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Policy

Interior Rights-of-Way Rule Affirms Tribal Government Authority

Resources

[25 CFR Part 169](#)

[FAQ Document on the Final Rule](#)

[BIA Presentation on the Rule](#)

[NAFOA Panel on "Diversifying Revenues Through Rights-of-Way, Land Leasing, and Taxation"](#)

"The power to tax is an essential attribute of Indian sovereignty"
- *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)

"The Federal statutory scheme for rights-of-way on Indian land is

The U.S. Department of the Interior final rule on rights-of-way ([25 CFR Part 169](#)) on tribal lands went into effect on April 21, 2016. The final rule comprehensively updates and streamlines the process for obtaining Bureau of Indian Affairs (BIA) grants of rights-of-way on Indian land.

The final rule recognizes the importance that taxation and jurisdiction has on tribal sovereignty and self-governance. Tribal governments rely on a broad range of revenue sources to fund government services. The final rule provides greater authority for tribal governments to drive additional income from rights-of-way, including railroad, telephone, public highways, oil and gas, and power projects.

Section §169.009 in the rule clarifies that rights-of-way on tribal land are not subject to state laws but are applicable to federal and tribal laws. Additionally, the rule states that permanent improvements and activities on right-of-way land may be subject to taxation by the Indian tribe but generally prohibits state and local taxation. The final rule ensures tribal governments receive compensation in any amount the tribe negotiates for rights-of-way on tribal land and establishes timelines for BIA review of rights-of-way applications; clarifies the review process; and addresses applicable law, jurisdiction, taxation, and BIA enforcement actions.

The final rule was scheduled to take effect on December 21, 2015; however, industry organizations had requested

comprehensive, and accordingly precludes State taxation. State taxation would undermine careful work of Federal actors analyzing the best interests of tribal beneficiaries under the trust responsibility."

- 25 CFR Part 169, Page 54

additional time for comment and implementation. The only change was the compliance date for submission of documentation of past assignments which is now extended to August 16, 2016.

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