

Q & A: DEPARTMENT OF THE INTERIOR'S FINAL LEASING REFORM

1. Why does the Department of the Interior regulate leasing on Indian lands?

A. The Department of the Interior holds approximately 56 million acres of land in trust for Indian tribes and individual Indians. This means that the Department has ownership of those lands, and holds them in trust for the benefit of tribes and individual Indians. As trustee of those lands, the Department must ensure that the lands are protected, and that they are used for the benefit of the tribes and individual Indians. Congress has enacted laws that require the Department to approve leases on Indian lands. The Department's regulations are intended to implement its trust responsibility under those laws.

2. Why was this reform necessary?

A. The Department's existing regulations were originally adopted 50 years ago, and are ill-suited to the modern needs of Indian tribes and individual Indians in using their lands for housing, economic, and wind & solar energy development. The existing regulations do not impose timelines for the Department to complete its review of leases, often resulting in delays in approving leases, amendments, subleases, mortgages, and assignments. They do not make a distinction between leases for single-family residences and large business developments – meaning the Department reviews leases under a “one-size fits all” structure. Finally, the current leasing regulations require the Department to heavily scrutinize the judgment of Indian landowners in the development of their own lands.

3. What do the final regulations accomplish?

A. The final regulations streamline the leasing process by imposing timelines on the Department for reviewing leases: up to 30 days for residential leases, and up to 60 days for business leases and wind & solar energy leases. The final regulations distinguish between residential, business, and wind & solar energy leases, and establish separate processes for review. They also permit the automatic approval of subleases and amendments to existing leases if the Department fails to act within the review timeframe. The regulations eliminate the requirement for Department approval of “permits” for activities on Indian lands, and defer to the judgment of tribes and individual Indians on land use (and rental rates) in most instances. Finally, the regulations establish a new, streamlined process for the development of wind & solar energy projects on Indian lands.

4. What benefits does the Department anticipate from this reform effort?

A. The Department anticipates that the regulations will spur an increase in homeownership on Indian lands, by streamlining the process for the approval of leases, subleases, and mortgages. The regulations also streamline leasing for small businesses and commercial developments on Indian lands, promoting private investment in businesses in Indian communities. Finally, by establishing a streamlined process for wind & solar energy resource assessment and development, the regulations remove significant obstacles to wind & solar energy development on Indian lands.

5. How does this fit into the bigger picture?

A. These regulations are an important part of a broader agenda to reform and improve the management of Indian lands across the United States. The Department's regulations govern the process of how it reviews and approves leases on Indian lands. The regulations overhaul a process that is antiquated

and ill-suited for modern development needs on Indian lands.

The Department worked closely with both houses of Congress to support passage of the HEARTH Act. Under the HEARTH Act, tribes may choose to develop their own leasing regulations, consistent with these final regulations, to implement their own leasing programs. The HEARTH Act and these regulations each provide tribes with greater control over leasing of their land.

6. Are timelines a necessary part of the review process?

- A. The timelines require the Department to address leases immediately, rather than allowing them to languish. Where necessary, the regulations would permit the Department to take more time to work with tribes and individual landowners to review more complex leases.

The Department will retain its trust obligations to protect Indian lands for the benefit of tribes and individual Indians. Because the decision on whether to approve a lease on Indian lands is a major federal action, the Department must also ensure that certain federal environmental laws and policies are satisfied. The Department recently improved the environmental review process for homesite activities on Indian lands by establishing a categorical exclusion for certain homesite leasing actions that will help facilitate homesite leasing on Indian land and remove bureaucratic obstacles to providing housing.

7. Will these regulations address leases for mining and oil & gas drilling on Indian lands?

- A. No. These regulations apply to “surface use” of Indian lands. Sub-surface activities are governed by separate statutes and regulations.

8. Will agricultural leasing on Indian land be affected by these regulations?

- A. No, the regulations only address residential, business, and wind & solar energy leasing. The Department recognizes the need to improve other land-use regulations, including agricultural leasing. The Department engaged in informal discussions with tribal representatives to discuss agricultural leasing, grazing, and rights-of-way issues facing Indian Country and plans to host tribal consultation sessions on revisions to other important land-use regulations in the near future.

9. Has the Department sought tribal input on these regulations?

- A. The Department conducted two rounds of consultation with tribal leaders in March and April 2011, and again in January 2012, in which it hosted six meetings with tribal leaders and received more than 4,000 comments. The Department reviewed each and every comment submitted during that process, prior to developing the proposed and final regulations.

10. When are these regulations effective?

- A. These regulations become effective 30 days after publication in the Federal Register. The Department is diligently working on training Bureau of Indian Affairs staff on these regulations, and has made a number of training materials available to tribes and the public on its website at: <http://www.bia.gov/WhoWeAre/BIA/OTS/index.htm>.