

## **Amend the Indian Trader Regulations to Eliminate Federal Licensing and Dual Taxation**

### **February 15, 2017**

- For 200 years federal regulation of Indian trade and commerce has consisted of licensing Indian traders. Existing regulations are rarely used, and were never effective to prevent abuses.
  - Last updated in 1957
  - Require federal licensing of all trade on reservation except for “fullbloods”
  - Parts implement federal law repealed in 1996, and prohibit gambling, etc.
  - 99% of reservation businesses do not have federal licenses
- Unnecessary for DOI to license traders on Indian reservations—outdated burden on economic development and inconsistent with tribal self-determination.
- Greater burden: Supreme Court’s common law creating impermissible dual taxation
  - 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).
  - If tribal governments impose a tax, the resulting dual taxation drives business away.
  - If tribes collect *no* taxes, suffer inadequate roads, schools, police, courts and health care—fundamentally unfair.
  - Dual Taxation undermines the Constitution’s promise of respect for tribal sovereignty, keeps Indian reservations the most underserved communities in the nation.
- Proposal to Revise Federal Trader Regulations at 25 C.F.R. Part 140:
  - 1) Defer to tribal authority to regulate trade on Indian lands
  - 2) Provide clear rules for tribal jurisdiction over business activity
  - 3) Eliminate dual taxation
    - Law applies to “any person desiring to trade with the Indians” and
    - Authorizes any regulations Interior “may prescribe for the protection of said Indians,” including protection from the harmful effects of dual taxation
- Tribal governments are taking on increasing levels of government responsibility, but receive inadequate federal funding for roads, schools, police and all government services
- Supplementary revenue must come from tribal natural resources or enterprises, and even these limited resources are frequently tapped by unconscionable dual state taxation
- Opportunity to end centuries of dishonorable commercial dealings, fulfill trust responsibilities, and create a revenue base for tribal schools, infrastructure, justice systems, etc.
- Existing tax and regulatory and service agreements would be protected and encouraged. Proposal does not attempt to pre-empt state taxes on non-Indian fee land within reservations.