

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

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

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 a 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?

The Department's existing regulations were originally adopted 50 years ago, and are ill-suited to the modern needs of 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, lease 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 would the proposed regulations accomplish?

The proposed regulations will 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 proposed regulations will distinguish between residential, business, and wind & solar energy leases, and establish separate processes for review. They will also permit the automatic approval of subleases and amendments to existing leases if the Department fails to act within the review timeframe. The proposed 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 proposed regulations will 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?

The Department anticipates that the proposed regulations will spur an increase in homeownership on Indian lands, by streamlining the process for the approval of leases, subleases, and mortgages. The proposed regulations would 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 proposed regulations would remove significant obstacles to wind & solar energy development on Indian lands.

5. How does this fit into the bigger picture?

These proposed 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. This process is antiquated, and ill-suited for modern development needs on Indian lands. The Department is reforming its own process.

The Department is also working with Congress on larger Indian land reforms. First, the Department continues to support a legislative fix to the Supreme Court's *Carcieri* decision, which makes it more difficult for a number of tribes to acquire land in trust. The Department is working closely with members in both houses to support the HEARTH Act, which is a bill that would return leasing authority to tribal governments that wish to opt-out of the Department-approval process. That legislation has been approved by committees in both the House and the Senate.

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

The timelines will require the Department to address proposed leases immediately, rather than allowing them to languish. Where necessary, the proposed 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 is working with the Council on Environmental Quality to improve the environmental review process for activities on Indian lands.

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

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?

No, the proposed 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 is engaged in informal discussions with tribal representatives to discuss agricultural leasing, grazing, and rights-of-way issues facing Indian

Country. Once these proposed regulations are finalized, the Department plans to host tribal consultation sessions on revisions to other important land-use regulations.

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

The Department conducted a period of consultation with tribal leaders in March and April 2011, in which it hosted three meetings with tribal leaders and received more than 2,000 comments. The Department reviewed each and every comment submitted during that process, prior to developing the proposed regulation.

10. Does today's announcement mean that these new regulations are effective? What are the next steps?

Today's announcement means that the Department has started the formal rulemaking process. The general public will have up to 60 days to submit comments on the proposed regulation. After that period, the Department will review and address comments submitted by the public. Pending the outcome of the public comment period, the Department anticipates that the proposed rule will be finalized in spring/summer 2012.