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United States Government Accountability Office
Washington, DC 20548

B-316537

June 3, 2008

The Honorable Byron L. Dorgan
Chairman

The Honorable Lisa Murkowski
Ranking Minority Member
Committee on Indian Affairs
United States Senate

The Honorable Nick J. Rahall II
Chairman

The Honorable Don Young
Ranking Minority Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Bureau of Indian Affairs: Gaming on Trust Lands Acquired After October 17, 1988*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior (Department), Bureau of Indian Affairs (BIA), entitled “Gaming on Trust Lands Acquired After October 17, 1988” (RIN: 1076-AE81). We received the rule on May 19, 2008. It was published in the *Federal Register* as a final rule on May 20, 2008. 73 Fed. Reg. 29,354.

The final rule implements section 2719 of the Indian Gaming Regulatory Act that allows Indian tribes to conduct class II and class III gaming activities on land acquired after October 17, 1988, only if the land meets certain exceptions. The final rule articulates standards that the BIA will follow in interpreting the various exceptions to the gaming prohibitions contained in section 2719. It also establishes a process for submitting and considering applications from Indian tribes.

The final rule currently has an effective date of June 19, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). BIA has informed us that it will publish a correction in the *Federal Register* to extend the effective date so as to comply with the requirements of the Congressional Review Act.

Enclosed is our assessment of the BIA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, assuming BIA extends the effective date to comply with the 60-day delay, BIA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Darren Pete
Director, Office of Congressional
and Legislative Affairs—Indian Affairs
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS
ENTITLED
"GAMING ON TRUST LANDS ACQUIRED AFTER OCTOBER 17, 1988"
(RIN: 1076-AE81)

(i) Cost-benefit analysis

BIA states that the final rule establishes requirements for the submission, review, and approval of a gaming application in a timely manner. The anticipated expenses or costs to the public or the tribes who submit applications will be substantial. However, the benefits of gaming on newly acquired land will be for the tribe, employees, state and local governments, nearby businesses, and local economic conditions. For example, jobs created by a gaming establishment generally vary from 500 to 5,000. The net gaming revenue that is available to the tribe will vary depending on the location and size of the new gaming facility and is expected to be from \$5,000,000 to \$200,000,000.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Department certifies that the final rule will not have a significant economic effect on a substantial number of small entities and, therefore, did not prepare a regulatory flexibility analysis.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

BIA concluded that the final rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. (This amount has been adjusted for inflation to \$127 million.)

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

BIA promulgated the final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On October 5, 2006, BIA published a notice of proposed rulemaking in the *Federal Register*. 71 Fed. Reg. 58,769. The comment period ended on December 5, 2006. On December 4, 2006, BIA published a notice in the *Federal Register* to extend the comment period. 71 Fed. Reg. 70,335.

The comment period ended on December 19, 2006. On January 17, 2007, BIA published a notice in the *Federal Register* to reopen the comment period to allow for consideration of comments received after December 19, 2006. 72 Fed. Reg. 1954. Comments received during the comment periods ending December 5, 2006, and February 1, 2007, were considered and discussed in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements that have been reviewed and cleared by the Office of Management and Budget (OMB) as required by the Act. The collection has been assigned the tracking number of OMB Control Number 1076-0158.

Statutory authorization for the rule

The final rule is promulgated under the authority in 5 U.S.C. § 310 and 25 U.S.C. §§ 2, 9, and 2719.

Executive Order No. 12,866

The final rule was reviewed by OMB and found to be a “significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

The Department determined that the final rule does not have significant federalism implications because it does not substantially and directly affect the relationship between the federal and state governments and does not impose costs on states or localities.