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Silence Greeted Pleas To Delay Adopting Proposed Tribal Gaming Rules

**Interior Department tight-lipped on proposed tribal rules
Critics say process lacks transparency, economic impact analysis**

Opponents seek at least revision if not withdrawal of guidelines

So far, it does not look like federal regulators are willing to back off their newly-proposed rules for the \$40bn Indian gaming industry despite several objections to proposals that include allowing for state-wide online gaming within tribal compacts.

As long as the Bureau of Indian Affairs (BIA) of the U.S. Department of the Interior complies with the federal Administrative Procedure Act, it could be only a matter of time before the new regulations govern internet gambling compacts between tribes and states as well as purchases of land which can be used for Indian casinos.

Opponents have stopped short of threatening a lawsuit to block the **proposed regulations**, choosing instead to implore the BIA to either withdraw the new rules or at least extend the public comment period, which ended March 1.

Meanwhile, the author of the proposed regulations, **Bryan Newland**, the Interior Department's assistant secretary for Indian Affairs, is not tipping his hand about what his next move might be, and the department's press office did not respond to an inquiry from VIXIO Gambling Compliance on Friday (March 17).

Jeff Ifrah, a prominent internet gambling attorney in Washington, D.C., is among critics from the commercial gaming industry, Congress and even some tribes who are opposed to the proposed regulations.

"We want to sit down with BIA because we want to be heard on a host of issues that are outlined

in our comments,” Ifrah told VIXIO Gambling Compliance in a phone interview on Thursday (March 16), referring to a response submitted on behalf of online gambling trade association iDEA.

Federal courts can overturn federal regulations, but Ifrah is not interested in pursuing a lawsuit at this point.

“We’re obviously hopeful that these regulations won’t go forward and that we’re given an opportunity to have a seat at the table to discuss the true economic impact to the commercial interests of our members and also have a discussion with tribes who do participate in regulated state-wide gaming,” Ifrah said.

A common refrain among the complaints submitted to the BIA was a lack of transparency and the exclusion of non-tribal interests in the formulation of the proposed regulations.

Many of the comments submitted to the BIA seem to echo each other, and in some cases the language is identical.

iDEA and state gaming associations from Iowa, Louisiana, Missouri and Mississippi all submitted letters to the BIA arguing that the potential approval of state-wide online gaming within tribal gaming compacts was not permissible under the 1988 Indian Gaming Regulatory Act because the wagering activity would not be occurring on Indian lands.

The associations also critique proposed language regarding the scope of gaming that should be included in compact negotiations, as well as an end to a past policy for the U.S. Department of Interior to take account of how far away proposed tribal land acquisitions would be from a tribe's traditional reservation when considering whether to approve it.

Despite the similarities, Ifrah said critics of the proposed regulations are not collaborating.

Ifrah and other opponents are urging the BIA to delay finalizing the proposed regulations until a [federal appeals court in Washington, D.C.](#) rules on the validity of a 2021 compact between the Seminole Tribe and Florida Republican Governor Ron DeSantis, which granted the Seminole exclusive rights to operate mobile sports wagering throughout the state via servers located on its tribal lands.

But Joseph Webster, an attorney representing the Seminoles in their appeal, submitted a comment to the BIA saying the tribe “generally supports the [Interior] Department’s efforts to provide [clear guidance regarding the review and evaluation process](#) for Tribal-State class III gaming compacts that are expressed in the proposed regulations.”

The Mohegan Tribe of Connecticut even praised the proposed regulations, and its chairman, R. James Gessner, Jr. went so far as to urge the BIA to “finalize the rule as expeditiously as possible.”

Perhaps the biggest red flag for the BIA is a comment from Republican Congressman James Comer of Kentucky, the new chairman of the Oversight and Reform Committee in the U.S. House of Representatives.

Aggressively partisan, Comer already has subpoenaed 14 years of bank records linked to his committee’s investigation of President Biden’s son, Hunter.

“If adopted the Proposed Rules would undermine states’ abilities to exercise their police power to regulate, and generate tax revenue from, their gaming markets,” Comer wrote in his March 1 comment to the BIA requesting the withdrawal of or at least a revision to the proposal.

“Additionally, adopting the Proposed Rules would overstep BIA’s statutory authority by disregarding the requirement that gaming conducted under the Indian Gaming Regulatory Act (IGRA) occur on ‘Indian lands, and nowhere else,’” Comer said.

Another common complaint in the comments is that the BIA’s cost estimate of \$100m for the economic impact of the proposed regulations is much too low.

The more accurate projected cost is \$5.36bn annually, according to Christopher Carrigan, a professor of public policy at George Washington University in Washington, D.C.

Republican Governor Mark Gordon of Wyoming said the proposed regulations would violate IGRA by requiring states to negotiate gambling compacts with tribes.

“The BIA cannot force the State of Wyoming to hybridize its laws and negotiate an allocation of jurisdiction that allows for off-reservation gaming in a way that IGRA otherwise does not,” Gordon said in his comment on February 28 to the BIA.

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