal government by regulations step in to promote that? And I think as the gentleman from the Seminole Tribe mentioned, dual taxation, you don't see that in the headline of amending the
Indian Trader's regulation. But it, definitely, in my opinion, is part of that overall objective of promoting economic development. It's really hard to have viable businesses on reservations when those non-tribal entities are subject to dual taxation. And I know that firsthand with my client. So if there's any lie that the federal government can address that issue, and I'm not saying what that means because I don't really know that. And as, Miles, you mentioned, we really don't know what this -- what new policies are going to come out of this administration. I think it's just too new on this administration to know. But my clients and I personally would like to see that as part of this review. And hopefully it'll find its way in some form or another in the regulations, should they be amended.

MR. JANSSEN: So I guess we can go through some of the questions that were proposed in the Advance Notice of Proposed Rulemaking. And we can kind of start backwards in terms of the questions, just because we have been talking about issues related to tax.

So one question I would have is: What services do tribes currently require to individuals or
entities doing business in Indian country? What roles
do tax revenues play in providing such services?

    MR. HAHN: Say that again.

    MR. JANSSEN: So I guess, what services do
    tribes currently provide to individuals or entities
doing business in Indian country? And what role do
    those tax revenues play in providing those
    services?

    MR. HAHN: As far as services right now, our
    tribe's primary business is the sale of fuel, the
    sale of cigarettes, primary things that are taxed
currently.

    MR. PORTER: But those are the tribes'
businesses.

    MR. HAHN: Yes, we have -- we have all the
    trading stations. We have trading posts that we
    sell gas at. They operate right off of one of the
    main streets here in Hollywood where we have both
    tribal and non-tribal patrons that come in and
    purchase gas, as well as other products there at
    the trading post. And the state does receive a
    fuel tax for that. What we're trying to provide,
    also, in addition to that, we have to accrue how
    much of those fuel sales are actually tribal
    members, so that makes it a little difficult at
times to make sure that some purchases were made by tribal members versus non-tribal members.

MR. PORTER: One of the reasons that doesn't fit, obviously, within the context of this statute of regulatory scheme is that this is about non-Indian, non-tribal traders conducting business on the reservation. So what -- you know, we have to figure out how that applies to the tribe's own business working on the reservation.

MR. WADZINSKI: And as far as -- and, Miles, I think your question is how do taxes result in services provided to non-tribal entities doing business in Indian country? And that's correct. I mean, you break it down a little bit. You first ask the question, who is the taxing authority? Obviously, the tribes can tax, but I think you'll find that many do not such that the only taxing authority exercising its jurisdiction is the non-tribal government. The other question is: What services are actually being provided to the non-tribal business and which government is providing those services? And in my experience, this is not happening to a particular client, it's just observation in Indian country is that a bulk of the services are provided by the tribal government.
Those would include such things as emergency response, fire and safety, police. Some tribes have various health departments that do inspections, those types of things. And I think, you know, a great example, which I'm sure you're aware of undoubtedly here in more detailed tribes, the Tulalip tribe in their development of their reservation and their ongoing issues with dual taxation.

MR. PORTER: Yeah. And they actually issue licenses, trader's licenses -- well, sorry -- they don't issue -- the BIA issues them to the traders there, so I want to run close. We had a consultation last weekend, and it's --

MR. WADZINSKI: It's very honest of you because if tribes elect not to exercise their taxing authority and there's good reason it's not to exercise their sovereign authority. It's just if they do, those businesses, absent some type of agreement with the other taxing jurisdiction, will leave. And for good reason because now they're operating expenses in this area is doubled.

MR. PORTER: How common or rare is it, in your experience, for tribes who rely on sewer, water, and electric, of course, coming off-reservation on
to the reservation?

MR. WADZINSKI: Again, it depends on the area and the location of the reservation, vis-a-n
municipality. They oftentimes will seek provided -- those services provided by the tribe in a rural setting.

MR. PORTER: Yeah.

MR. HAHN: Depending on which area as well as you have water treatment because we have a lot of facilities, but there's less water used at rural county, whoever's at that location, municipality.

MR. PORTER: Right.

MR. JANSSEN: So it's for the infrastructure and services that tribe provides. Are you able to provide any tax revenues that collect to provide such services in any structure? Or is that provided in these other types funds?

MR. HAHN: Typically, the services that are provided, whether it's water or utilities, the tribe picks up the bill, or most of the bill, the majority of it. There's no tax that's imposed for the trucks coming on, and there's no taxes imposed for the water that's running through the pipes. There's no additional services not passed on to the members. It's not passed on the user. It's
MR. JANSSEN: So I guess we can also kind of start going question by question. So the first question that we propose is: Should the federal government address trade currently in Indian Country through an updated 25 CFR Part 140, and why? Congress granted the Department regulatory and regular trading in Indian Country, specifically the Indian trader statutes, "The right of the department and the authority to make rules specifying the kind and quantity of goods that may be sold to Indians and the prices of which such goods could sold as," 25 USC 261. "To establish rules and regulations governing who is the proper person to engage trading on Indian reservations for the protection of the Indians," 25 USC 262. And we know that currently tribes regularly trade on reservation under tribal laws and authorities without federal involvement. We also acknowledge our trust responsibly to charters. I ask, again, how can we update these regulations in a way that kind of recognizes the facts? You know, one is, business is currently done on the reservation versus kind of historical past. How can we make those ends meet?
MR. HAHN: I mean, I'm sure other tribes as well, but we have our own regulations that we follow, which is very similar to the state for issuing of a business license. So for any vendor that wants to do business on the reservation, within our reservations, they have to follow our policies and our procedures to obtain a business license through us. So just having one from the State of Florida doesn't necessarily guarantee that they're going to receive ours. They still have to receive a tribal business license as well. It may put a little burden on the people, however, we have our own regulations to follow. So I don't see any reason why the Department of Interior has to decide when a trader's going to meet the policy of the reservations. We have our own policies and regulations to follow.

MR. JANSSEN: Would you be able to -- just maybe if you would like to kind of explain in further what -- you know, when a person applies for a tribal business license, I guess, what are the steps? What do they have to go through to get that?

MR. HAHN: Okay. Part of the steps is, after they approach the appropriate tribe and inform us
that they have a business that they would like to propose, they then go through various departments in order to qualify for it, in part, ensuring that whatever business they're going to be doing, the need isn't going to conflict with something else we have here because we don't want to oversaturate the markets. And after we find out that, yes, we have a purpose for that business, we then make sure that they have their insurance, make sure that they have their various things in place, that they're in good standing with the state and the federal government. After they have reached the requirements, they then apply for a business license, those business licenses, and take a few other steps and ask a few questions for the scope of service, what exactly it is they're going to be providing, how it is they feel that it can benefit the tribe through the process?

MR. PORTER: Is there anything about the jurisdiction of the tribal court through the license?

MR. HAHN: Not typically. There are -- it depends on what the business is as to how those could be handled. And so usually it falls within the state and other jurisdictions are going to be
held. However, we -- we're not confined to the tribal court system. I mean, there's a lot of business in the tribal court system and we have it in place now. And we're working on putting all those -- all the regulations in place, so I'm sure once we have that in place, they want to go over it. We can go over that into our regulations.

MR. WADZINSKI: Going back to the same question. I think you're going to hear from the Indian Country that one option that you have, and I think this will be the preferred option coming to Indian Country, is that if you should revise the regulations, they would acknowledge the policy of tribal regulations as to who should be permitted or allowed to do business within that particular tribe's jurisdiction. I think you also see that the tribes, in fact, are doing that, not just Seminole, but other tribes across the country. And perhaps some of this started with Indian gaming and certain federal requirements of tribes allocating where it's regulated various entities doing business in that context. But it is certainly -- in my observation, it certainly expanded to other industries as well. And I think you'll find that tribes have to approach it in different ways. And
the level of tribal regulation varies from policies
and practice that it's doing due diligence, doing
background checks, even if it's not gaming related,
to structures where they're actually licensed
applications and formal license that process. And,
Jim, to answer your question, I certainly seen in —
a number of different circumstances, where tribes
will require the entity doing business with the
tribe to acknowledge that entering into a potential
relationship subject to the jurisdiction of the
tribe. And now it's in tribal court's
jurisdiction.

MR. JANSSEN: So another question we had is:
Are there certain components to the existing rule
that should be kept, and if so, why? For instance,
if the department has issued licenses, should there
be a grandfather clause? We currently have
licenses that the department's issued under Part
140. And if no section should be kept, we would
like information on why and what would an entirely
new rule look like? The BIA normally issues
licenses in the rule. What would the federal
involvement be — with the understanding,
obviously, the tribes are doing licensing? How --
is there any ideas on that?
MR. WADZINSKI: I think -- I can't speak on behalf of any particular client just because, quite frankly, we haven't gone through the process long enough to get to those recommendations. Having said that, as far as with a grandfather-type provision, I think you'll find for the licensed Indian traders at that time if they would like to see, perhaps they would view it as having a vested right in their ability to conduct business pursuant to that existing license. Again, we're at that stage where you're just looking at feedback, so you haven't identified your options. But one potential option would be through a grandfather provision that phases out over time and ideally switches to the exclusive tribal jurisdiction, as well as licensing. It can also happen, as far as some of the provisions, you may want to think about deleting in entirety. I know that glancing over some of the provisions that it appears that some of them are a bit outdated or perhaps even inconsistent with existing law; just recalling the provision dealing with the sale of alcohol and I think some of that has changed where tribes have approved ordinances. Presumably, you may have like a restaurant franchise come in, and they're
actually serving alcohol. But it appears that these things could happen at Indian traders, so I think you may find provision like that where they're a bit outdated or perhaps inconsistent with superseding law.

MR. PORTER: The whole section is just; we're all violating it every day.

MR. WADZINSKI: Can I say about the question? Do you know when the last time the regulations were enforced?

MR. JANSEN: No, I do not.

MR. WADZINSKI: I do not either. And there are some pretty hefty fines imposed for individuals who violate Indian traders' laws, and I was just curious to find out whether or not the Department -- when the last time it was that the Department brought an action.

MR. PORTER: I have no idea. I think it's part of the incentive -- why we can't just let this go away and just ignore it -- we can't just continue to ignore it because it's telling us to do some really important things, and so if we're not going to do those things, we probably need to deal with the regulatory scheme.

MR. WADZINSKI: And it causes practitioners in
this area to wake up in the middle of the night and say, "Oh, my God."

    MR. PORTER: Yes. And I would assume that, you know, there's one or two circumstances where traders aren't currently being licensed. I would hope that soon that violations of the licensing scheme will get, you know, enforced. Only, we're not issuing any licenses, so the opportunity say historically you don't have a license. I can't imagine the last time -- you know, decades ago.

    MR. WADZINSKI: And on that point, I think there are some real practical hurdles to uniform enforcement. I don't know how the Department would possibly have the capabilities to police this, especially in light of the fact that economic development on Indian reservations has changed so dramatically since these reservations were first brought on to them.

    MR. PORTER: That was something I was curious about. There are so many different sets of circumstances in Indian Country. I mean, every tribes got a different set of circumstances, and so in a regulatory scheme like this has been, you know, how could anything really be appropriate for all of those different services? And I don't know
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if it was -- if it would make sense that we do
carry forward with some kind of revised scheme to
have a venue of different things that might apply
to different circumstances or something as simple
as a tribe can opt in or out of its application on
their reservation, or whatever. But it just seems
really hard to craft something that would make
sense in every possible tribe scenario. That would
be helpful information to have.

MR. HAHN: That kind of goes back to the self-
determination, and so it's the aspect by a lot of
tribes to make the regulations their own policies.
The Department of Interior saying, well, we
acknowledge that tribes are making the regulations
and maybe it is best suited for them to decide
what's going to be better for their economic
development. But you've got to support it.

MR. WADZINSKI: I would agree with that in
part because it reflects what's really happening
out there. And if a tribe is comfortable in its
regulating who's doing business with the tribe on
the reservation, they're going to have the best
sense of what they need to ensure that people that
are not allowed to do business with them are not
going, in fact, going to be allowed to do business
with them.

MRS. JANSSEN: So I'll just keep going down the
list of questions. Some of these might be --
sounds like I'm repeating myself. So "How can
revisions to the existing rule ensure that persons
who conduct trade are reputable and that there are
mechanisms in place to address traders who violate
Federal or Tribal law?" So the best way the
address that comments is keeping the place
regulating trade. I mean, this is their
jurisdiction currently. How can the rule ensure
there are reputable traders in Indian Country,
ensure the violation of Federal and Tribal law are
properly addressed? Anyone have any thoughts on
that?

MRS. HAHN: I mean, once again, the tribal
self-governs so that we maintain what it is the --
my tribe, for instance, if something happens to
where a vendor violates any of our policies, or
does some type of business that we don't agree
with, then we'll make sure that we exclude them
from our current business. Whereas the Department
of Interior, unless you have an agent sitting on
each of those reservations that's going to sit and
filter through every one of those businesses and
then they're going to look at all the details of
what's going on, and then it's going to be reported
and any other mishaps or anything that could be
construed as bad business, and it's not necessarily
done all through the federal guidelines. So, I
mean, that may produce an additional burden on the
Department of Interior requiring diligently going
through and making process of reading through all
those documents, making sure that these financials
are in order, making sure that these businesses are
actually doing what they're supposed to, making
sure that if there was a violation of some sort,
how was it going to be dealt with at that point
forward. And on top of that, if you don't have --
all the additional workload, and you're going to
have additional staff that you're going to be
required to hire in other places, or there's going
to be a huge backlog ten years later when you get
to something that happened.

MR. JANSSEN: Is there a way for the
department to -- I would say -- so the tribe,
obviously, makes the determination that some would
be not proper to take action. Is there a way -- do
you have any ideas of any way the Department could
help assist the tribe in that process or to
strengthen a tribal order? Obviously, the tribe has to -- you know, is making those determinations, but can the department provide assistance somewhere in the tribal process?

MR. WADZINSKI: To answer that question and go back to the original question, if the regulations were to provide that a violation of a tribal laws is also a violation of the regulation, then you have a potential of other enforcement mechanism. And I think, you know, tribes -- again, in that thinking on behalf of the client, we very welcome that because the threat of enforcement in tribal court, I think, is one thing, but the threat of enforcement by federal officials is another. So making a violation of a tribal law regulation governing trade business on Indian reservations is also a violation of the federal regulations, I think, one way that would be helpful as in the role that the federal government is playing here. When you originally asked the question, I thought well, perhaps some type of database or registry of individuals that should be precluded from doing business in Indian Country across the board -- maybe something like that would make sense, but in thinking through it, I'm left with the thought that
I don't know really how large that database would be. And just looking at it the source, if that information comes from the federal government itself, then does the limit get to the federal government? I'm not sure you would have a whole lot of individuals on that list; not because there have not been violations out there, but just because I think there are a few enforcement actions. That type of database, in order for it to be effective, would rely on tribes submitting that information to you all, and I don't know where a tribe stands on that.

MR. PORTER: Do you guys have a sense of the non-tribal businesses conducting business on the reservation? How many of them are corporations versus privately owned? Kind of an obscure question.

MR. HAHN: The majorities that do business with us are private or sole proprietorships in that setting. There are -- I mean, there are some that could be franchise-ish, but it's few and far between for them.

MR. WADZINSKI: My guess there is that, you know, for the real small mom-and-pop type of businesses, maybe individuals. The larger types of
businesses are going to be corporations and limited
liability companies.

MR. PORTER: Home Depot, you have big box
stores on the reservations.

MR. JANSSEN: Okay. Moving on to question
four: "How do tribes currently regulate trade on
Indian Country?" I know we've been asked that many
times already now. "How might provisions in 25 CFR
Part 140 help tribes regulate trade in Indian
Country?

So I guess we're looking for specific
information and suggestions including language on
how the federal government involves those tribes
and currently comprehensively regulate trade as
well as those tribes that do not do so presently.
And, like I said -- I mean, we're accepting
comments until April 10. I know it's kind of --
it's a complicated issue to, you know, come here
and just read and have answers. If you have any
ideas just off the top of your head, that would be
helpful.

MR. WADZINSKI: Again, I think I mentioned
this earlier. How do the regulations acknowledge
not only the business of the tribal regulation, but
also the privacy of that? I think we would need
the -- one recommendation suggests that we hear a lot from Indian County.

MR. JANSSEN: Another question is: "What types of trade should be regulated, and what types of traders should be subject to regulations?" So the parties receive proposals from various tribes and tribal organizations pertaining to the Indian trader regulations. Many of those proposals suggest a trade that should be regulated under Part 140 should include not only commercial activities, but mineral and energy development in any form of natural resource extraction or agriculture. And so should it -- so that's a -- that's a question that we have, what should be the scope of trade, I guess? Should it be just kind of we think of it as, you know, commerce or should it include energy, agriculture, along that case?

MR. HAHN: Again, I think it should kind of be up to that tribe to regulate what a business is going on in that area. For instance, we don't deal with oil, but other tribes do, so for us to make regulations for other tribes on how to handle the oil, it wouldn't be fair for us to impose our opinions and our views on some other tribe.

MR. WADZINSKI: And I would suggest that you
examine the existing laws that already do regulate different forms of commerce in Indian Country. Obviously, they need gaming regulatory act is a very comprehensive law that regulates gaming a number of different ways. That would be helpful because then it would eliminate inconsistencies or additional burdens. Vendors providing services in that industry are already regulated on the tribal level, the federal level, and depending on what context as the state level. I would imagine that Indian Country would not want yet another layer of duplicative regulations there. As far as the broader, what is the scope of this type of revision? I think that is an issue not only for how you go about defining commerce and whether that includes business as selling goods, providing services, or whether it broader to include agricultural issues, mineral, energy issues. But I think there's another component to it as well, we touched upon that earlier, and that is, is it broad enough to cover governmental action that directly impacts commerce on the reservation and specifically the issue of taxation of the traders on the reservation? So I think how broad in scope should this be involved. So that's two separate,
you know.

MR. JANSSEN: I guess another question. "Should a rule define the type of trader conducting business within any tribe?" In draft proposals, the department has received from outside of organizations. The department has received recommendations in a revised rule applied to any person conducting trading in Indian Country, including non-Indians. So I guess, what should be -- should the type of trader be defined? Should it be anybody? Any thoughts on that?

MR. WADZINSKI: I guess my thought would be that if there's a role of actual regulation by the federal government, that I don't think the status of the trader is all that relevant, as is that individual's suitability, for lack of a better word, to engage in business with the tribe.

MR. JANSSEN: And the last question I have is: "How might revision to regulations promote economic viability and sustainability in Indian Country?" How do the rules facilitate economic activity in Indian Country and tribal economic self-sufficiency?

Something we talked about a little bit before. Any additional thoughts?
MR. WADZINSKI: You know, I think that's a great question. I think the first step in answering that question is to examine what are the impediments and hurdles to economic self-sufficiency on reservations? And that goes to the issue that we just discussed. What should be -- how broad should this be? In my experience, again, an issue of taxation by entities that don't often provide all of the services for which they -- the service is provided to the taxing entity, that should be address because I think that will cause -- or will allow -- for businesses that want to engage in business on the Indian reservation to identify what their actual cost of doing business is going to be. So I would hope that the ultimate outcome is here is a revision that addresses that particular issue. Again, I think we're too early in the process to understand what is likely or even possible to end up having a final regulation. But I would recommend -- to start at that point.

MR. HAHN: And, again, with taxation coming from the state is the state provides any of those tax monies or tax dollars back to reservations to cover the infrastructure in any aspect. So unless the road is a main road that the state uses or that
the county uses, the tribe, in essence, has to pay
for that to cover the cost of repairing roads and
various other improvements. There is no taxation
that we can actually impose in that aspect because
if we do, we may actually drive business away and
then the prices would increase and then they will
find somewhere else that's cheaper to go.

MR. JANSSEN: So those are all the questions
that I have. Those are questions, as I said
before, that were published in the Advanced Notice
of Proposal of Meeting, so that if you go to the
federal registration notice, those questions will
be there.

We are accepting comments on this issue until
April 10, 2017. We welcome any comments,
suggestions, and proposals on the revisions to
trader regulations. So I guess we can -- at this
point we can take a break and see if anyone else
comes. We'll wait a few minutes, but if not, I
appreciate you guys coming today and talking about
this issue. Thank you.

MR. PORTER: It was short, but very helpful.

MR. HAHN: Thank you for your time. I hope
the issue progresses that we have a little more
interest and more attendance, and that we can start
the board so that you can actually get feedback from other tribes in different situations, that may have additional input that we could provide.

MR. PORTER: Need to check the holiday calendar.

MR. WADZINSKI: Yeah. And on behalf of my clients, thank you and we appreciate you taking a look at this regulation to see how, perhaps, it could be revised to truly promote the economic development on the Indian reservations.

MR. JANSSEN: Thank you.

MR. PORTER: Thank you.

(MEETING CONCLUDED AT 9:31 A.M.)
CERTIFICATE

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, JAMIE LYNN SAPP, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceeding, and that said transcript is a true record of the testimony given by the witness.

I FURTHER CERTIFY that I am not of counsel for, related to, or employed by any of the parties or attorneys involved herein, nor am I financially interested in said action.

Submitted on: April 18, 2017

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JAMIE LYNN SAPP
Court Reporter, Notary Public