DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Pascua Yaqui Tribe of Arizona Residential Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Pascua Yaqui Tribe of Arizona Residential Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential leases without further BIA approval.

DATES: BIA issued the approval on October 26, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pascua Yaqui Tribe of Arizona.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415 (h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered

under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pascua Yaqui Tribe of Arizona.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–24091 Filed 11–3–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DOI–2021–0011; 22XD4523WS, DWSN00000.000000, DS64800000, DP64803]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create a new Privacy Act system of records titled, ''INTERIOR/DOI–92, Public Health Emergency Response Records.'' This system of records notice (SORN) describes DOI's collection, maintenance, and use of records on individuals associated with DOI efforts to respond to the Coronavirus Disease 2019 (COVID–19), a declared public health emergency, and protect the health and safety of its workforce and members of the public. This newly established system will be included in DOI's inventory of record systems.

DATES: This new system will be effective upon publication. New routine uses will be effective December 6, 2021. Submit comments on or before December 6, 2021.

ADDRESSES: You may send comments identified by docket number [DOI–2021–0011] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2021–0011] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2021–0011]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or 202–208–1605.

SUPPLEMENTARY INFORMATION:

I. Background

The DOI Office of Occupational Safety and Health (OSH) is establishing a new Department-wide system of records, INTERIOR/DOI–92, Public Health Emergency Response Records. This system will help DOI manage records related to DOI's response to the COVID–19 public health emergency and future high consequence public health threats, support emergency or medically related decisions affecting DOI personnel, and ensure the health and safety of the various categories of personnel, contractors, grantees, detailees, volunteers, interns, long-term trainees, and visitors at DOI owned, operated, leased or managed facilities or properties.

This system supports DOI's COVID–19 vaccination and testing program as required by Executive Orders 14043 and 14042; Office of Management and Budget (OMB) Memorandums M–21–15 and M–21–25; COVID–19 Workplace Safety: Agency Model Safety Principles issued by the Federal Safer Federal Workforce Task Force; and other applicable law and policy. Federal labor, employment and workforce health and safety laws that govern the collection, dissemination, and retention of DOI employees' medical information include the Americans with Disability Act (ADA), the Rehabilitation Act of 1973 (Rehab Act), and the Occupational Safety and Health Act of 1970. The Department of Health and Human Services (HHS) Secretary may, under section 319 of the Public Health Service (PHS) Act codified at 42 U.S.C 247d, declare that: (a) A disease or disorder presents a public health emergency; or (b) that a public health emergency, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists.

The Occupational Safety and Health Act (OSHA) of 1970, Public Law 91–596, 29 U.S.C. 668, Section 19(a) requires the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program and safe and healthful places and conditions of employment, and to keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action. OSHA also requires that Federal agencies maintain an injury and illness prevention program, which is a proactive process designed to reduce injuries, illnesses, and fatalities. State governors also have the authority to declare public health emergencies by executive order or other declaration. State declared public health emergencies could also involve a significant risk of substantial harm to DOI personnel or visitors at DOI buildings, facilities and events.

Executive Order 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,* signed September 9, 2021, establishes mandatory requirements for Federal executive agencies to implement a program to require COVID–19 vaccinations for Federal employees, with some exceptions as required by law. Additionally, Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors,* signed September 9, 2021, establishes requirements for Federal executive agencies to implement workplace safety protocols for contractors and subcontractors to protect the health and safety of the Federal workforce and members of the public. DOI is implementing these requirements to ensure the safety of its workforce and visitors to its facilities and sponsored events.

DOI will collect and maintain information within the scope of this system of records when it is determined that it is authorized and necessary to meet Federal requirements and respond to a declared public health emergency. To make this determination, DOI will evaluate the privacy risks for the collection of information, who the information pertains to, how the information is used and shared, the actions needed to protect individuals and respond to the public health emergency, and the laws that may apply, including the U.S. Constitution, Executive orders, Federal privacy laws, Federal labor and employment laws, and Federal workforce health and safety laws.

DOI will only collect the minimum information necessary to respond to COVID–19, or future high consequence