



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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October 30, 2017

Elizabeth Appel, Director
Office of Regulatory Affairs & Collaborative Action
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street, NW, Mailstop 3642-MIB
Washington, DC 20240

Re: BIA-2016-0007

Dear Director Appel:

The Nez Perce Tribe writes in support of the Department of the Interior's (Department) efforts to modernize the Department's regulations at 25 C.F.R. Part 140. The Nez Perce Tribe believes modernized 25 C.F.R. Part 140 regulations are in the best interest of Indian tribes, the Department as trustee, and will provide more certainty to tribes, states and local counties with respect to commerce in Indian country. The Nez Perce Tribe is located in north central Idaho with an enrollment of approximately 3500 members. The Nez Perce Tribe is the 2nd largest employer in the region and is looking for the best ways to provide consistent revenue to fund governmental services.

25 U.S.C. § 262 states "Any person desiring to trade with the Indians on any Indian reservation shall...be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians." This broad statutory authority provides the Department the regulatory discretion to speak clearly in support of tribal self-governance over commerce occurring in Indian country. In other words, the Department can modernize its regulations to reflect current practice where Tribal civil regulatory authority is recognized to be at its zenith within Indian country.

In addition, the Department is authorized to address dual taxation, an issue that has handicapped tribal governments. A series of common law decisions have allowed states to intrude on tribes' sovereign tax base by being allowed to tax events on a reservation. This is best illustrated in the limited tax base the Nez Perce Tribe has to draw upon for revenue. The Nez Perce Tribe sales tax can currently only be implemented on the Tribe's two tribal stores and resort which does not provide the revenue most governments expects from sales tax.

Addressing dual taxation is extremely important and further justified since state governments provide few services on Indian reservations, but impose taxes on natural resources, retail sales, and personal property (e.g. wind energy-generating facilities). In addition, if tribal governments impose a tax, the resulting dual taxation drives business away. If tribes collect *no* taxes, they suffer inadequate roads, schools, police, courts and health care. Dual taxation effectively undermines the Constitution's promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

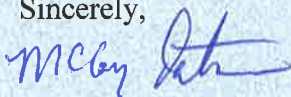
For these reasons we support modernized Indian Trader Regulations at 25 C.F.R. Part 140 which declare:

1. "Any person or business desiring to trade with the Indians on any Indian reservation shall be permitted to do so under the laws of the tribal government."
2. "Trade and business activity on trust or restricted fee lands is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision."

Tribal governments are taking on increasing levels of governmental responsibility, but receive inadequate federal funding for roads, schools, police and all government services. Through its proposal to modernize the Indian Trader Regulations, the Department has an opportunity to end centuries of dishonorable commercial dealings, fulfill trust responsibilities, and create a revenue base for tribal governments.

In addition, tax, regulatory, and service agreements with states and local governments would be encouraged but not required. For all of the aforementioned reasons, the Department should take the next step. Initiating a regulatory process will send a strong message to states and local governments that they must deal fairly on taxes and services. Please contact us if you have any questions or concerns.

Sincerely,



Mary Jane Miles
Chairman