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BIA Proposes New Indian Land Right-of-Way Rules

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On June 17, 2014, the Bureau of Indian Affairs (BIA) published proposed new rules to update and streamline the process for obtaining a BIA right-of-way grant on Indian land. 79 Fed. Reg. 34455 (June 17, 2014). The current regulations were promulgated in 1968 and last updated in 1980. The proposed revision will bring the right-of-way regulations up to date and also make them consistent with 2012 revisions to the BIA residential, business, and wind and solar leasing rules. Highlights of the proposed rule changes include:

- Eliminating the need to obtain BIA consent for surveying in preparation for a right-of-way;
- Establishing timelines for BIA review of right-of-way requests;
- Clarifying processes for BIA review of right-of-way documents;
- Allowing BIA disapproval only where there is a stated compelling reason;
- Establishing that BIA will defer to the Tribe's negotiated compensation for rights-of-way and specifying methods for determining fair market value;
- Recognizing that right-of-way grants may include preference for employment of tribal members;
- Clarifying the authority by which BIA approves rights-of-way;
- Providing guidance for determining the appropriate term of a right-of-way grant;
- Clarifying circumstances under which rights-of-way can be amended, assigned, or mortgaged;
- Specifying the process for cancelling a right-of-way grant; and
- Eliminating outdated requirements specific to different types of rights-of-way.

Comments on the proposed rules must be received by BIA on or before August 18, 2014. For more information, please contact Dessa Reimer at (307) 734-4517 or hmreimer@hollandhart.com.

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