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WilmerHale: BIA Finalizes Reforms for Obtaining Rights of Way on Indian Lands.

On November 19, the Bureau of Indian Affairs (BIA) published a final rule that makes sweeping changes to the process for obtaining rights of way for proposed oil and gas pipelines, electric transmission lines, railroads, roads and other infrastructure projects on Indian lands. This is the first update of BIA's right-of-way regulations in more than 30 years. The revised rule aims to expedite and clarify the BIA right-of-way process for project developers, as well as to support the interests of Tribes and individual Indian landowners. The rule update was announced earlier this month at the 7th Annual White House Tribal Nations Conference. The rule is scheduled to go into effect on December 21, 2015.

1. Reforming the Right-of-Way Process

The new rule includes a number of reforms intended to expedite BIA review of right-of-way applications for approximately 56 million acres of land that are held in trust for Indian Tribes and individual Indians by the Department of the Interior. The most significant changes include imposing deadlines for BIA decisions on right-of-way applications: BIA will be required to issue decisions within 60 days of receiving an application for a new right of way and within 30 days of receiving a proposed amendment, assignment or mortgage of an existing right of way. The rule also aims to improve certainty for project proponents by limiting BIA's right to disapprove a right-of-way grant only when the agency has a stated compelling reason to do so, and by clarifying when BIA approval is required.

2. Supporting Tribal and Indian Interests

The final rule also includes a number of important reforms to support the interests of, and expand economic opportunities for, Tribes and individual Indian landowners. For example, the rule requires giving notice to Tribes and Indian landowners of any potential right-of-way actions on their land and provides that BIA will defer to Tribal and landowner decisions to the maximum extent possible. Importantly, the rule clarifies that Indian landowners have the right to negotiate the terms of rights of way across their land directly with applicants. This includes negotiating the amount and type of compensation for the grant of a right of way. Finally, a number of revisions in the final rule are intended to support Tribal self-determination and protect trust property, including: clarifying that the grant of a right of way has no effect on Tribal jurisdiction; establishing guidelines for "reasonable" durations of rights of way on Indian land; and requiring developers to provide a bond, insurance or other security as a condition of receiving a right of way on Indian lands.

The final rule implements the policy principles adopted in BIA's 2012 reform of its leasing regulations for wind, solar, business and residential leasing on Indian lands and extends the same principles to rights of way. The final publication concludes a much-anticipated update to BIA's outdated right-of-way regulations, which were originally promulgated in 1968 and were last updated in 1980.

A complete copy of the new rule is available [here](#).

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