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# SUBCHAPTER H—LAND AND WATER

## PART 150—LAND RECORDS AND TITLE DOCUMENTS

Sec.
150.1 Purpose and scope.
150.2 Definitions.
150.3 Maintenance of land records and title documents.
150.4 Locations and service areas for land titles and records offices.
150.5 Other Bureau offices with title service responsibility.
150.6 Recordation of title documents.
150.7 Curative action to correct title defects.
150.8 Title status reports.
150.9 Land status maps.
150.10 Certification of land records and title documents.
150.11 Disclosure of land records, title documents, and title reports.

AUTHORITY: Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 9). Act of July 26, 1892 (27 Stat. 272; 25 U.S.C. 5). Reorganization Plan No. 3 of 1950 approved June 20, 1949 (64 Stat. 1262). (Act of April 26, 1906 (34 Stat. 137); Act of May 27, 1908 (35 Stat. 312); Act of August 1, 1914 (38 Stat. 582, 598) deal specifically with land records of the Five Civilized Tribes.)

CROSS REFERENCE: For further regulations pertaining to proceedings in Indian probate, see 43 CFR part 4, subpart D.

SOURCE: 46 FR 47537, Sept. 29, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 150.1 Purpose and scope.

These regulations set forth authorities, policy and procedures governing the recording, custody, maintenance, use and certification of title documents, and the issuance of title status reports for Indian land.

### § 150.2 Definitions.

As used in this part.

(a) *Secretary* is the Secretary of the Interior or his authorized representative.

(b) *Commissioner* is the Commissioner of Indian Affairs or his authorized representative.

(c) *Agency* is an Indian Agency or other field unit of the Bureau of Indian Affairs having Indian land under its immediate jurisdiction.

(d) *Superintendent* is the designated officer in charge of an Agency.

(e) *Tribe* is a tribe, band, nation, community, rancheria, colony, pueblo, or other Federally-acknowledged group of Indians.

(f) *Bureau* is the Bureau of Indian Affairs.

(g) *Land* is real property, including any interests, benefits, and rights inherent in the ownership of the real property.

(h) *Indian land* is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and U.S. Government-owned land under Bureau jurisdiction.

(i) *Administrative Law Judge* is an employee of the Office of Hearing and Appeals, Department of the Interior, upon whom authority has been conferred by the Secretary to probate the trust or restricted estates of deceased Indians in accordance with 43 CFR part 4, subpart D.

(j) *Land Titles and Records Offices* are those offices within the Bureau of Indian Affairs charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian lands, to examine titles, and to provide title status reports for such land.

(k) *Manager* is the designated officer in charge of a Land Titles and Records Office.

(l) *Title document* is any document that affects the title to or encumbers Indian land and is required to be recorded by regulation or Bureau policy.

(m) *Recordation* or *recording* is the acceptance of a title document by the appropriate Land Titles and Records Office. The purpose of recording is to provide evidence of a transaction, event, or happening that affects land titles; to preserve a record of the title document; and to give constructive notice of the ownership and change of ownership and

the existence of encumbrances to the land.

(n) *Title examination* means an examination and evaluation by a qualified title examiner of the completeness and accuracy of title documents affecting a particular tract of Indian land with certification of the findings by the Manager of the Land Titles and Records Office.

(o) *Title status report* means a report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on record; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.

### § 150.3 Maintenance of land records and title documents.

The Land Titles and Records Offices within the Bureau are hereby designated as the offices of record for land records and title documents and are hereby charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian land, to examine titles, and to provide title status reports.

### § 150.4 Locations and service areas for land titles and records offices.

Shown below are present Land Titles and Records Offices and the jurisdictional area served by each office.

(a) Aberdeen, S. Dakota Office provides title service for Indian land located under the jurisdiction of the Aberdeen and Minneapolis Area Offices, except for Indian land on the White Earth, Isabella, and Oneida Indian Reservations.

(b) Albuquerque, New Mexico Office provides title services for Indian land located under the jurisdiction of the Albuquerque, Navajo, and Phoenix Area Offices.

(c) Anadarko, Oklahoma Office provides title services for Indian land located under the jurisdiction of the Anadarko Area Office and under the Miami Agency of the Muskogee Area Office.

(d) Billings, Montana Office provides title services for Indian land located under the jurisdiction of the Billings Area Office.

(e) Portland, Oregon Office provides title services for Indian land located under the jurisdiction of the Portland and Sacramento Area Offices.

### § 150.5 Other Bureau offices with title service responsibility.

(a) Muskogee Area Office is the office of record and performs limited title functions for all Indian land of the Five Civilized Tribes. The regulations in this part apply to the Muskogee Area Office to the extent that they relate to the title services performed by that office.

(b) The Juneau Area Office has title service responsibility for the Juneau Area. This authority has been largely delegated to the agencies. The regulations in this part apply to the Juneau Area Office to the extent practicable.

(c) The Cherokee Agency has title service responsibility for the Eastern Cherokee Reservation. The regulations in this part apply to the Cherokee Agency to the extent practicable.

(d) The Bureau Central Office, Washington, DC, provides title services for all other Indian land not shown above in § 150.4 or in this section, including the land of the Absentee Wyandottes. The regulations in this part apply to the Central Office.

### § 150.6 Recordation of title documents.

All title documents shall be submitted to the appropriate Land Titles and Records Office for recording immediately after final approval, issuance, or acceptance. Bureau officials delegated authority by the Secretary to approve title documents or accept title are responsible for prompt compliance with the recording requirement. Documents submitted for recording shall be completed in accordance with prescribed Bureau regulations or instructions.

(a) *Title documents other than probate records.* The original, a signed duplicate, or a certified copy of such documents shall be submitted for recording. Following the recording process, the

Land Titles and Records Office will return those title documents that are required to be returned to the originating office with appropriate recording information.

(b) *Probate records.* In accordance with 43 CFR part 4, subpart D, Administrative Law Judges shall forward the original record of Indian probate decisions and copies of petitions for rehearing, reopening, and other appeals to the Land Titles and Records Office which provides service to the originating Agency. If trust land or Indian heirs involved in the probate are located within the jurisdictional area of another Land Titles and Records Office, the Administrative Law Judge shall also send a duplicate copy to that office. Probate records submitted by an Administrative Law Judge for recording will be retained by the Land Titles and Records Office.

### § 150.7 Curative action to correct title defects.

Land Titles and Records Office shall initiate such action as described below to cure defects in the record discovered during the recording of title documents or examination of titles.

(a) If an error is traced to a defective title document other than probate records, the Land Titles and Records Office shall notify the originating office of the defect.

(b) If errors are discovered in probate records, the Land Titles and Records Office may initiate corrective action as follows:

(1) An administrative modification shall be issued to modify probate records to include any Indian land omitted from the inventory if such property is located in the same state and takes the same line of descent as that shown in the original probate decision. Authority is delegated to the Commissioner by 43 CFR 4.272 to make such modifications except on those Indian reservations covered by special Inheritance Acts (43 CFR 4.300). Copies of administrative modifications shall be distributed to the appropriate Administrative Law Judge, Agencies with jurisdiction over the Indian land, and to all persons who share in the estate.

(2) Land Titles and Records Offices shall notify the Superintendent when modifications are required by Administrative Law Judges for other types of probate errors. Corrective action is then initiated in accordance with 43 CFR part 4, subpart D.

(3) Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not affect vested property rights or involve questions of due process. Copies of administrative corrections are distributed to the appropriate Administrative Law Judge and Agency.

### § 150.8 Title status reports.

Land Titles and Records Offices may conduct a title examination of a tract of Indian land provide a title status report upon request to those persons authorized by law to receive such information. Requests for title status reports shall be submitted by or through the Bureau office that has administrative jurisdiction over the Indian land. All requests must clearly identify the tract of Indian land.

### § 150.9 Land status maps.

The Land Titles and Records Offices shall prepare and maintain maps of all reservations and similar entities within their jurisdictions to assist Bureau personnel in the execution of their title service responsibilities. Base maps shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. These base maps, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and townsite maps, may also be prepared and maintained to meet the needs of individual Land Titles and Records Offices, Agencies, and Indian tribes.

### § 150.10 Certification of land records and title documents.

Under the provisions of the Act of July 26, 1892 (27 Stat. 273; 25 U.S.C. 6), an official seal was created for the use of the Commissioner of Indian Affairs in authenticating and certifying copies of Bureau records. Managers of Land

Titles and Records Offices are designated as Certifying Officers for this purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Manager, Land Titles and Records Office, the copy or reproduction shall be admitted into evidence the same as the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee schedule applicable to all constituent units of the Department of the Interior and published in 43 CFR part 2, appendix A.

### § 150.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore, the policy of the Bureau of Indian Affairs to allow access to land records and title documents unless such access would violate the Privacy Act, 5 U.S.C. 552a or other law restricting access to such records, or there are strong policy grounds for denying access where such access is not required by the Freedom of Information Act, 5 U.S.C. 552. It shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations will not be disclosed insofar as leases of tribal land are concerned.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

## PART 151—LAND ACQUISITIONS

Sec.

151.1 Purpose and scope.
151.2 Definitions.
151.3 Land acquisition policy.
151.4 Acquisitions in trust of lands owned in fee by an Indian.
151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.
151.6 Exchanges.
151.7 Acquisition of fractional interests.
151.8 Tribal consent for nonmember acquisitions.
151.9 Requests for approval of acquisitions.
151.10 On-reservation acquisitions.
151.11 Off-reservation acquisitions.
151.12 Action on requests.
151.13 Title examination.
151.14 Formalization of acceptance.
151.15 Information collection.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

CROSS REFERENCE: For regulations pertaining to: The inheritance of interests in trust or restricted land, see parts 15, 16, and 17 of this title and 43 CFR part 4; the purchase of lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see part 103 of this title; the exchange and partition of trust or restricted lands, see part 152 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see parts 900 and 276 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR part 2530; the acquisition of Native allotments and Native townsite lots in Alaska, see 43 CFR parts 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 7 CFR part 1823, subpart N; the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 117.8 and 158.54 of this title.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations. These regulations do not cover the acquisition of

land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it members.

**§ 151.2 Definitions.**

(a) *Secretary* means the Secretary of the Interior or authorized representative.

(b) *Tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, ''Tribe'' also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

(c) *Individual Indian* means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, *Individual Indian* also means a person who meets the qualifications of paragraph (c)(1), (2), or (3) of this section where ''Tribe'' includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) *Trust land* or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) *Restricted land* or *land in restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, *Indian reservation* means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) *Land* means real property or any interest therein.

(h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

[45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995]

**§ 151.3 Land acquisition policy.**

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or

(2) When the tribe already owns an interest in the land; or

(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding

land in trust or restricted status, land may be acquired for an individual Indian in trust status:

(1) When the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or

(2) When the land is already in trust or restricted status.

### § 151.4 Acquisitions in trust of lands owned in fee by an Indian.

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

### § 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

### § 151.6 Exchanges.

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

### § 151.7 Acquisition of fractional interests.

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

### § 151.8 Tribal consent for nonmember acquisitions.

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

### § 151.9 Requests for approval of acquisitions.

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

### § 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when

the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

[45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995]

### § 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in § 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to § 151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

[60 FR 32879, June 23, 1995, as amended at 60 FR 48894, Sept. 21, 1995]

### § 151.12 Action on requests.

(a) The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.

(b) Following completion of the Title Examination provided in § 151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the FEDERAL REGISTER, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no

sooner than 30 days after the notice is published.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995, as amended at 61 FR 18083, Apr. 24, 1996]

### § 151.13 Title examination.

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995]

### § 151.14 Formalization of acceptance.

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995]

### § 151.15 Information collection.

(a) The information collection requirements contained in §§ 151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

[60 FR 32879, June 23, 1995; 64 FR 13895, Mar. 23, 1999]

## PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.

152.1 Definitions.
152.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.
152.4 Application for patent in fee.
152.5 Issuance of patent in fee.
152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.
152.7 Application for certificate of competency.
152.8 Issuance of certificate of competency.
152.9 Certificates of competency to certain Osage adults.
152.10 Application for orders removing restrictions, except Five Civilized Tribes.
152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.
152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.
152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.
152.14 Removal of restrictions, Five Civilized Tribes, without application.
152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.
152.16 Effect of order removing restrictions, Five Civilized Tribes.

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.
152.18 Sale with the consent of natural guardian or person designated by the Secretary.
152.19 Sale by fiduciaries.
152.20 Sale by Secretary of certain land in multiple ownership.
152.21 Sale or exchange of tribal land.
152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.
152.23 Applications for sale, exchange or gift.
152.24 Appraisal.
152.25 Negotiated sales, gifts and exchanges of trust or restricted lands.
152.26 Advertisement.
152.27 Procedure of sale.
152.28 Action at close of bidding.
152.29 Rejection of bids; disapproval of sale.
152.30 Bidding by employees.
152.31 Cost of conveyance; payment.
152.32 Irrigation fee; payment.

PARTITIONS IN KIND OF INHERITED ALLOTMENTS

152.33 Partition.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

152.34 Approval of mortgages and deeds of trust.
152.35 Deferred payment sales.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666: 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

CROSS REFERENCES: For further regulations pertaining to the sale of irrigable lands, see parts 160, 159 and §134.4 of this chapter. For Indian money regulations, see parts 115, 111, 116, and 112 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see part 15 and subpart G of part 11 of this chapter.

SOURCE: 38 FR 10080, Apr. 24, 1973, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 152.1 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) *Agency* means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(c) *Restricted land* means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

(d) *Trust land* means land or any interest therein held in trust by the United States for an individual Indian.

(e) *Competent* means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof. (Act of August 11, 1955 (69 Stat. 666)).

(f) *Tribe* means a tribe, band, nation, community, group, or pueblo of Indians.

### § 152.2 Withholding action on application.

Action on any application, which if approved would remove Indian land from restricted or trust status, may be withheld, if the Secretary determines that such removal would adversely affect the best interest of other Indians, or the tribes, until the other Indians or the tribes so affected have had a reasonable opportunity to acquire the land from the applicant. If action on the application is to be withheld, the applicant shall be advised that he has the right to appeal the withholding action pursuant to the provisions of part 2 of this chapter.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

### § 152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions shall be disclosed to employees of the Department of the Interior whose

duties require that such information be disclosed to them; to the applicant or his attorney, upon request; and to Members of Congress who inquire on behalf of the applicant. Such information will be available to all other persons, upon request, 15 days after the fee patent has been issued by the Bureau of Land Management, or 15 days after issuance of certificate of competency or order removing restrictions, or after the application has been rejected and the applicant notified. Where the termination of the trust or restricted status of the land covered by the application would adversely affect the protection and use of Indian land remaining in trust or restricted status, the owners of the land that would be so affected may be informed that the application has been filed.

### § 152.4 Application for patent in fee.

Any Indian 21 years of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

### § 152.5 Issuance of patent in fee.

(a) An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent. When the patent in fee is delivered, an inventory of the estate covered thereby shall be given to the patentee. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), and other authorizing acts.)

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

(c) White Earth Reservation: The Secretary will, pursuant to the Act of March 1, 1907 (34 Stat. 1015), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application from such Indian, and without consideration as to whether the applicant is competent.

(d) Fort Peck Reservation: Pursuant to the Act of June 30, 1954 (68 Stat. 358), oil and gas underlying certain allotments in the Fort Peck Reservation were granted to certain Indians to be held in trust for such Indians and provisions was made for issuance of patents in fee for such oil and gas or patents in fee for land in certain circumstances.

(1) Where an Indian or Indians were the grantees of the entire interest in the oil and gas underlying a parcel of land, and such Indian or Indians had before June 30, 1954, been issued a patent or patents in fee for any land within the Fort Peck Reservation, the title to the oil and gas was conveyed by the act in fee simple status.

(2) Where the entire interest in the oil and gas granted by the act is after June 30, 1954, held in trust for Indians to whom a fee patent has been issued at any time, for any land within the Fort Peck Reservation, or who have been or are determined by the Secretary to be competent, the Secretary will convey, by patent, without application, therefor, unrestricted fee simple title to the oil and gas.

(3) Where the Secretary determines that the entire interest in a tract of land on the Fort Peck Reservation is owned by Indians who were grantees of oil and gas under the act and he determines that such Indians are competent, he will issue fee patents to them covering all interests in the land without application.

### § 152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

### § 152.7 Application for certificate of competency.

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 152.9, who

holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

### § 152.8 Issuance of certificate of competency.

(a) An application may be approved and a certificate of competency issued if the Secretary, in his discretion, determines that the applicant is competent. The delivery of the certificate shall have the effect of removing the restrictions from the land described therein. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372).)

(b) If the application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

### § 152.9 Certificates of competency to certain Osage adults.

Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be in the form approved by the Secretary. Upon the finding by the Secretary that an applicant is competent, a certificate of competency may be issued removing restrictions against alienation of all restricted property and terminating the trust on all restricted property, except Osage headright interests, of the applicant.

CROSS REFERENCES: For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see part 154 of this chapter.

### § 152.10 Application for orders removing restrictions, except Five Civilized Tribes.

Any Indian not under legal disability under the laws of the State where he resides or where the land is located, or the court-appointed guardian or conservator of any Indian, may apply for an order removing restrictions from his restricted land or the restricted land of his ward. The application shall be in writing setting forth reasons for removal of restrictions and filed with the agency having immediate jurisdiction over the lands.

### § 152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

(a) An application for an order removing restrictions may be approved and such order issued by the Secretary, in his discretion, if he determines that the applicant is competent or that removal of restrictions is in the best interests of the Indian owner. The effect of the order will be to remove the restrictions from the land described therein.

(b) If the application is denied, the applicant will be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

### § 152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions from his restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), such application may be for either unconditional removal of restrictions or conditional removal of restrictions, but shall not include lands or interest in lands acquired by inheritance or devise.

(a) If the application is for unconditional removal of restrictions and the Secretary, in his discretion, determines the applicant should have the unrestricted control of that land described in his application, the Secretary may issue an order removing restrictions therefrom.

(b) When the Secretary, in his discretion, finds that in the best interest of the applicant all or part of the land described in the application should be sold with conditions concerning terms of sale and disposal of the proceeds, the Secretary may issue a conditional order removing restrictions which shall be effective only and simultaneously with the execution of a deed by said applicant upon completion of an advertised sale or negotiated sale acceptable to the Secretary.

### § 152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions under authority of section 2(a) of the Act of August 11, 1955 (69 Stat. 666), the Secretary will determine the competency of the applicant.

(a) If the Secretary determines the applicant to be competent, he shall issue an order removing restrictions having the effect stated in § 152.16.

(b) If the Secretary rejects the application, his action is not subject to administrative appeal, notwithstanding the provisions concerning appeals in part 2 of this chapter.

(c) If the Secretary rejects the application, or neither rejects nor approves the application within 90 days of the application date, the applicant may apply to the State district court in the county in which he resides for an order removing restrictions. If that State district court issues such order, it will have the effect stated in § 152.16.

### § 152.14 Removal of restrictions, Five Civilized Tribes, without application.

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

### § 152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

When an order removing restrictions is issued, pursuant to § 152.14, a copy of such order will be delivered to the Indian, to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides. At the time the order is delivered written notice will be given the parties that under the terms of the Act of August 11, 1955 (69 Stat. 666), the Indian or the Board of County Commissioners has, within 6 months of the date of notification, the right to appeal to the State district court for the district in which the Indian resides for an order setting aside the order removing restrictions. The timely initiation of proceedings in the State district court will stay the effective date of the order removing restrictions until such proceedings are concluded. If the State district court dismisses the appeal, the order removing restrictions will become effective 6 months after notification to the parties of such dismissal. The effect of the issuance of such order will be as prescribed in § 152.16.

### § 152.16 Effect of order removing restrictions, Five Civilized Tribes.

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate: *Provided*, That the Secretary may make such provisions as he deems necessary to insure payment of money loaned to any such Indian by the Federal Government or by an Indian tribe; *And provided further*, That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

### § 152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and pursuant to other authorizing acts, trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

### § 152.18 Sale with the consent of natural guardian or person designated by the Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

### § 152.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

### § 152.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

### § 152.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a-2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this part 152 shall be applicable to sale or exchanges of such tribal land.

### § 152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian

tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

### § 152.23 Applications for sale, exchange or gift.

Applications for the sale, exchange or gift of trust or restricted land shall be filed in the form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 152.25(d).

### § 152.24 Appraisal.

Except as otherwise provided by the Secretary, an appraisal shall be made indicating the fair market value prior to making or approving a sale, exchange, or other transfer of title of trust or restricted land.

### § 152.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

Those sales, exchanges, and gifts of trust or restricted lands specifically described in the following paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales shall be by advertised sale, except as may be otherwise provided by the Secretary.

(a) *Consideration not less than the appraised fair market value.* Indian owners may, with the approval of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value:

(1) When the sale is to the United States, States, or political subdivisions thereof, or such other sale as may be for a public purpose;

(2) When the sale is to the tribe or another Indian; or

(3) When the Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* With the approval of the Secretary, Indian owners may exchange trust or restricted land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised fair market value of the consideration given by him.

(c) *Sale to coowners.* With the approval of the Secretary, Indian owners may negotiate a sale of and sell trust or restricted land to a coowner of that land. The consideration may be less than the appraised fair market value, if in the opinion of the Secretary there is a special relationship between the coowners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

### § 152.26 Advertisement.

(a) Upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless for good cause a shorter period is authorized by the Secretary.

(b) The notice of sale will include:

(1) Terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in § 152.27(b)(2) if applicable;

(2) Where and how bids shall be submitted;

(3) A statement warning all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and

(4) Description of tracts, all reservations to which title will be subject and any restrictions and encumbrances of record with the Bureau of Indian Affairs and any other information that may improve sale prospects.

### § 152.27 Procedure of sale.

Advertised sales shall be by sealed bids except as otherwise provided herein.

(a)(1) Bids, conforming to the requirements set out in the advertisement of sale, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bidder's risk. Tribes submitting bids pursuant to this paragraph may guarantee the required 10 percent deposit by an appropriate resolution;

(2) The sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

(b) The policy of the Secretary recognizes that in many instances a tribe or a member thereof has a valid interest in acquiring trust or restricted lands offered for sale.

(1) With the consent of the owner and when the notice of sale so states, the tribe or members of such tribe shall have the right to meet the high bid.

(2) Provided the tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

### § 152.28 Action at close of bidding.

(a) The officer in charge of the sale shall publicly announce the apparent highest acceptable bid. The deposits submitted by the unsuccessful bidders shall be returned immediately. The deposit submitted by the apparent successful bidder shall be held in a special account.

(b) If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary with the consent of the owner may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances.

(c) The Secretary shall award the bid and notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days.

(1) Upon a showing of cause the Secretary may, in his discretion, extend the time of payment of the balance due.

(2) If the remainder of the purchase price is not paid within the time allowed, the bid will be rejected and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner's use.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid, except that the fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government and such agency has given the Secretary a commitment that the balance of the purchase price will be paid when the fee patent is issued.

### § 152.29 Rejection of bids; disapproval of sale.

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he shall have determined such rejection to be in the best interests of the Indian owner.

### § 152.30 Bidding by employees.

Except as authorized by the provisions of part 140 of this chapter, no person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of part 140 of this chapter (see 25 U.S.C. 68 and 441).

### § 152.31 Cost of conveyance; payment.

Pursuant to the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may in his discretion collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount so collected shall be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of this section.

(a)(1) The amount of the fee shall be $22.50 for each transaction.

(2) The fee may be reduced to a lesser amount or may be waived, if the Secretary determines circumstances justify such action.

(b)(1) If any or all of the costs of the work performed or expenses incurred are paid with tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary, and that part of such fees deemed appropriate may be credited to the tribe.

(2) When the purchaser is the tribe which bears all or any part of such costs, the collection of the proportionate share from the tribe may be waived.

### § 152.32 Irrigation fee; payment.

Collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. (Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a)). This statute is interpreted to apply only where such land is owned by Indians either in trust or restricted status.

(a) When any person whether Indian or non-Indian acquires Indian lands in a fee simple status that are part of an Indian irrigation project he must enter into an agreement,

(1) To pay the pro rata share of the construction of the project chargeable to the land,

(2) To pay all construction costs that accrue in the future, and

(3) To pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for their payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

CROSS REFERENCE: See part 159 and part 160 and cross-references thereunder in this chapter for further regulations regarding sale of irrigable lands.

## PARTITIONS IN KIND OF INHERITED ALLOTMENTS

### § 152.33 Partition.

(a) *Partition without application*. If the Secretary of the Interior shall find that any inherited trust allotment or allotments (as distinguished from lands held in a restricted fee status or authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483)), are capable of partition in kind to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378)). The authority contained in the Act of May 18, 1916, is not applicable to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) *Application for partition*. Heirs of a deceased allottee may make written application, in the form approved by the Secretary, for partition of their trust or restricted land. If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for the portions set aside to them. If the allotment is held under a restricted fee title (as distinguished from a trust title), partition

may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

### § 152.34 Approval of mortgages and deeds of trust.

Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable. Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956).

(70 Stat. 62; 25 U.S.C. 483a)

### § 152.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

## PART 153—DETERMINATION OF COMPETENCY: CROW INDIANS

Sec.
153.1 Purpose of regulations.
153.2 Application and examination.
153.3 Application form.
153.4 Factors determining competency.
153.5 Children of competent Indians.
153.6 Appeals.

AUTHORITY: Sec. 12, 41 Stat. 755, 46 Stat. 1495, as amended.

SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 153.1 Purpose of regulations.

The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

### § 153.2 Application and examination.

The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

### § 153.3 Application form.

The application form shall include, among other things:

(a) The name of the applicant;

(b) His age, residence, degree of Indian blood, and education;

(c) His experience in farming, cattle raising, business, or other occupation (including home-making);

(d) His present occupation, if any;

(e) A statement concerning the applicant's financial status, including his average earned and unearned income for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others;

(f) A description of his property and its value, including his allotted and inherited lands; and

(g) The name of the applicant's spouse, if any, and the names of his minor children, if any, and their ages, together with a statement regarding the land, allotted and inherited, held by each.

### § 153.4 Factors determining competency.

Among the matters to be considered by the Commissioner of Indian Affairs in determining competency are the amount of the applicant's indebtedness to the tribe, to the United States Government, and to others; whether he is a public charge or a charge on friends and relatives, or will become such a charge, by reason of being classed as competent; and whether the applicant has demonstrated that he possesses the ability to take care of himself and his property, to protect the interests of himself and his family, to lease his land and collect the rentals therefrom, to lease the land of his minor children, to prescribe in lease agreements those provisions which will protect the land from deterioration through over-grazing and other improper practices, and to assume full responsibility for obtaining compliance with the terms of any lease.

### § 153.5 Children of competent Indians.

Children of competent Indians who have attained or upon attaining their majority shall automatically become competent except any such Indian who is declared incompetent by a court of competent jurisdiction or who is incompetent under the laws of the State within which he resides.

### § 153.6 Appeals.

An appeal to the Secretary of the Interior may be made within 30 days from the date of notice to the applicant of the decision of the Commissioner of Indian Affairs.

## PART 158—OSAGE LANDS

Sec.

158.51 Definitions.
158.52 Application for change in designation of homestead.
158.53 Order to change designation of homestead.
158.54 Exchanges of restrictive lands.
158.55 Institution of partition proceedings.
158.56 Partition records.
158.57 Approval of deeds or other instruments vesting title on partition and payment of costs.
158.58 Disposition of proceeds of partition sales.

AUTHORITY: 5 U.S.C. 301. Interpret or apply 62 Stat. 18; 25 U.S.C. 331 note.

SOURCE: 22 FR 10565, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 158.51 Definitions.

When used in this part:

(a) *Homestead* means the restricted nontaxable lands, not exceeding 160 acres, allotted to an enrolled member of the Osage Tribe pursuant to the act of June 28, 1906 (34 Stat. 539), or the restricted surplus lands designated in lieu thereof pursuant to the act of May 25, 1918 (40 Stat. 578).

(b) *Surplus land* means those restricted lands, other than the homestead, allotted to an enrolled member of the Osage Tribe pursuant to the act of June 28, 1906 (34 Stat. 539).

### § 158.52 Application for change in designation of homestead.

Any Osage allottee or the legal guardian thereof may make application to change his homestead for an equal area of his surplus land. The application shall give in detail the reasons why such change is desired and shall be submitted to the Osage Indian Agency on the form ''Application to Change Designation of Homestead.''

### § 158.53 Order to change designation of homestead.

The application of an Osage allottee, or his legal guardian, may be approved by the Secretary of the Interior, or his authorized representative, and an order issued to change designation of homestead, if it is found that the applicant owns an equal area of surplus land. The expense of recording the order shall be borne by the applicant. The order to change designation shall be made on the form ''Order to Change Designation of Homestead.''

### § 158.54 Exchanges of restrictive lands.

Upon written application of the Indians involved, the exchange of restricted lands between adult Indians, and between adult Indians and non-Indians, may be approved by the Secretary of the Interior, or his authorized representative. Title to all lands acquired under this part by an Indian who does not have a certificate of competency shall be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary, or his authorized representative. In case of differences in the appraised value of lands under consideration for exchange, the application of an Indian for funds to equalize such differences may be approved to the extent authorized by § 117.8 of this chapter.

### § 158.55 Institution of partition proceedings.

(a) Prior authorization should be obtained from the Secretary, or his authorized representative, before the institution of proceedings to partition the lands of deceased Osage allottees in which any interest is held by an Osage Indian not having a certificate of competency. Requests for authority to institute such partition proceedings shall contain a description of the lands involved, the names of the several owners and their respective interests and the reasons for such court action. Authorization may be given for the institution of partition proceedings in a court of competent jurisdiction when it appears to the best interest of the Indians involved to do so and the execution of voluntary exchange deeds is impracticable.

(b) When it appears to the best interest of the Indians to do so, the Secretary's, or his authorized representative's, authorization to institute partition proceedings may require that title to the lands be quieted in the partition action in order that the deeds issued pursuant to the proceedings shall convey good and merchantable title to the grantee therein. (See section 6, 37 Stat. 87.)

### § 158.56 Partition records.

Upon completion of an action in partition, a copy of the judgment roll showing schedule of costs and owelty moneys having accrued to or from the several parties, together with deeds, or other instruments vesting title on partition, in triplicate, shall be furnished to the Osage Agency. The original allotment number shall follow the legal description on all instruments vesting title. When a grantee is a member of the Osage Tribe who has not received a certificate of competency, deeds or other instruments vesting title shall contain the following clause against alienation:

> Subject to the condition that while title to the above-described lands shall remain in the grantee or his Osage Indian heirs or devisees who do not have certificates of competency, the same shall not be alienated or encumbered without approval of the Secretary of the Interior or his authorized representative.

### § 158.57 Approval of deeds or other instruments vesting title on partition and payment of costs.

Upon completion of the partition proceedings in accordance with the law and in conformity with the regulations in this part, the Secretary, or his authorized representative, may approve the deeds, or other instruments vesting title on partition, and may disburse from the restricted (accounts) funds of the Indians concerned, such amounts as may be necessary for payment of their share of court costs, attorney fees, and owelty moneys.

### § 158.58 Disposition of proceeds of partition sales.

Owelty moneys due members of the Osage Tribe who do not have certificates of competency shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund.

## PART 159—SALE OF IRRIGABLE LANDS, SPECIAL WATER CONTRACT REQUIREMENTS

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 160 and §§ 134.4 and 152.21

of this chapter. For general regulations pertaining to the issuance of patents in fee, see part 152 of this chapter.

### § 159.1 Conditions of contract.

(a) The form of contract (Form 5–462b)[1] for sale of irrigable lands specifically provides that the purchaser will obligate and pay on a per acre basis all irrigation charges assessed or to be assessed against the land purchased including accrued assessment, which accrued assessment shall be paid prior to the approval of the sale, and for the payment of the construction and operation and maintenance assessments on the due dates of each year. The agreement is to be acknowledged and recorded in the county records in which county the land is situated. The charges incidental to the recording of the instrument shall be paid by the purchaser at the time of executing the agreement.

(b) A strict compliance with the terms of paragraph (a) of this section is absolutely necessary and required.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interprets or applies sec. 1, 41 Stat. 409; 25 U.S.C. 386)

[22 FR 10566, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

NOTE: On May 12, 1921, Circular No. 1677, re sale of irrigable lands, was addressed to all superintendents. It was pointed out therein that the collection of irrigation construction charges was required by the terms of an act approved February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), and that in addition to the construction charge there was an operation and maintenance charge assessable annually that must be paid by the landowners benefited; furthermore, that the purpose of this circular was to point out to the superintendents the necessity of advising prospective purchasers that irrigation charges must be paid and that a so-called paid-up water right was not conveyed with the land. A form of agreement to be executed by the prospective purchaser accompanied this circular.

It has been brought to the attention of the Bureau that irrigation construction charges and operation and maintenance charges have accrued against irrigable allotments prior to the time of their being advertised for sale and that the superintendents have failed to provide for payment of the accrued irrigation charges, with the result that no means are apparent for their collection.

With a view of preventing any future misunderstanding the form of contract accompanying Circular No. 1677 has been redrafted and Form 5–462b assigned to it. The circular has been designated ''No. 1677a.''

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

## PART 160—INCLUSION OF LIENS IN ALL PATENTS AND INSTRUMENTS EXECUTED

Sec.
160.1 Liens.
160.2 Instructions.
160.3 Leases to include description of lands.
160.4 Prompt payment of irrigation charges by lessees.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10566, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 160.1 Liens.

The act of March 7, 1928 (45 Stat. 210; 25 U.S.C. 387) creates a first lien against irrigable lands under all Indian irrigation projects where the construction, operation and maintenance costs of such projects remain unpaid and are reimbursable, and directs that such lien shall be recited in any patent or instrument issued for such lands to cover such unpaid charges. Prior to the enactment of this legislation similar liens had been created by legislative authority against irrigable lands of the projects on the Fort Yuma, Colorado River, and Gila River Reservations, in Arizona; Blackfeet, Fort Peck, Flathead, Fort Belknap, and Crow Reservations, Mont.; Wapato project, Yakima Reservation, Wash.; the irrigable lands on the Colville Reservation within the West Okanogan irrigation district, Washington, and the Fort Hall Reservation, Idaho. This legislation, therefore, extends protection similar to that existing in the legislation applicable to the projects on the reservations above mentioned.

CROSS REFERENCES: For operation and maintenance charges and construction costs, see parts 134 and 137 of this chapter.

### § 160.2 Instructions.

All superintendents and other officers are directed to familiarize themselves with this provision of law, and in

all cases involving the issuance of patents or deeds direct to the Indian or purchaser of Indian allotments embracing irrigable lands, they will recite in the papers forwarded to the Department for action the fact that the lands involved are within an irrigation project (giving the name) and accordingly are subject to the provisions of this law. This requirement will be in addition to the existing regulations requiring the superintendents in case of sales of irrigable lands to obtain from the project engineer a written statement relative to the irrigability of the lands to be sold, and whether or not there are any unpaid irrigation charges, together with the estimated per acre construction cost assessable against the land involved in the sale. Each sale will also be accompanied by contract executed in accordance with regulations obligating the purchaser to pay the accrued charges, namely, construction, operation, and maintenance, prior to the approval of the sale and to assume and pay the unassessed irrigation charges in accordance with regulations promulgated by the Secretary of the Interior.

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 159 and §§ 134.4 and 152.21 of this chapter.

### § 160.3 Leases to include description of lands.

It is important, also, for superintendents in leasing irrigable lands to present to the project engineer lists containing descriptions of the lands involved for his approval of the irrigable acreage and for checking as to whether or not such lands are in fact irrigable under existing works. Strict compliance with this section is required for the purpose of avoiding error.

### § 160.4 Prompt payment of irrigation charges by lessees.

Superintendents will also see that irrigation charges are promptly paid by lessees, and where such charges are not so paid take appropriate and prompt action for their collection. Such unpaid charges are a lien against the land, and accordingly any failure on the part of the superintendents to collect same increases the obligation against the land.

# PART 161—NAVAJO PARTITIONED LANDS GRAZING PERMITS

## Subpart A—Definitions, Authority, Purpose and Scope

Sec.
161.1 What definitions do I need to know?
161.2 What are the Secretary's authorities under this part?
161.3 What is the purpose of this part?
161.4 To what lands does this part apply?
161.5 Can BIA waive the application of this part?
161.6 Are there any other restrictions on information given to BIA?

## Subpart B—Tribal Policies and Laws Pertaining to Permits

161.100 Do tribal laws apply to grazing permits?
161.101 How will tribal laws be enforced on the Navajo Partitioned Lands?
161.102 What notifications are required that tribal laws apply to grazing permits on the Navajo Partitioned Lands?

## Subpart C—General Provisions

161.200 Is an Indian agricultural resource management plan required?
161.201 Is environmental compliance required?
161.202 How are range units established?
161.203 Are range management plans required?
161.204 How are carrying capacities and stocking rates established?
161.205 How are range improvements treated?
161.206 What must a permittee do to protect livestock from exposure to disease?
161.207 What livestock are authorized to graze?

## Subpart D—Permit Requirements

161.300 When is a permit needed to authorize grazing use?
161.301 What will a grazing permit contain?
161.302 What restrictions are placed on grazing permits?
161.303 How long is a permit valid?
161.304 Must a permit be recorded?
161.305 When is a decision by BIA regarding a permit effective?
161.306 When are permits effective?
161.307 When may a permittee commence grazing on Navajo Partitioned Land?
161.308 Must a permittee comply with standards of conduct if granted a permit?

### Subpart E—Reissuance of Grazing Permits

161.400 What are the criteria for reissuing grazing permits?
161.401 Will new permits be granted after the initial reissuance of permits?
161.402 What are the procedures for reissuing permits?
161.403 How are grazing permits allocated within each range unit?

### Subpart F—Modifying A Permit

161.500 May permits be transferred, assigned or modified?
161.501 When will a permit modification be effective?
161.502 Will a special land use require permit modification?

### Subpart G—Permit Violations

161.600 What permit violations are addressed by this subpart?
161.601 How will BIA monitor permit compliance?
161.602 Will my permit be canceled for nonuse?
161.603 Can mediation be used in the event of a permit violation or dispute?
161.604 What happens if a permit violation occurs?
161.605 What will a written notice of a permit violation contain?
161.606 What will BIA do if the permitee doesn't cure a violation on time?
161.607 What appeal bond provisions apply to permit cancellation decisions?
161.608 When will a permit cancellation be effective?
161.609 Can BIA take emergency action if the rangeland is threatened?
161.610 What will BIA do if livestock is not removed when a permit expires or is cancelled?

### Subpart H—Trespass

161.700 What is trespass?
161.701 What is BIA's trespass policy?
161.702 Who will enforce this subpart?

NOTIFICATION

161.703 How are trespassers notified of a trespass determination?
161.704 What can a permittee do if they receive a trespass notice?
161.705 How long will a written trespass notice remain in effect?

ACTIONS

161.706 What actions does BIA take against trespassers?
161.707 When will BIA impound unauthorized livestock or other property?
161.708 How are trespassers notified of impoundments?
161.709 What happens after unauthorized livestock or other property are impounded?
161.710 How can impounded livestock or other property be redeemed?
161.711 How will BIA sell impounded livestock or other property?

PENALTIES, DAMAGES, AND COSTS

161.712 What are the penalties, damages, and costs payable by trespassers?
161.713 How will BIA determine the amount of damages to Navajo Partitioned Lands?
161.714 How will BIA determine the costs associated with enforcement of the trespass?
161.715 What will BIA do if a trespasser fails to pay penalties, damages and costs?
161.716 How are the proceeds from trespass distributed?
161.717 What happens if BIA does not collect enough money to satisfy the penalty?

### Subpart I—Concurrence/Appeals/Amendments

161.800 How does the Navajo Nation provide concurrence to BIA?
161.801 May decisions under this part be appealed?
161.802 How will the Navajo Nation recommend amendments to this part?


AUTHORITY: 25 U.S.C. 2; 5 U.S.C. 301; 25 U.S.C. 640d *et seq.*

SOURCE: 70 FR 58888, Oct. 7, 2005, unless otherwise noted.

## Subpart A—Definitions, Authority, Purpose, and Scope

### § 161.1 What definitions do I need to know?

*Agricultural Act* means the American Indians Agricultural Resource Management Act (AIARMA) of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).

*Agricultural resource management plan* means a 10-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by BIA and Indian tribal governments.

*Allocation* means the number of animal units authorized in each grazing permit.

*Animal Unit (AU)* means one adult cow and her 6-month-old calf or the equivalent thereof based on comparable forage consumption. Thus as defined in the following:

(1) One adult sheep or goat is equivalent to one-fifth (0.20) of an AU;

(2) One adult horse, mule, or burro is equivalent to one and one quarter (1.25) AU; or

(3) One adult llama is equivalent to three-fifths (0.60) of an AU.

*Appeal* means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request.

*Appeal Bond* means a bond posted upon filing of an appeal that provides a security or guaranty if an appeal creates a delay in implementing our decision that could cause a significant and measurable financial loss to another party.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Bond* means security for the performance of certain permit obligations, as furnished by the permittee, or a guaranty of such performance as furnished by a third-party surety.

*Business day* means Monday through Friday, excluding federally or tribally recognized holidays.

*Carrying capacity* means the number of livestock and/or wildlife, which may be sustained on a management unit compatible with management objectives for the unit.

*Concurrence* means the written agreement of the Navajo Nation with a policy, action, decision or finding submitted for consideration by BIA.

*Conservation practice* refers to any management measure taken to maintain or improve the condition, productivity, sustainability, or usability of targeted resources.

*Customary Use Area* refers to an area to which an individual traditionally confined his or her traditional grazing use and occupancy and/or an area traditionally inhabited by his or her ancestors.

*Day* means a calendar day, unless otherwise specified.

*Enumeration* means the list of persons living on and identified improvements located within the Former Joint Use Area obtained through interviews conducted by BIA in 1974 and 1975.

*Former Joint Use Area* means the area that was divided between the Navajo Nation and the Hopi Tribe by the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona. This area was established by the United States District Court for the District of Arizona in *Healing* v. *Jones*, 210 F. Supp. 125 (1962), aff'd. 373 U.S. 758 (1963) and is located:

(1) Inside the Executive Order area (Executive Order of December 16, 1882); and

(2) Outside Land Management District 6.

*Grazing Committee* means the District Grazing Committee established by the Navajo Nation Council, that is responsible for enforcing and implementing tribal grazing regulations on the Navajo Partitioned Lands.

*Grazing Permit* means a revocable privilege granted in writing and limited to entering on and utilizing forage by domestic livestock on a specified range unit. The term as used herein shall include authorizations issued to enable the crossing or trailing of domestic livestock within an assigned range unit.

*Historical Land Use* see Customary Use Area.

*Improvement* means any structure or excavation to facilitate management of the range for livestock, such as: Fences, cattle guards, spring developments, windmills, stock ponds, and corrals.

*Livestock* means horses, cattle, sheep, goats, mules, burros, donkeys, and llamas.

*Management Unit* is a subdivision of a geographic area where unique resource conditions, goals, concerns, or opportunities require specific and separate management planning.

*Navajo Nation* means all offices/entities/programs under the direct jurisdiction of the Navajo Nation Government.

*Navajo Partitioned Lands (NPL)* means that portion of the Former Joint Use

Area awarded to the Navajo Nation under the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona, and now a separate administrative entity within the Navajo Indian Reservation.

*Non-Concurrence* means the official written denial of approval by the Navajo Nation of a policy, action, decision, or finding submitted for consideration by BIA.

*Range management plan* is a statement of management objectives for grazing, farming, or other agriculture management including contract stipulations defining required uses, operations, and improvements.

*Range Unit* means a tract of land designated as a separate management subdivision for the administration of grazing.

*Resident* means a person who lives on the Navajo Partitioned Lands.

*Resources Committee* means the oversight committee for the Division of Natural Resources within the Navajo Nation Government. The Resources Committee of the Navajo Nation Council to whom authority is delegated to exercise the powers of the Navajo Nation with regards to the range development and grazing management of the Navajo Partitioned Lands.

*Secretary* means the Secretary of the Interior or his or her designated representative.

*Settlement Act* means the Navajo Hopi Settlement Act of December 22, 1974 (88 Stat. 1712, 25 U.S.C. 64d *et seq.*, as amended).

*Sheep Unit* means an adult ewe with un-weaned lamb. It is also the basic unit in which forage allocations are expressed.

*Special land use* means all land usage for purposes other than for grazing withdrawn in accordance with Navajo Nation laws, Federal laws, and BIA policies and procedures, such as but not limited to: Housing permits, farm leases, governmental facilities, rights-of-way, schools, parks, business leases, etc.

*Stocking rate* means the maximum number of sheep units, or animal units authorized to graze on a particular pasture, management unit, or range unit during a specified period of time.

*Trespass* means any unauthorized occupancy, grazing, use of, or action on the Navajo Partitioned Lands.

### § 161.2 What are the Secretary's authorities under this part?

(a) Under Section 640d–9(e) of the Settlement Act, lands partitioned under the Settlement Act are subject to the jurisdiction of the tribe to whom partitioned. The laws of the tribe apply to the partitioned lands as in paragraphs (a)(1) and (a)(2) of this section.

(1) Effective October 6, 1980:

(i) All conservation practices on the Navajo Partitioned Lands, including control and range restoration activities, must be coordinated and executed with the concurrence of the Navajo Nation; and

(ii) All grazing and range restoration matters on the Navajo Reservation lands must be administered by BIA, under applicable laws and regulations.

(2) Effective April 18, 1981, the Navajo Nation has jurisdiction and authority over any lands partitioned to it and over all persons on these lands. This jurisdiction and authority apply:

(i) To the same extent as is applicable to those other portions of the Navajo reservation; and

(ii) Notwithstanding any provision of law to the contrary, except where there is a conflict with the laws and regulations referred to in paragraph (a) of this section.

(b) Under the Agricultural Act, the Secretary is authorized to:

(1) Carry out the trust responsibility of the United States and promote Indian tribal self-determination by providing for management of Indian agricultural lands and renewable resources consistent with tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) Take part in managing Indian agricultural lands, with the participation of the land's beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(3) Provide for the development and management of Indian agricultural lands; and

(4) Improve the expertise and technical abilities of Indian tribes and their members by increasing the educational

and training opportunities available to Indian people and communities in the practical, technical, and professional aspects of agricultural and land management.

### § 161.3 What is the purpose of this part?

The purpose of this part is to describe the goals and objectives of grazing management on the Navajo Partitioned Lands:

(a) To respect and recognize the importance that livestock and land have in sustaining Navajo tradition and culture.

(b) Provide resources to rehabilitate range resources in the preservation of forage, soil, and water on the Navajo Partitioned Lands;

(c) Monitor the recovery of those resources where they have deteriorated;

(d) Protect, conserve, utilize, and maintain the highest productive potential on the Navajo Partitioned Lands through the application of sound conservation practices and techniques. These practices and techniques will be applied to planning, development, inventorying, classification, and management of agricultural resources;

(e) Increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians, through the development of agricultural resources on the Navajo Partitioned Lands;

(f) Manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, recreation and to regulate water runoff and minimize soil erosion;

(g) Enable the Navajo Nation to maximize the potential benefits available to its members from their lands by providing technical assistance, training, and education in conservation practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products, and other applicable subject areas;

(h) Develop the Navajo Partitioned Lands to promote self-sustaining communities; and

(i) Assist the Navajo Nation with permitting the Navajo Partitioned Lands, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

### § 161.4 To what lands does this part apply?

The grazing regulations in this part apply to the Navajo Partitioned Lands within the boundaries of the Navajo Indian Reservation held in trust by the United States for the Navajo Nation. Contiguous areas outside of the Navajo Partitioned Lands may be included under this part for management purposes by BIA in consultation with the affected permittees and other affected land users, and with the concurrence of the Resources Committee. Other affected land users include those holding approved assignments, permits, leases, and rights of way for activities such as: home sites, farm plots, roads, utilities, businesses, and schools.

### § 161.5 Can BIA waive the application of this part?

Yes. If a provision of this part conflicts with the objectives of the agricultural resource management plan provided for in § 161.200, or with a tribal law, BIA may waive the application of this part unless the waiver would either:

(a) Constitute a violation of a federal statute or judicial decision; or

(b) Conflict with BIA's general trust responsibility under federal law.

### § 161.6 Are there any other restrictions on information given to BIA?

Information that the BIA collects in connection with permits for NPL in sections 161.102, 161.206, 161.301, 161.302, 161.304, 161.402, 161.500, 161.502, 161.604, 161.606, 161.703, 161.704, 161.708, 161.717, 161.800, 161.801, and 161.802 have been reviewed and approved by the Office of Management and Budget. The OMB Control Number assigned is 1076–0162. Please note that a federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Subpart B—Tribal Policies and Laws Pertaining to Permits

### § 161.100 Do tribal laws apply to grazing permits?

Navajo Nation laws generally apply to land under the jurisdiction of the Navajo Nation, except to the extent that those Navajo Nation laws are inconsistent with this part or other applicable federal law. This part may be superseded or modified by Navajo Nation laws with Secretarial approval, however, so long as:

(a) The Navajo Nation laws are consistent with the enacting Navajo Nation's governing documents;

(b) The Navajo Nation has notified BIA of the superseding or modifying effect of the Navajo Nation laws;

(c) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with the Secretary's general trust responsibility under federal law; and

(d) The superseding or modifying of the regulation applies only to Navajo Partitioned Lands.

### § 161.101 How will tribal laws be enforced on the Navajo Partitioned Lands?

(a) Unless prohibited by federal law, BIA will recognize and comply with tribal laws regulating activities on the Navajo Partitioned Lands, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the Navajo Nation is primarily responsible for enforcing tribal laws pertaining to the Navajo Partitioned Lands, BIA will:

(1) Assist in the enforcement of Navajo Nation laws;

(2) Provide notice of Navajo Nation laws to persons or entities undertaking activities on the Navajo Partitioned Lands; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as the appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR part 2, subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of (BIA) actions by the tribal court.

(c) Where the provisions in this subpart are inconsistent with a Navajo Nation law, but the provisions cannot be superseded or modified by the Navajo Nation laws under § 161.5, BIA may waive the provisions under part 1 of 25 CFR, so long as the new waiver does not violate a federal statute or judicial decision or conflict with the Secretary's trust responsibility under federal law.

### § 161.102 What notifications are required that tribal laws apply to grazing permits on the Navajo Partitioned Lands?

(a) The Navajo Nation must provide BIA with an official copy of any tribal law or tribal policy that relates to this part. The Navajo Nation must notify BIA of the content and effective dates of tribal laws.

(b) BIA will then notify affected permittees of the effect of the Navajo Nation law on their grazing permits. BIA will:

(1) Provide individual written notice; or

(2) Post public notice. This notice will be posted at the tribal community building, U.S. Post Office, announced on local radio station, and/or published in the local newspaper nearest to the permitted Navajo Partitioned Lands where activities are occurring.

## Subpart C—General Provisions

### § 161.200 Is an Indian agricultural resource management plan required?

(a) Yes, Navajo Partitioned Lands must be managed in accordance with the goals and objectives in the agricultural resource management plan developed by the Navajo Nation, or by BIA in close consultation with the Navajo Nation, under the Agricultural Act.

(b) The 10-year agricultural resource management and monitoring plan must be developed through public meetings and completed within 3 years of the initiation of the planning activity. The

plan must be based on the public meeting records and existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the tribe and its members and provide identified resource management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the provisions in this subpart are inconsistent with the Navajo Nation's agricultural resource management plan, the Secretary may waive the provisions under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with the Secretary's trust responsibility under federal law.

### § 161.201 Is environmental compliance required?

Actions taken by BIA under this part must comply with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, applicable provisions of the Council on Environmental Quality, 40 CFR part 1500, and applicable tribal laws and provisions of the Navajo Nation Environmental Policy Act CAP–47–95, where the tribal laws and provisions do not violate a federal or judicial decision or conflict with the Secretary's trust responsibility under federal law.

### § 161.202 How are range units established?

(a) BIA, with the concurrence of the Navajo Nation, will establish range units on the Navajo Partitioned Lands to provide unified areas for which range management plans can be developed to improve and maintain soil and forage resources. Physical land features, watersheds, drainage patterns, vegetation, soil, resident concentration, problem areas, historical land use patterns, chapter boundaries, special land uses and comprehensive land use planning will be considered in the determination of range unit boundaries.

(b) BIA may modify range unit boundaries with the concurrence of the Navajo Nation. This may include small and/or isolated portions of Navajo Partitioned Lands contiguous to Navajo tribal lands in order to develop more efficient land management.

### § 161.203 Are range management plans required?

Yes. BIA will:

(a) Consult with the Navajo Nation in planning conservation practices, including grazing control and range restoration activities for the Navajo Partitioned Lands.

(b) Develop range management plans with the concurrence of the Navajo Nation.

(c) Approve the range management plans, after concurrence with the Navajo Nation, and the implementation of the plan may begin immediately. The plan will address, but is not limited to, the following issues:

(1) Goals for improving vegetative productivity and diversity;

(2) Stocking rates;

(3) Grazing schedules;

(4) Wildlife management;

(5) Needs assessment for range and livestock improvements;

(6) Schedule for operation and maintenance of existing range improvements and development for cooperative funded projects;

(7) Cooperation in the implementation of range studies;

(8) Control of livestock diseases and parasites;

(9) Fencing or other structures necessary to implement any of the other provisions in the range management plan;

(10) Special land uses; and

(11) Water development and management.

### § 161.204 How are carrying capacities and stocking rates established?

(a) BIA, with the concurrence of the Navajo Nation, will prescribe, review and adjust the carrying capacity of each range unit by determining the number of livestock, and/or wildlife, that can be grazed on the Navajo Partitioned Lands without inducing damage to vegetation or related resources on

each range unit and the season or seasons of use to achieve the objectives of the agricultural resource management plan and range unit management plan.

(b) BIA, with the concurrence of the Navajo Nation, will establish the stocking rate of each range or management unit. The stocking rate will be based on forage production, range utilization, the application of land management practices, and range improvements in place to achieve uniformity of grazing under sustained yield management principles on each range or management unit.

(c) BIA will review the carrying capacity of the grazing units on a continuing basis and, in consultation with the Grazing Committee and affected permittees, adjust the stocking rate for each range or management unit as conditions warrant.

(d) Any adjustments in stocking rates will be applied equally to each permittee within the management unit requiring adjustment.

### § 161.205 How are range improvements treated?

(a) Improvements placed on the Navajo Partitioned Lands will be considered affixed to the land unless specifically exempted in the permit. No improvement may be constructed or removed from Navajo Partitioned Lands without the written consent of BIA and the Navajo Nation.

(b) Before undertaking an improvement, BIA, Navajo Nation and permittee will negotiate who will complete and maintain improvements. The improvement agreement will be reflected in the permit.

### § 161.206 What must a permittee do to protect livestock from exposure to disease?

In accordance with applicable law, permittees must:

(a) Vaccinate livestock;

(b) Treat all livestock exposed to or infected with contagious or infectious diseases; and

(c) Restrict the movement of exposed or infected livestock.

### § 161.207 What livestock are authorized to graze?

The following livestock are authorized to graze on the Navajo Partitioned Lands: horses, cattle, sheep, goats, mules, burros, donkeys, and llamas.

## Subpart D—Permit Requirements

### § 161.300 When is a permit needed to authorize grazing use?

Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by the Navajo Nation, must obtain a permit under this part before using Navajo Partitioned Land for grazing purposes.

### § 161.301 What will a grazing permit contain?

(a) All grazing permits will contain the following provisions:

(1) Name of permit holder;

(2) Range management plan requirements;

(3) Applicable stocking rate;

(4) Range unit number and description of the permitted area;

(5) Animal identification requirements (*i.e.*, brand, microchip, freeze brand, earmark, tattoo, etc.);

(6) Term of permit (including beginning and ending dates of the term allowed, as well as an option to renew, or extend);

(7) A provision stating that the permittee agrees that he or she will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose;

(8) A provision stating that the permit authorizes no other privilege than grazing use;

(9) A provision stating that no person is allowed to hold a grazing permit in more than one range unit of the Navajo Partitioned Lands, unless the customary use area extends beyond the range unit boundary;

(10) A provision reserving a right of entry by BIA and the Navajo Nation for range survey, inventory and inspection or compliance purposes;

(11) A provision prohibiting the creation of a nuisance, any illegal activity, and negligent use or waste of resources;

(12) A provision stating how trespass proceeds are to be distributed;

(13) A provision stating whether mediation will be used in the event of a permit violation; and

(14) A provision stating that the permit cannot be subdivided once it has been issued.

(b) Grazing permits will contain any other provision that in the discretion of BIA with the concurrence of the Navajo Nation is necessary to protect the land and/or resources.

(c) Grazing permits containing any special land use authorized under § 161.503 of this part must be included on the permit.

### § 161.302 What restrictions are placed on grazing permits?

Only a grazing permit issued under this part authorizes the grazing of livestock within the Navajo Partitioned Lands. Grazing permits are subject to the following restrictions:

(a) Grazing permits should not be issued for less than 2 animal units (10 sheep units) or exceed 70 animal units (350 sheep units). However, all grazing permits issued before the adoption of this regulation will be honored and reissued with an adjusted stocking rate if the permittee meets the eligibility and priority criteria found in § 161.400 of this part, and only if the carrying capacity and stocking rate as determined under §§ 161.204 and 161.403 allows.

(b) A grazing permit will be issued in the name of one individual.

(c) Only two horses will be permitted on a grazing permit.

(d) Grazing permits may contain additional conditions authorized by Federal law or Navajo Nation law.

(e) A state/tribal brand only identifies the owner of the livestock, but does not authorize the grazing of any livestock within the Navajo Partitioned Lands.

(f) A permit cannot be subdivided once it has been issued.

### § 161.303 How long is a permit valid?

After its initial issuance, each grazing permit is valid for one year beginning on the following January 1. All permits will be automatically renewed annually if the permittee is in compliance with all applicable laws including tallies and permit requirements.

### § 161.304 Must a permit be recorded?

A permit must be recorded by BIA following approval under this subpart.

### § 161.305 When is a decision by BIA regarding a permit effective?

BIA approval of a permit will be effective immediately upon signature, notwithstanding any appeal, which may be filed under part 2 of this title. Copies of the approved permit will be provided to the permittee and made available to the Navajo Nation upon request.

### § 161.306 When are permits effective?

Unless otherwise provided in the permit, a permit will be effective on the date on which BIA approves the permit.

### § 161.307 When may a permittee commence grazing on Navajo Partitioned Land?

The permittee may graze on Navajo Partitioned Land on the date specified in the permit as the beginning date of the term, but not before BIA approves the permit.

### § 161.308 Must a permittee comply with standards of conduct if granted a permit?

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in Navajo Nation laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, provisions, and other legal requirements. Permittee must also pay all applicable penalties that may be assessed for non-compliance.

(c) Fulfill all financial permit obligations owed to the Navajo Nation and the United States.

(d) Conduct only those activities authorized by the permit.

## Subpart E—Reissuance of Grazing Permits

### § 161.400 What are the criteria for reissuing grazing permits?

(a) The Navajo Nation may prescribe eligibility requirements for grazing allocations within 180 days following the effective date of this part. BIA will prescribe the eligibility requirements after expiration of the 180-day period if the Navajo Nation does not prescribe eligibility requirements, or if satisfactory action is not taken by the Navajo Nation.

(b) With the written concurrence of the Navajo Nation, BIA will prescribe the following eligibility requirements, where only those applicants who meet the following criteria are eligible to receive permits to graze livestock:

(1) Those who had grazing permits on Navajo Partitioned Lands under 25 CFR part 167 (formerly part 152), and whose permits were canceled on October 14, 1973;

(2) Those who are listed in the 1974 and 1975 Former Joint Use Area enumeration;

(3) Those who are current residents on Navajo Partitioned Lands; and

(4) Those who have a customary use area on Navajo Partitioned Lands.

(c) Permits re-issued to applicants under this section may be granted by BIA based on the following priority criteria:

(1) The first priority will go to individuals currently the age of 65 or older; and

(2) The second priority will go to individuals under the age of 65.

(d) Upon the recommendation of the NPL District Grazing Committee and Resources Committee, BIA or Navajo Nation will have authority to waive one of the eligibility or priority criteria.

### § 161.401 Will new permits be granted after the initial reissuance of permits?

(a) Following the initial reissuance of permits under § 161.400, the Navajo Nation can grant new permits, subject to BIA approval, if:

(1) Additional permits become available; and

(2) The carrying capacity and stocking rates as determined under §§ 161.204 and 161.403 allow.

(b) The Navajo Nation must inform BIA if it grants any permits under paragraph (a) of this section.

### § 161.402 What are the procedures for reissuing permits?

BIA, with the concurrence of the Navajo Nation, will reissue grazing permits only to individuals that meet the eligibility requirements in § 161.400. Responsibilities for reissuance of grazing permits are as follows:

(a) BIA will develop a complete list consisting of all former permittees whose permits were cancelled and the number of animal units previously authorized in prior grazing permits. This list will be provided to the Grazing Committee and Resources Committee for their review. BIA will also provide the Grazing Committee and Resources Committee with the current carrying capacity and stocking rate for each range unit within the Navajo Partitioned Lands, as determined under § 161.204.

(b) Within 90 days of receipt, the Grazing Committee will review the list developed under § 161.402(a), and make recommendations to the Resources Committee for the granting of grazing permits according to the eligibility and priority criteria in § 161.400.

(c) If the Grazing Committee fails to make its recommendation to the Resources Committee within 90 days after receiving the list of potential permittees, BIA will submit its recommendations to the Resources Committee.

(d) The Resources Committee will review and concur with the list of proposed permit grantees, and then forward a final list to BIA for the reissuance of grazing permits. If the Resources Committee does not concur, the procedures outlined in § 161.800 will govern.

(e) The final determination list of eligible permittees will be published. Permits will not be issued sooner than 90 days following publication of the final list.

### § 161.403 How are grazing permits allocated within each range unit?

(a) Initial allocation of the number of animal units authorized in each grazing permit will be determined by considering the number of animal units previously authorized in prior grazing permits and the current authorized stocking rate on a given range unit.

(b) Grazing permit allocations may vary from range unit to range unit depending on the stocking rate of each unit, the range management plan, and the number of eligible grazing permittees in the unit.

## Subpart F—Modifying A Permit

### § 161.500 May permits be transferred, assigned or modified?

(a) Grazing permits may be transferred, assigned, or modified only as provided in this section. Permits may only be transferred or assigned as a single permit under Navajo Nation procedures and with the approval of BIA. Permittees must reside within the same range unit as the original permittee.

(b) Permits may be transferred, assigned, or modified with the written consent of the permittee, District Grazing Committee and/or Resources Committee and approved by BIA.

(c) BIA must record each transfer, assignment, or modification that it approves under a permit.

### § 161.501 When will a permit modification be effective?

BIA approval of a transfer, assignment, or modification under a permit will be effective immediately, notwithstanding any appeal, which may be filed under part 2 of this title. Copies of approved documents will be provided to the permittee and made available to the Navajo Nation upon request.

### § 161.502 Will a special land use require permit modification?

Yes. When the Navajo Nation and BIA approve a special land use, the grazing permit will be modified to reflect the change in available forage. If a special land use is inconsistent with grazing activities authorized in the permit, the special land use area will be withdrawn from the permit, and grazing cannot take place on that part of the range unit.

## Subpart G—Permit Violations

### § 161.600 What permit violations are addressed by this subpart?

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart H.

### § 161.601 How will BIA monitor permit compliance?

Unless the permit provides otherwise, BIA and/or Navajo Nation may enter the range unit at any reasonable time, without prior notice, to protect the interests of the Navajo Nation and ensure that the permittee is in compliance with the operating requirements of the permit.

### § 161.602 Will my permit be canceled for non-use?

(a) If a grazing permit is not used by the permittee for a 2-year period, BIA may cancel the permit upon the recommendation of the Grazing Committee and with the concurrence of the Resources Committee under § 161.606(c). Non-use consists of, but is not limited to, absence of livestock on the range unit, and/or abandonment of a permittee's grazing permit.

(b) Unused grazing permits or portions of grazing permits that are set aside for range recovery will not be cancelled for non-use.

### § 161.603 Can mediation be used in the event of a permit violation or dispute?

A permit may provide for permit disputes or violations to be resolved with the District Grazing Committee through mediation.

(a) The District Grazing Committee will conduct the mediation before the Navajo Nation's appropriate hearing body, before BIA invokes any cancellation remedies.

(b) Conducting the mediation may substitute for permit cancellation. However, BIA retains the authority to cancel the permit under § 161.606.

(c) The Navajo Nation's appropriate hearing body decision will be final, unless it is appealed to the Navajo Nation Supreme Court on a question of law.

BIA will defer to any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to BIA under § 161.606.

### § 161.604 What happens if a permit violation occurs?

(a) If the Resources Committee notifies BIA that a specific permit violation has occurred, BIA will initiate an appropriate investigation within 5 business days of that notification.

(b) Unless otherwise provided under tribal law, when BIA has reason to believe that a permit violation has occurred, BIA or the authorized tribal representative will provide written notice to the permittee within 5 business days.

### § 161.605 What will a written notice of a permit violation contain?

The written notice of a permit violation will provide the permittee with 10 days from the receipt of the written notice to:

(a) Cure the permit violation and notify BIA that the violation is cured;

(b) Explain why BIA should not cancel the permit;

(c) Request in writing additional time to complete corrective actions. If additional time is granted, BIA may require that certain actions be taken immediately; or

(d) Request mediation under § 161.603.

### § 161.606 What will BIA do if the permittee doesn't cure a violation on time?

(a) If the permittee does not cure a violation within the required time period, or if the violation is not referred to District Grazing Committee for mediation, BIA will consult with the Navajo Nation, as appropriate, and determine whether:

(1) The permit may be canceled by BIA under paragraph (c) of this section and §§ 161.607 through 161.608;

(2) BIA may invoke any other remedies available to BIA under the permit;

(3) The Navajo Nation may invoke any remedies available to them under the permit; or

(4) The permittee may be granted additional time in which to cure the violation.

(b) If BIA grants a permittee a time extension to cure a violation, the permittee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time from the date on which the extension is granted.

(c) If BIA cancels the permit, BIA will send the permittee and the District Grazing Committee a written notice of cancellation within 5 business days of the decision. BIA will also provide actual or constructive notice of the cancellation to the Navajo Nation, as appropriate. The written notice of cancellation will:

(1) Explain the grounds for cancellation;

(2) Notify the permittee of the amount of any unpaid fees and other financial obligations due under the permit;

(3) Notify the permittee of his or her right to appeal under 25 CFR part 2 of this title, as modified by § 161.607, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the permittee to cease grazing livestock on the next anniversary date of the grazing permit or 180 days following the receipt of the written notice of cancellation, whichever is sooner.

### § 161.607 What appeal bond provisions apply to permit cancellation decisions?

(a) The appeal bond provisions in § 2.5 of part 2 of this title will not apply to appeals from permit cancellation decision. Instead, when BIA decides to cancel a permit, BIA may require the permittee to post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this title.

(b) An appeal bond should be set in an amount necessary to protect the Navajo Nation against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the permit cancellation decision.

### § 161.608 When will a permit cancellation be effective?

A cancellation decision involving a permit will not be effective for 30 days after the permittee receives a written notice of cancellation from BIA. The cancellation decision will remain ineffective if the permittee files an appeal under § 161.607 and part 2 of this title, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the permittee must continue to comply with the other terms of the permit. If an appeal is not filed in accordance with § 161.607 and part 2 of this title, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from BIA.

### § 161.609 Can BIA take emergency action if the rangeland is threatened?

Yes, if a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Navajo Nation land during the term of a permit, BIA will take appropriate emergency action. Emergency action may include trespass proceedings under subpart H, or judicial action seeking immediate cessation of the activity resulting in or threatening harm. Reasonable efforts will be made to notify the Navajo Nation, either before or after the emergency action is taken.

### § 161.610 What will BIA do if livestock is not removed when a permit expires or is cancelled?

If the livestock is not removed after the expiration or cancellation of a permit, BIA will treat the unauthorized use as a trespass. BIA may remove the livestock on behalf of the Navajo Nation, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under subpart H.

## Subpart H—Trespass

### § 161.700 What is trespass?

Under this part, trespass is any unauthorized use of, or action on, Navajo partitioned grazing lands.

### § 161.701 What is BIA's trespass policy?

BIA will:

(a) Investigate accidental, willful, and/or incidental trespass on Navajo Partitioned Lands;

(b) Respond to alleged trespass in a prompt, efficient manner;

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Navajo Partitioned Lands, and enforcement costs incurred as a consequence of the trespass; and

(d) Ensure, to the extent possible, that damage to Navajo Partitioned Lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

### § 161.702 Who will enforce this subpart?

(a) BIA enforces the provisions of this subpart. If the Navajo Nation adopts the provisions of this subpart, the Navajo Nation will have concurrent jurisdiction to enforce this subpart. Additionally, if the Navajo Nation so requests, BIA will defer to tribal prosecution of trespass on Navajo Partitioned Lands.

(b) Nothing in this subpart will be construed to diminish the sovereign authority of the Navajo Nation with respect to trespass.

NOTIFICATION

### § 161.703 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when BIA has reason to believe that a trespass on Navajo Partitioned Lands has occurred, BIA or the authorized tribal representative will provide written notice within 5 business days to:

(1) The alleged trespasser;

(2) The possessor of trespass property; and

(3) Any known lien holder.

(b) The written notice under paragraph (a) of this section will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of ownership of unauthorized property (*e.g.*, brands in the

State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

(6) Potential consequences and penalties for failure to take corrective action; and

(7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by BIA under paragraph (b)(4) of this section.

(c) If BIA determines that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(d) Trespass notices under this subpart are not subject to appeal under part 2 of this title.

### § 161.704 What can a permittee do if they receive a trespass notice?

The trespasser will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact BIA in writing to explain why the trespass notice is in error. The trespasser may contact BIA by telephone but any explanation of trespass must be provided in writing. If BIA determines that a trespass notice was issued in error, the notice will be withdrawn.

### § 161.705 How long will a written trespass notice remain in effect?

A written trespass notice will remain in effect for the same action identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

ACTIONS

### § 161.706 What actions does BIA take against trespassers?

If the trespasser fails to take the corrective action as specified, BIA may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. BIA may keep the property seized for use as evidence.

(b) Assess penalties, damages, and costs under § 161.712.

### § 161.707 When will BIA impound unauthorized livestock or other property?

BIA will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after 5 days of providing notice of impoundment if the trespasser failed to correct the trespass.

### § 161.708 How are trespassers notified of impoundments?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, BIA will send written notice of its intent to impound unauthorized livestock or other property to:

(1) The unauthorized livestock or property owner or representative; and

(2) Any known lien holder of the unauthorized livestock or other property.

(b) If BIA determines that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, a public notice of intent to impound will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After BIA has given notice as described in § 161.707, unauthorized livestock or other property will be impounded without any further notice.

### § 161.709 What happens after unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property,

BIA will provide notice that the impounded property will be sold as follows:

(a) BIA will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed before the sale.

(b) BIA will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least 5 days after the publication and posting of notice.

### § 161.710 How can impounded livestock or other property be redeemed?

Impounded livestock or other property may be redeemed by submitting proof of ownership and paying all penalties, damages, and costs under § 161.712 and completing all corrective actions identified by BIA under § 161.704.

### § 161.711 How will BIA sell impounded livestock or other property?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property before the time set by the sale, by submitting proof of ownership and settling all obligations under §§ 161.704 and 161.712, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) BIA will give the purchaser a bill of sale or other written receipt evidencing the sale.

## PENALTIES, DAMAGES, AND COSTS

### § 161.712 What are the penalties, damages, and costs payable by trespassers?

Trespassers on Navajo Partitioned Lands must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Navajo Partitioned Lands and/or property;

(c) The costs associated with enforcement of the provisions, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 161.707; and

(e) All other penalties authorized by law.

### § 161.713 How will BIA determine the amount of damages to Navajo Partitioned Lands?

(a) BIA will determine the damages by considering the costs of rehabilitation and re-vegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

(b) BIA will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of the products or property.

(c) BIA will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

### § 161.714 How will BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

### § 161.715 What will BIA do if a trespasser fails to pay penalties, damages and costs?

This section applies if a trespasser fails to pay the assessed penalties, damages, and costs as directed. Unless otherwise provided by applicable Navajo Nation law, BIA will:

(a) Refuse to issue the permittee a permit for any use of Navajo Partitioned Lands; and

(b) Forward the case for appropriate legal action.

### § 161.716 How are the proceeds from trespass distributed?

Unless otherwise provided by Navajo Nation law:

(a) BIA will treat any amounts recovered under § 161.712 as proceeds from the sale of agricultural property from the Navajo Partitioned Lands upon which the trespass occurred.

(b) Proceeds recovered under § 161.712 may be distributed to:

(1) Repair damages of the Navajo Partitioned Lands and property; or

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit.

(c) Reimburse for costs associated with the enforcement.

(d) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, BIA will return it to the trespasser or, where the owner of the impounded property cannot be identified within 180 days, the net proceeds of the sale will be deposited into the appropriate Navajo Nation account or transferred to the Navajo Nation under applicable tribal law.

### § 161.717 What happens if BIA does not collect enough money to satisfy the penalty?

BIA will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within 5 business days from the date of receipt, BIA will forward the case for appropriate legal action. BIA may send a copy of the notice to the Navajo Nation, permittee, and any known lien holders.

## Subpart I—Concurrence/Appeals/Amendments

### § 161.800 How does the Navajo Nation provide concurrence to BIA?

(a) Actions taken by BIA under this part require concurrence of the Navajo Nation under section 640d–9(e)(1)(A) of the Settlement Act.

(b) For any action requiring the concurrence of the Resources Committee, the following procedures will apply:

(1) Unless a longer time is specified in a particular section, or unless BIA grants an extension of time, the Resources Committee will have 45 days to review and concur with the proposed action;

(2) If the Resources Committee concurs in writing with all or part of BIA proposed action, the action or a portion of it may be immediately implemented;

(3) If the Resources Committee does not concur with all or part of the proposed action within the time prescribed in paragraph (b)(1) of this section, BIA will submit to the Resources Committee a written declaration of non-concurrence. BIA will then notify the Resources Committee in writing of a formal hearing to be held not sooner than 30 days from the date of the non-concurrence declaration;

(4) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. BIA will take minutes of the hearing. Following the hearing, BIA may amend, alter, or otherwise change the proposed action. If, following a hearing, BIA alters or amends portions of the proposed plan of action, BIA will submit the altered or amended portions of the plan to the Resources Committee for its concurrence; and

(5) If the Resources Committee fails or refuses to give its concurrence to the proposal, BIA may implement the proposal only after issuing a written order, based upon findings of fact, that the proposed action is necessary to protect the land under the Settlement Act and the Agricultural Act.

### § 161.801 May decisions under this part be appealed?

(a) Appeals of BIA decisions issued under this part may be taken in accordance with procedures in part 2 of 25 CFR.

(b) All appeals of decisions by the Grazing Committee and Resources Committee will be forwarded to the Navajo Nation's Office of Hearings and Appeals.

### § 161.802 How will the Navajo Nation recommend amendments to this part?

The Resources Committee will have final authority on behalf of the Navajo Nation to approve amendments to the Navajo Partitioned Lands grazing provisions, upon the recommendation of the Grazing Committee and the Navajo-Hopi Land Commission, and the concurrence of BIA.

## PART 162—LEASES AND PERMITS

### Subpart A—General Provisions

Sec.
162.100 What are the purposes of this part?
162.101 What key terms do I need to know?
162.102 What land, or interests in land, are subject to these regulations?
162.103 What types of land use agreements are covered by these regulations?
162.104 When is a lease needed to authorize possession of Indian Land?
162.105 Can tracts with different Indian landowners be unitized for leasing purposes?
162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?
162.107 What are BIA's objectives in granting or approving leases?
162.108 What are BIA's responsibilities in administering and enforcing leases?
162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?
162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?
162.111 Who owns the records associated with this part?
162.112 How must records associated with this part be preserved?
162.113 May decisions under this part be appealed?

### Subpart B—Agricultural Leases

GENERAL PROVISIONS
162.200 What types of leases are covered by this subpart?
162.201 Must agricultural land be managed in accordance with a tribe's agricultural resource management plan?
162.202 How will tribal laws be enforced on agricultural land?
162.203 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?
162.204 Must notice of applicable tribal laws and leasing policies be provided?
162.205 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?

HOW TO OBTAIN A LEASE
162.206 Can the terms of an agricultural lease be negotiated with the Indian landowners?
162.207 When can the Indian landowners grant an agricultural lease?
162.208 Who can represent the Indian landowners in negotiating or granting an agricultural lease?
162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?
162.210 When can BIA grant a permit covering agricultural land?
162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?
162.212 When will the BIA advertise Indian land for agricultural leases?
162.213 What supporting documents must be provided prior to BIA's grant or approval of an agricultural lease?
162.214 How and when will BIA decide whether to approve an agricultural lease?
162.215 When will an agricultural lease be effective?
162.216 When will a BIA decision to approve an agricultural lease be effective?
162.217 Must an agricultural lease or permit be recorded?

LEASE REQUIREMENTS
162.218 Is there a standard agricultural lease form?
162.219 Are there any provisions that must be included in an agricultural lease?
162.220 Are there any formal requirements that must be satisfied in the execution of an agricultural lease?
162.221 How should the land be described in an agricultural lease?
162.222 How much rent must be paid under an agricultural lease?
162.223 Must the rent be adjusted under an agricultural lease?
162.224 When are rent payments due under an agricultural lease?

162.225 Will untimely rent payments made under an agricultural lease be subject to interest charges or late payment penalties?
162.226 To whom can rent payments be made under an agricultural lease?
162.227 What form of rent payment can be accepted under an agricultural lease?
162.228 What other types of payments are required under an agricultural lease?
162.229 How long can the term of an agricultural lease run?
162.230 Can an agricultural lease be amended, assigned, sublet, or mortgaged?
162.231 How can the land be used under an agricultural lease?
162.232 Can improvements be made under an agricultural lease?
162.233 Who will own the improvements made under an agricultural lease?
162.234 Must a tenant provide a bond under an agricultural lease?
162.235 What form of bond can be accepted under an agricultural lease?
162.236 How will a cash bond be administered?
162.237 What insurance is required under an agricultural lease?
162.238 What indemnities are required under an agricultural lease?
162.239 How will payment rights and obligations relating to agricultural land be allocated between the Indian landowners and the tenant?
162.240 Can an agricultural lease provide for negotiated remedies in the event of a violation?

LEASE ADMINISTRATION

162.241 Will administrative fees be charged for actions relating to agricultural leases?
162.242 How will BIA decide whether to approve an amendment to an agricultural lease?
162.243 How will BIA decide whether to approve an assignment or sublease under an agricultural lease?
162.244 How will BIA decide whether to approve a leasehold mortgage under an agricultural lease?
162.245 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease be effective?
162.246 Must an amendment, assignment, sublease, or mortgage approved under an agricultural lease be recorded?

LEASE ENFORCEMENT

162.247 Will BIA notify a tenant when a rent payment is due under an agricultural lease?
162.248 What will BIA do if rent payments are not made in the time and manner required by an agricultural lease?
162.249 Will any special fees be assessed on delinquent rent payments due under an agricultural lease?
162.250 How will BIA determine whether the activities of a tenant under an agricultural lease are in compliance with the terms of the lease?
162.251 What will BIA do in the event of a violation under an agricultural lease?
162.252 What will BIA do if a violation of an agricultural lease is not cured within the requisite time period?
162.253 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving agricultural leases?
162.254 When will a cancellation of an agricultural lease be effective?
162.255 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?
162.256 What will BIA do if a tenant holds over after the expiration or cancellation of an agricultural lease?

## Subpart C—Residential Leases [Reserved]

## Subpart D—Business Leases [Reserved]

## Subpart E—Special Requirements for Certain Reservations 162.500 Crow Reservation.

162.500 Crow Reservation.
162.501 Fort Belknap Reservation.
162.502 Cabazon, Augustine, and Torres-Martinez Reservations, California.
162.503 San Xavier and Salt River Pima-Maricopa Reservations.

## Subpart F—Non-Agricultural Leases

162.600 What types of leases are covered by this subpart?
162.601 Grants of leases by Secretary.
162.602 Grants of leases by owners or their representatives.
162.603 Use of land of minors.
162.604 Special requirements and provisions.
162.605 Negotiation of leases.
162.606 Advertisement.
162.607 Duration of leases.
162.608 Ownership of improvements.
162.609 Unitization for leasing.
162.610 Subleases and assignments.
162.611 Payment of fees and drainage and irrigation charges.
162.612 Can a lease provide for negotiated remedies in the event of a violation?
162.613 Will BIA notify a tenant when a rent payment is due under a lease?
162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?
162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?

162.616 Will any special fees be assessed on delinquent rent payments due under a lease?
162.617 How will BIA determine whether the activities of a tenant under a lease are in compliance with the terms of the lease?
162.618 What will BIA do in the event of a violation under a lease?
162.619 What will BIA do if a violation of a lease is not cured within the requisite time period?
162.620 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving leases?
162.621 When will a cancellation of a lease be effective?
162.622 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?
162.623 What will BIA do if a tenant holds over after the expiration or cancellation of a lease?

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SOURCE: 66 FR 7109, Jan. 22, 2001, unless otherwise noted.

## Subpart A—General Provisions

### § 162.100 What are the purposes of this part?

(a) The purposes of this part are to:

(1) Identify the conditions and authorities under which certain interests in Indian land and Government land may be leased;

(2) Describe the manner in which various types of leases may be obtained;

(3) Identify terms and conditions that may be required in various types of leases;

(4) Describe the policies and procedures that will be applied in the administration and enforcement of various types of leases; and

(5) Identify special requirements that apply to leases made under special acts of Congress that apply only to certain Indian reservations.

(b) This part includes six subparts, including separate, self-contained subparts relating to Agricultural Leases (Subpart B), Residential Leases (Subpart C, reserved), Business Leases (Subpart D, reserved), and Non-Agricultural Leases (Subpart F), respectively. Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases covered by subpart E are also subject to the general provisions in subparts A through F, respectively, except to the extent those general provisions are inconsistent with any of the special provisions in subpart E or any special act of Congress under which those leases are made.

(c) These regulations apply to all leases in effect when the regulations are promulgated; however, unless otherwise agreed by the parties, these regulations will not affect the validity or terms of any existing lease.

### § 162.101 What key terms do I need to know?

For purposes of this part:

*Adult* means an individual who is 18 years of age or older.

*Agricultural land* means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

*Agricultural lease* means a lease of agricultural land for farming and/or grazing purposes.

*AIARMA* means the American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended on November 2, 1994 (108 Stat. 4572).

*Assignment* means an agreement between a tenant and an assignee, whereby the assignee acquires all of the tenant's rights, and assumes all of the tenant's obligations, under a lease.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of BIA under § 162.109 of this part.

*Bond* means security for the performance of certain lease obligations, as furnished by the tenant, or a guaranty of such performance as furnished by a third-party surety.

*Day* means a calendar day.

*Emancipated minor* means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

*Fair annual rental* means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market.

*Fee interest* means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

*Fractionated tract* means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

*Government land* means any tract, or interest therein, in which the surface estate is owned by the United States and administered by BIA, not including tribal land that has been reserved for administrative purposes.

*Immediate family* means a spouse, brother, sister, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner.

*Indian land* means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

*Indian landowner* means a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

*Individually-owned land* means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

*Interest,* when used with respect to Indian land, means an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

*Lease* means a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration. Unless otherwise provided, the use of this term will also include permits, as appropriate.

*Lessee* means tenant, as defined in this section.

*Life estate* means an interest in Indian land that is limited, in duration, to the life of the life tenant holding the interest, or the life of some other person.

*Majority interest* means more than 50% of the trust or restricted interests in a tract of Indian land.

*Minor* means an individual who is less than 18 years of age.

*Mortgage* means a mortgage, deed of trust or other instrument that pledges a tenant's leasehold interest as security for a debt or other obligation owed by the tenant to a lender or other mortgagee.

*NEPA* means the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*)

*Non compos mentis* means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

*Permit* means a written agreement between Indian landowners and the applicant for the permit, also referred to as a permittee, whereby the permittee is granted a revocable privilege to use Indian land or Government land, for a specified purpose.

*Remainder* means an interest in Indian land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

*Restricted land or restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Sublease* means a written agreement by which the tenant grants to an individual or entity a right to possession no greater than that held by the tenant under the lease.

*Surety* means one who guarantees the performance of another.

*Tenant* means a person or entity who has acquired a legal right of possession to Indian land by a lease or permit under this part.

Trespass means an unauthorized possession, occupancy or use of Indian land.

*Tribal land* means the surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476).

*Tribal laws* means the body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common law.

*Trust land* means any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

*Undivided interest* means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

*Us/We/Our* means the Secretary or BIA and any tribe acting on behalf of the Secretary or BIA under § 162.110 of this part.

*USPAP* means the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

### § 162.102 What land, or interests in land, are subject to these regulations?

(a) These regulations apply to Indian land and Government land, including any tract in which an interest is owned by an individual Indian or tribe in trust or restricted status.

(b) Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be leased under these regulations, unless the lease is for less than one year in duration. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the lease must be paid to the life tenant under part 179 of this chapter.

(c) In approving a lease under these regulations, we will not lease any fee interest in Indian land, nor will we collect rent on behalf of any fee owners. The leasing of the trust and restricted interests of the Indian landowners will not be conditioned on a lease having been obtained from the owners of any fee interests. Where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a lease of the remainder interests only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners.

(d) These regulations do not apply to tribal land that is leased under a corporate charter issued by us pursuant to 25 U.S.C. § 477, or under a special act of Congress authorizing leases without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such leases on behalf of the Indian landowners.

(e) To the extent any regulations in this part conflict with the Indian Land Consolidation Act Amendments of 2000, Public Law 106–462, the provisions of that Act will govern.

### § 162.103 What types of land use agreements are covered by these regulations?

(a) These regulations cover leases that authorize the possession of Indian land. These regulations do not apply to:

(1) Mineral leases, prospecting permits, or mineral development agreements, as covered by parts 211, 212 and 225 of this chapter and similar parts specific parts specific to particular tribes;

(2) Grazing permits, as covered by part 166 of this chapter and similar

parts specific parts specific to particular tribes;

(3) Timber contracts, as covered by part 163 of this chapter;

(4) Management contracts, joint venture agreements, or other encumbrances of tribal land, as covered by 25 U.S.C. § 81, as amended;

(5) Leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself; and

(6) Easements or rights-of-way, as covered by part 169 of this chapter.

(b) Where appropriate, the regulations in this part that specifically refer to leases will apply to permits that authorize the temporary, non-possessory use of Indian land or Government land, not including:

(1) Land assignments and similar instruments authorizing temporary uses by tribal members, in accordance with tribal laws or custom; and

(2) Trader's licenses issued under part 140 of this chapter.

### § 162.104 When is a lease needed to authorize possession of Indian Land?

(a) An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession without a lease or any other prior authorization from us.

(b) An Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given the landowner's permission to take or continue in possession without a lease.

(c) A parent or guardian of a minor child who owns 100% of the trust interests in the land may take possession without a lease. We may require that the parent or guardian provide evidence of a direct benefit to the minor child. When the child reaches the age of majority, a lease must be obtained under these regulations to authorize continued possession.

(d) Any other person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a lease under these regulations before taking possession.

### § 162.105 Can tracts with different Indian landowners be unitized for leasing purposes?

(a) A lease negotiated by Indian landowners may cover more than one tract of Indian land, but the minimum consent requirements for leases granted by Indian landowners under subparts B through D of this part will apply to each tract separately. We may combine multiple tracts into a unit for leases negotiated or advertised by us, if we determine that unitization is in the Indian landowners' best interests and consistent with the efficient administration of the land.

(b) Unless otherwise provided in the lease, the rent or other consideration derived from a unitized lease will be distributed based on the size of each landowner's interest in proportion to the acreage within the entire unit.

### § 162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?

(a) If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the party in possession is engaged in negotiations with the Indian landowners to obtain a lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

(b) Where a trespass involves Indian agricultural land, we will also assess civil penalties and costs under part 166, subpart I, of this chapter.

### § 162.107 What are BIA's objectives in granting or approving leases?

(a) We will assist Indian landowners in leasing their land, either through negotiations or advertisement. In reviewing a negotiated lease for approval, we will defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible. In granting a lease on the landowners' behalf, we will obtain a fair annual rental and attempt to ensure (through proper notice) that the use of the land is consistent with the

landowners' wishes. We will also recognize the rights of Indian landowners to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved.

(b) We will recognize the governing authority of the tribe having jurisdiction over the land to be leased, preparing and advertising leases in accordance with applicable tribal laws and policies. We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f *et seq*.

### § 162.108 What are BIA's responsibilities in administering and enforcing leases?

(a) We will ensure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions. We will also assist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to us under these or other regulations.

(b) We will ensure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Indian landowners and respond to concerns expressed by them. We will take immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.

### § 162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?

(a) Leases granted or approved under this part will be subject to federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these regulations.

(b) Tribal laws generally apply to land under the jurisdiction of the tribe enacting such laws, except to the extent that those tribal laws are inconsistent with these regulations or other applicable federal law. These regulations may be superseded or modified by tribal laws, however, so long as:

(1) The tribal laws are consistent with the enacting tribe's governing documents;

(2) The tribe has notified us of the superseding or modifying effect of the tribal laws;

(3) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with our general trust responsibility under federal law; and

(4) The superseding or modifying of the regulation applies only to tribal land.

(c) State law may apply to lease disputes or define the remedies available to the Indian landowners in the event of a lease violation by the tenant, if the lease so provides and the Indian landowners have expressly agreed to the application of state law.

### § 162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?

Except insofar as these regulations provide for the granting, approval, or enforcement of leases and permits, the provisions in these regulations that authorize or require us to take certain actions will extend to any tribe or tribal organization that is administering specific programs or providing specific services under a contract or self-governance compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450f *et seq*.).

### § 162.111 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq*., including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

### § 162.112 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 162.111(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 162.111(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

### § 162.113 May decisions under this part be appealed?

Yes. Except where otherwise provided in this part, appeals from decisions by the BIA under this part may be taken pursuant to 25 CFR part 2.

## Subpart B—Agricultural Leases

GENERAL PROVISIONS

### § 162.200 What types of leases are covered by this subpart?

The regulations in this subpart apply to agricultural leases, as defined in this part. The regulations in this subpart may also apply to business leases on agricultural land, where appropriate.

### § 162.201 Must agricultural land be managed in accordance with a tribe's agricultural resource management plan?

(a) Agricultural land under the jurisdiction of a tribe must be managed in accordance with the goals and objectives in any agricultural resource management plan developed by the tribe, or by us in close consultation with the tribe, under AIARMA.

(b) A ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the Indian tribe and its members and identify holistic management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the regulations in this subpart are inconsistent with a tribe's agricultural resource management plan, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

### § 162.202 How will tribal laws be enforced on agricultural land?

(a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the tribe is primarily responsible for enforcing tribal laws pertaining to agricultural land, we will:

(1) Assist in the enforcement of tribal laws;

(2) Provide notice of tribal laws to persons or entities undertaking activities on agricultural land, under § 162.204(c) of this subpart; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as such an appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR Part 2, Subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of our actions by a tribal court.

(c) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 162.109 of this part, we may waive the regulations under part 1 of this chapter, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

### § 162.203 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?

(a) The regulations in this subpart may be superseded or modified by tribal laws, under the circumstances described in § 162.109(b) of this part.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of tribal and individually-owned agricultural land, we will:

(1) Waive the general prohibition against tenant preferences in leases advertised for bid under § 162.212 of this subpart, by allowing prospective Indian tenants to match the highest responsible bid (unless the tribal leasing policy specifies some other manner in which the preference must be afforded);

(2) Waive the requirement that a tenant post a bond under § 162.234 of this subpart;

(3) Modify the requirement that a tenant post a bond in a form described in § 162.235 of this subpart;

(4) Approve leases of tribal land at rates established by the tribe, as provided in § 162.222(b) of this subpart.

(c) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of ''highly fractionated undivided heirship lands'' (as defined in the tribal leasing policy), we may waive or modify the three-month notice requirement in § 162.209(b) of this subpart, so long as:

(1) The tribal law or leasing policy adopts an alternative plan for providing notice to Indian landowners, before an agricultural lease is granted by us on their behalf; and

(2) A waiver or modification of the three-month notice requirement is needed to prevent waste, reduce idle land acreage, and ensure lease income to the Indian landowners.

(d) Tribal leasing policies of the type described in paragraphs (b) through (c) of this section will not apply to individually-owned land that has been made exempt from such laws or policies under § 162.205 of this subpart.

### § 162.204 Must notice of applicable tribal laws and leasing policies be provided?

(a) A tribe must provide us with an official copy of any tribal law or leasing policy that supersedes or modifies these regulations under §§ 162.109 or 162.203 of this part. If the tribe has not already done so, we will provide notice of such a tribal law or leasing policy to affected Indian landowners and persons or entities undertaking activities on agricultural land. Such notice will be provided in the manner described in paragraphs (b) through (c) of this section.

(b) We will provide notice to Indian landowners, as to the superseding or modifying effect of any tribal leasing policy and their right to exempt their land from such a policy. Such notice will be provided by:

(1) Written notice included in a notice of our intent to lease the land, issued under § 162.209(b) of this subpart; or

(2) Public notice posted at the tribal community building or the United States Post Office, or published in the local newspaper that serves the area in which the Indian owners' land is located, at the time the tribal leasing policy is adopted.

(c) We will provide notice to persons or entities undertaking activities on

agricultural land, as to the general applicability of tribal laws and the superseding or modifying effect of particular tribal laws and leasing policies. Such notice will be provided by:

(1) Written notice included in advertisements for lease, issued under § 162.212 of this subpart; or

(2) Public notice posted at the tribal community building or the United States Post Office, or published in a local newspaper of general circulation, at the time the tribal law is enacted or the leasing policy adopted.

### § 162.205 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?

(a) Individual Indian landowners may exempt their agricultural land from the application of a tribal leasing policy of a type described in § 162.203(b) through (c) of this subpart, if the Indian owners of at least 50% of the trust or restricted interests in the land submit a written objection to us before a lease is granted or approved.

(b) Upon our receipt of a written objection from the Indian landowners that satisfies the requirements of paragraph (a) of this section, we will notify the tribe that the owners' land has been exempted from a specific tribal leasing policy. If the exempted land is part of a unitized lease tract, such land will be removed from the unit and leased separately, if appropriate.

(c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

## HOW TO OBTAIN A LEASE

### § 162.206 Can the terms of an agricultural lease be negotiated with the Indian landowners?

An agricultural lease may be obtained through negotiation. We will assist prospective tenants in contacting the Indian landowners or their representatives for the purpose of negotiating a lease, and we will assist the landowners in those negotiations upon request.

### § 162.207 When can the Indian landowners grant an agricultural lease?

(a) Tribes grant leases of tribally-owned agricultural land, including any tribally-owned undivided interest(s) in a fractionated tract, subject to our approval. Where tribal land is subject to a land assignment made to a tribal member or some other individual under tribal law or custom, the individual and the tribe must both grant the lease, subject to our approval.

(b) Adult Indian owners, or emancipated minors, may grant agricultural leases of their land, including undivided interests in fractionated tracts, subject to our approval.

(c) An agricultural lease of a fractionated tract may be granted by the owners of a majority interest in the tract, subject to our approval. Although prior notice to non-consenting individual Indian landowners is generally not needed prior to our approval of such a lease, a right of first refusal must be offered to any non-consenting Indian landowner who is using the entire lease tract at the time the lease is entered into by the owners of a majority interest. Where the owners of a majority interest grant such a lease on behalf of all of the Indian owners of a fractionated tract, the non-consenting Indian landowners must receive a fair annual rental.

(d) As part of the negotiation of a lease, Indian landowners may advertise their land to identify potential tenants with whom to negotiate.

### § 162.208 Who can represent the Indian landowners in negotiating or granting an agricultural lease?

The following individuals or entities may represent an individual Indian landowner:

(a) An adult with custody acting on behalf of his or her minor children;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be leased; and

(3) Describes the scope of the power granted and any limits thereon.

### § 162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?

(a) We may grant an agricultural lease on behalf of:

(1) Individuals who are found to be non compos mentis by a court of competent jurisdiction;

(2) Orphaned minors;

(3) The undetermined heirs and devisees of deceased Indian owners;

(4) Individuals who have given us a written power of attorney to lease their land; and

(5) Individuals whose whereabouts are unknown to us, after reasonable attempts are made to locate such individuals; and

(6) The individual Indian landowners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

(b) We may grant an agricultural lease on behalf of all of the individual Indian owners of a fractionated tract, where:

(1) We have provided the Indian landowners with written notice of our intent to grant a lease on their behalf, but the Indian landowners are unable to agree upon a lease during a three-month negotiation period immediately following such notice, or any other notice period established by a tribe under § 162.203(c) of this subpart; and

(2) The land is not being used by an Indian landowner under § 162.104(b) of this part.

### § 162.210 When can BIA grant a permit covering agricultural land?

(a) We may grant a permit covering agricultural land in the same manner as we would grant an agricultural lease under § 162.209 of this part. We may also grant a permit on behalf of individual Indian landowners, without prior notice, if it is impractical to provide notice to the owners and no substantial injury to the land will occur.

(b) We may grant a permit covering agricultural land, but not an agricultural lease, on government land.

(c) We will not grant a permit on tribal agricultural land, but a tribe may grant a permit, subject to our approval, in the same manner as it would grant a lease under § 162.207(a) of this subpart.

### § 162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?

(a) To support the Indian landowners in their negotiations, and to assist in our consideration of whether an agricultural lease is in the Indian landowners' best interest, we must determine the fair annual rental of the land prior to our grant or approval of the lease, unless the land may be leased at less than a fair annual rental under § 162.222(b) through (c) of this subpart.

(b) A fair annual rental may be determined by competitive bidding, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair annual rental, the appraisal or valuation must be prepared in accordance with USPAP.

### § 162.212 When will the BIA advertise Indian land for agricultural leases?

(a) We will generally advertise Indian land for agricultural leasing:

(1) At the request of the Indian landowners; or

(2) Before we grant a lease under § 162.209(b) of this subpart.

(b) Advertisements will provide prospective tenants with notice of any superseding tribal laws and leasing policies that have been made applicable to the land under §§ 162.109 and 162.203 of this part, along with certain standard terms and conditions to be included in the lease. Advertisements will prohibit tenant preferences, and bidders at lease sales will not be afforded any preference, unless a preference in favor of individual Indians is required by a superseding tribal law or leasing policy.

(c) Advertisements will require sealed bids, and they may also provide for further competitive bidding among the prospective tenants at the conclusion of the bid opening. Competitive bidding should be supported, at a minimum, by a market study or rent survey that is consistent with USPAP.

### § 162.213 What supporting documents must be provided prior to BIA's grant or approval of an agricultural lease?

(a) If the tenant is a corporation, partnership or other legal entity, it must provide organizational and financial documents, as needed to show that the lease will be enforceable against the tenant and the tenant will be able to perform all of its lease obligations.

(b) Where a bond is required under § 162.234 of this subpart, the bond must be furnished before we grant or approve the lease.

(c) The tenant must provide environmental and archaeological reports, surveys, and site assessments, as needed to document compliance with NEPA and other applicable federal and tribal land use requirements.

### § 162.214 How and when will BIA decide whether to approve an agricultural lease?

(a) Before we approve a lease, we must determine in writing that the lease is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the lease and supporting documents;

(2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances (including preparation of the appropriate review documents under NEPA);

(3) Assure ourselves that adequate consideration has been given, as appropriate, to:

(i) The relationship between the use of the leased premises and the use of neighboring lands;

(ii) The height, quality, and safety of any structures or other facilities to be constructed on the leased premises;

(iii) The availability of police and fire protection, utilities, and other essential community services;

(iv) The availability of judicial forums for all criminal and civil matters arising on the leased premises; and

(v) The effect on the environment of the proposed land use.

(4) Require any lease modifications or mitigation measures that are needed to satisfy any requirements of this subpart, or any other federal or tribal land use requirements.

(b) Where an agricultural lease is in a form that has previously been accepted or approved by us, and all of the documents needed to support the findings required by paragraph (a) of this section have been received, we will decide whether to approve the lease within 30 days of the date of our receipt of the lease and supporting documents. If we decide to approve or disapprove a lease, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter. Copies of agricultural leases that have been approved will be provided to the tenant, and made available to the Indian landowners upon request.

### § 162.215 When will an agricultural lease be effective?

Unless otherwise provided in the lease, an agricultural lease will be effective on the date on which the lease is approved by us. An agricultural lease may be made effective on some past or future date, by agreement, but such a lease may not be approved more than one year prior to the date on which the lease term is to commence.

### § 162.216 When will a BIA decision to approve an agricultural lease be effective?

Our decision to approve an agricultural lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter.

### § 162.217 Must an agricultural lease or permit be recorded?

(a) An agricultural lease or permit must be recorded in our Land Titles and Records Office with jurisdiction over the land. We will record the lease or permit immediately following our approval under this subpart.

(b) Agricultural leases of tribal land that do not require our approval, under § 162.102 of this part, must be recorded by the tribe in our Land Titles and Records Office with jurisdiction over the land.

LEASE REQUIREMENTS

### § 162.218 Is there a standard agricultural lease form?

Based on the need for flexibility in advertising, negotiating and drafting of appropriate lease terms and conditions, there is no standard agricultural lease form that must be used. We will assist the Indian landowners in drafting lease provisions that conform to the requirements of this part.

### § 162.219 Are there any provisions that must be included in an agricultural lease?

In addition to the other requirements of this part, all agricultural leases must provide that:

(a) The obligations of the tenant and its sureties to the Indian landowners will also be enforceable by the United States, so long as the land remains in trust or restricted status;

(b) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land;

(c) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises; and

(d) The tenant must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including tribal laws and leasing policies.

### § 162.220 Are there any formal requirements that must be satisfied in the execution of an agricultural lease?

(a) An agricultural lease must identify the Indian landowners and their respective interests in the leased premises, and the lease must be granted by or on behalf of each of the Indian landowners. One who executes a lease in a representative capacity under § 162.208 of this subpart must identify the owner being represented and the authority under which such action is being taken.

(b) An agricultural lease must be executed by individuals having the necessary capacity and authority to bind the tenant under applicable law.

(c) An agricultural lease must include a citation of the provisions in this subpart that authorize our approval, along with a citation of the formal documents by which such authority has been delegated to the official taking such action.

### § 162.221 How should the land be described in an agricultural lease?

An agricultural lease should describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include a legal description or other description that is sufficient to identify the leased premises, subject to our approval. Where there are undivided interests owned in fee status, the aggregate portion of trust and restricted interests should be identified in the description of the leased premises.

### § 162.222 How much rent must be paid under an agricultural lease?

(a) An agricultural lease must provide for the payment of a fair annual rental at the beginning of the lease term, unless a lesser amount is permitted under paragraphs (b) through (d) of this section. The tenant's rent payments may be:

(1) In fixed amounts; or

(2) Based on a share of the agricultural products generated by the lease, or a percentage of the income to be derived from the sale of such agricultural products.

(b) We will approve an agricultural lease of tribal land at a nominal rent, or at less than a fair annual rental, if such a rent is negotiated or established by the tribe.

(c) We will approve an agricultural lease of individually-owned land at a nominal rent or at less than a fair annual rental, if:

(1) The tenant is a member of the Indian landowner's immediate family, or a co-owner in the lease tract; or

(2) The tenant is a cooperative or other legal entity in which the Indian landowners directly participate in the

revenues or profits generated by the lease.

(d) We will grant or approve a lease at less than a fair annual rental, as previously determined by an appraisal or some other appropriate valuation method, if the land is subsequently advertised and the tenant is the highest responsible bidder.

### § 162.223 Must the rent be adjusted under an agricultural lease?

(a) Except as provided in paragraph (c) of this section, an agricultural lease must provide for one or more rental adjustments if the lease term runs more than five years, unless the lease provides for the payment of:

(1) Less than a fair annual rental, as permitted under § 162.222(b) through (c) of this part; or

(2) A rental based primarily on a share of the agricultural products generated by the lease, or a percentage of the income derived from the sale of agricultural products.

(b) If rental adjustments are required, the lease must specify:

(1) How adjustments are made;

(2) Who makes the adjustments;

(3) When the adjustments are effective; and

(4) How disputes about the adjustments are resolved.

(c) An agricultural lease of tribal land may run for a term of more than five years, without providing for a rental adjustment, if the tribe establishes such a policy under § 162.203(b)(4) and negotiates such a lease.

### § 162.224 When are rent payments due under an agricultural lease?

An agricultural lease must specify the dates on which all rent payments are due. Unless otherwise provided in the lease, rent payments may not be made or accepted more than one year in advance of the due date. Rent payments are due at the time specified in the lease, regardless of whether the tenant receives an advance billing or other notice that a payment is due.

### § 162.225 Will untimely rent payments made under an agricultural lease be subject to interest charges or late payment penalties?

An agricultural lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.251 of this subpart.

### § 162.226 To whom can rent payments be made under an agricultural lease?

(a) An agricultural lease must specify whether rent payments will be made directly to the Indian landowners or to us on behalf of the Indian landowners. If the lease provides for payment to be made directly to the Indian landowners, the lease must also require that the tenant retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of §§ 162.112 and 162.113 of this part.

(b) Rent payments made directly to the Indian landowners must be made to the parties specified in the lease, unless the tenant receives notice of a change of ownership. Unless otherwise provided in the lease, rent payments may not be made payable directly to anyone other than the Indian landowners.

(c) A lease that provides for rent payments to be made directly to the Indian landowners must also provide for such payments to be suspended and the rent thereafter paid to us, rather than directly to the Indian landowners, if:

(1) An Indian landowner dies;

(2) An Indian landowner requests that payment be made to us;

(3) An Indian landowner is found by us to be in need of assistance in managing his/her financial affairs; or

(4) We determine, in our discretion and after consultation with the Indian landowner(s), that direct payment should be discontinued.

### § 162.227 What form of rent payment can be accepted under an agricultural lease?

(a) When rent payments are made directly to the Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) Payments made to us may be delivered in person or by mail. We will not accept cash, foreign currency, or third-party checks. We will accept:

(1) Personal or business checks drawn on the account of the tenant;

(2) Money orders;

(3) Cashier's checks;

(4) Certified checks; or

(5) Electronic funds transfer payments.

### § 162.228 What other types of payments are required under an agricultural lease?

(a) The tenant may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by the tribe having jurisdiction over the land. The tenant must pay these amounts to the appropriate tribal official.

(b) Except as otherwise provided in part 171 of this chapter, if the leased premises are within an Indian irrigation project or drainage district, the tenant must pay all operation and maintenance charges that accrue during the lease term. The tenant must pay these amounts to the appropriate official in charge of the irrigation project or drainage district. Failure to make such payments will constitute a violation of the lease under § 162.251.

### § 162.229 How long can the term of an agricultural lease run?

(a) An agricultural lease must provide for a definite lease term, specifying the commencement date. The commencement date of the lease may not be more than one year after the date on which the lease is approved.

(b) The lease term must be reasonable, given the purpose of the lease and the level of investment required. Unless otherwise provided by statute, the maximum term may not exceed ten years, unless a substantial investment in the improvement of the land is required. If such a substantial investment is required, the maximum term may be up to 25 years.

(c) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(d) An agricultural lease may not provide the tenant with an option to renew, and such a lease may not be renewed or extended by holdover.

### § 162.230 Can an agricultural lease be amended, assigned, sublet, or mortgaged?

(a) An agricultural lease may authorize amendments, assignments, subleases, or mortgages of the leasehold interest, but only with the written consent of the parties to the lease in the same manner the original lease was approved, and our approval. An attempt by the tenant to mortgage the leasehold interest or authorize possession by another party, without the necessary consent and approval, will be treated as a lease violation under § 162.251 of this subpart.

(b) An agricultural lease may authorize us, one or more of the Indian landowners, or a designated representative of the Indian landowners, to consent to an amendment, assignment, sublease, mortgage, or other type of agreement, on the landowners' behalf. A designated landowner or representative may not negotiate or consent to an amendment, assignment, or sublease that would:

(1) Reduce the rentals payable to the other Indian landowners; or

(2) Terminate or modify the term of the lease.

(c) Where the Indian landowners have not designated a representative for the purpose of consenting to an amendment, assignment, sublease, mortgage, or other type of agreement, such consent may be granted by or on behalf of the landowners in the same manner as a new lease, under §§ 162.207 through 162.209 of this subpart.

### § 162.231 How can the land be used under an agricultural lease?

(a) An agricultural lease must describe the authorized uses of the leased

premises. Any use of the leased premises for an unauthorized purpose, or a failure by the tenant to maintain continuous operations throughout the lease term, will be treated as a lease violation under § 162.251 of this subpart.

(b) An agricultural lease must require that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable tribal laws, leasing policies, or agricultural resource management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all agricultural leases.

### § 162.232 Can improvements be made under an agricultural lease?

An agricultural lease must generally describe the type and location of any improvements to be constructed by the lessee. Unless otherwise provided in the lease, any specific plans for the construction of those improvements will not require the consent of the Indian owners or our approval.

### § 162.233 Who will own the improvements made under an agricultural lease?

(a) An agricultural lease may specify who will own any improvements constructed by the tenant, during the lease term. The lease must indicate whether any improvements constructed by the tenant will remain on the leased premises upon the expiration or termination of the lease, providing for the improvements to either:

(1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and us; or

(2) Be removed within a time period specified in the lease, at the tenant's expense, with the leased premises to be restored as close as possible to their condition prior to construction of such improvements.

(b) If the lease allows the tenant to remove the improvements, it must also provide the Indian landowners with an option to waive the removal requirement and take possession of the improvements if they are not removed within the specified time period. If the Indian landowners choose not to exercise this option, we will take appropriate enforcement action to ensure removal at the tenant's expense.

### § 162.234 Must a tenant provide a bond under an agricultural lease?

Unless otherwise provided by a tribe under § 162.203 of this subpart, or waived by us at the request of the owners of a majority interest in an agricultural lease tract, the tenant must provide a bond to secure:

(a) The payment of one year's rental;

(b) The construction of any required improvements;

(c) The performance of any additional lease obligations, including the payment of operation and maintenance charges under § 162.228(b) of this subpart; and

(d) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition.

### § 162.235 What form of bond can be accepted under an agricultural lease?

(a) Except as provided in paragraph (b) of this section, a bond must be deposited with us and made payable only to us, and such a bond may not be modified or withdrawn without our approval. We will only accept a bond in one of the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value at least equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to us to sell such securities in case of a violation of the terms of the lease.

(3) Certificates of deposit that indicate on their face that our approval is required prior to redemption by any party;

(4) Irrevocable letters of credit issued by federally-insured financial institutions authorized to do business in the United States. A letter of credit must:

(i) Contain a clause that grants us the authority to demand immediate payment if the tenant violates the lease or fails to replace the letter of credit at least 30 days prior to its expiration date;

(ii) Be payable to us;

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date of issuance; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides us with written notice that it will not be renewed, at least 90 calendar days before the letter of credit's expiration date.

(5) A surety bond issued by a company approved by the U.S. Department of the Treasury; or

(6) Any other form of highly liquid, non-volatile security that is easily convertible to cash and for which our approval is required prior to redemption by any party.

(b) A tribe may accept and hold any form of bond described in paragraph (a) of this section, to secure performance under an agricultural lease of tribal land.

### § 162.236 How will a cash bond be administered?

(a) If a cash bond is submitted, we will retain the funds in an account established in the name of the tenant.

(b) We will not pay interest on a cash performance bond.

(c) If the bond is not forfeited under § 162.252(a) of this subpart, we will refund the bond to the tenant upon the expiration or termination of the lease.

### § 162.237 What insurance is required under an agricultural lease?

When necessary to protect the interests of the Indian landowners, an agricultural lease must require that a tenant provide insurance. Such insurance may include property, crop, liability and/or casualty insurance. If insurance is required, it must identify both the Indian landowners and the United States as insured parties, and be sufficient to protect all insurable improvements on the leased premises.

### § 162.238 What indemnities are required under an agricultural lease?

(a) An agricultural lease must require that the tenant indemnify and hold the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the tenant's use or occupation of the leased premises, unless:

(1) The tenant would be prohibited by law from making such an agreement; or (2) The interests of the Indian landowners are adequately protected by insurance.

(b) Unless the tenant would be prohibited by law from making such an agreement, an agricultural lease must specifically require that the tenant indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault.

### § 162.239 How will payment rights and obligations relating to agricultural land be allocated between the Indian landowners and the tenant?

(a) Unless otherwise provided in an agricultural lease, the Indian landowners will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include (but are not limited to) :

(1) Insurance proceeds;

(2) Trespass damages; and

(3) Condemnation awards.

(b) An agricultural lease may provide for the tenant to assume certain cost-share or other payment obligations that have attached to the land through past farming and grazing operations, so long as those obligations are specified in the lease and considered in any determination of fair annual rental made under this subpart.

### § 162.240 Can an agricultural lease provide for negotiated remedies in the event of a violation?

(a) A lease of tribal agricultural land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. An agricultural lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.252(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) An agricultural lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.252 of this subpart.

LEASE ADMINISTRATION

### § 162.241 Will administrative fees be charged for actions relating to agricultural leases?

(a) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.

(b) Except as provided in paragraph (c) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage-based rent that can be reasonably estimated.

(c) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00, and any administrative fees that have been paid will be non-refundable. However, we may waive all or part of these administrative fees, in our discretion.

(d) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

### § 162.242 How will BIA decide whether to approve an amendment to an agricultural lease?

We will approve an agricultural lease amendment if:

(a) The required consents have been obtained from the parties to the lease under § 162.230 and any sureties; and

(b) We find the amendment to be in the best interest of the Indian landowners, under the standards set forth in § 162.213 of this subpart.

### § 162.243 How will BIA decide whether to approve an assignment or sublease under an agricultural lease?

(a) We will approve an assignment or sublease under an agricultural lease if:

(1) The required consents have been obtained from the parties to the lease under § 162.230 and the tenant's sureties;

(2) The tenant is not in violation of the lease;

(3) The assignee agrees to be bound by, or the subtenant agrees to be subordinated to, the terms of the lease; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian owners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The Indian landowners should receive any income derived by the tenant from the assignment or sublease, under the terms of the lease;

(2) The proposed use by the assignee or subtenant will require an amendment of the lease;

(3) The value of any part of the leased premises not covered by the assignment or sublease would be adversely affected; and

(4) The assignee or subtenant has bonded its performance and provided supporting documents that demonstrate that the lease or sublease will be enforceable against the assignee or subtenant, and that the assignee or subtenant will be able to perform its obligations under the lease or sublease.

### § 162.244 How will BIA decide whether to approve a leasehold mortgage under an agricultural lease?

(a) We will approve a leasehold mortgage under an agricultural lease if:

(1) The required consents have been obtained from the parties to the lease under § 162.230 and the tenant's sureties;

(2) The mortgage covers only the tenant's interest in the leased premises, and no unrelated collateral;

(3) The loan being secured by the mortgage will be used only in connection with the development or use of the leased premises, and the mortgage does not secure any unrelated debts owed by the tenant to the mortgagee; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The tenant's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would be modified by the mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the tenant.

### § 162.245 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease be effective?

Our decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

### § 162.246 Must an amendment, assignment, sublease, or mortgage approved under an agricultural lease be recorded?

An amendment, assignment, sublease, or mortgage approved under an agricultural lease must be recorded in our Land Titles and Records Office that has jurisdiction over the leased premises. We will record the document immediately following our approval under this subpart.

## LEASE ENFORCEMENT

### § 162.247 Will BIA notify a tenant when a rent payment is due under an agricultural lease?

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under an agricultural lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

### § 162.248 What will BIA do if rent payments are not made in the time and manner required by an agricultural lease?

(a) A tenant's failure to pay rent in the time and manner required by an agricultural lease will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.251(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.252 of this subpart, or invoke any other remedies available under the lease or applicable

law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

(c) Partial payments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

(d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. Any payment made to cure such a violation, and any future payments by the same tenant, must be made by one of the alternative payment methods listed in § 162.227(b) of this subpart.

### § 162.249 Will any special fees be assessed on delinquent rent payments due under an agricultural lease?

The following special fees will be assessed if rent is not paid in the time and manner required, in addition to any interest or late payment penalties that must be paid to the Indian landowners under an agricultural lease. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

| The tenant will pay * * * | For * * * |
|---|---|
| (a) $50.00 | Administrative fee for dishonored checks. |
| (b) $15.00 | Administrative fee for BIA processing of each notice or demand letter. |
| (c) 18% of balance due. | Administrative fee charged by Treasury following referral for collection of delinquent debt. |

### § 162.250 How will BIA determine whether the activities of a tenant under an agricultural lease are in compliance with the terms of the lease?

(a) Unless an agricultural lease provides otherwise, we may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the tenant is in compliance with the operating requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

### § 162.251 What will BIA do in the event of a violation under an agricultural lease?

(a) If we determine that an agricultural lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within ten business days of the receipt of a notice of violation, the tenant must:

(1) Cure the violation and notify us in writing that the violation has been cured;

(2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or

(3) Request additional time to cure the violation.

### § 162.252 What will BIA do if a violation of an agricultural lease is not cured within the requisite time period?

(a) If the tenant does not cure a violation of an agricultural lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.253 through 162.254 of this subpart;

(2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the lease; or

(4) The tenant should be granted additional time in which to cure the violation.

(b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;

(3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.253 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

### § 162.253 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving agricultural leases?

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.252 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

### § 162.254 When will a cancellation of an agricultural lease be effective?

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.253 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.253 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us.

### § 162.255 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of an agricultural lease, we will take appropriate emergency action. Emergency action may include trespass proceedings under part 166, subpart I, of this chapter, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

### § 162.256 What will BIA do if a tenant holds over after the expiration or cancellation of an agricultural lease?

If a tenant remains in possession after the expiration or cancellation of an agricultural lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover

possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under part 166, subpart I, of this chapter.

## Subpart C—Residential Leases [Reserved]

## Subpart D—Business Leases [Reserved]

## Subpart E—Special Requirements for Certain Reservations

### § 162.500 Crow Reservation.

(a) Notwithstanding the regulations in other sections of this part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:

(1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease;

(2) There is, of record, a lease on the land for all or a part of the same term;

(3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices; or

(4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

### § 162.501 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (non-irrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding ten years.

### § 162.502 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the county recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

### § 162.503 San Xavier and Salt River Pima-Maricopa Reservations.

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Arizona, in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in part 162 apply. The purpose of this section is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed ten years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed ten years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term

beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations in part 162 of this title shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this section.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

## Subpart F—Non-Agricultural Leases

### § 162.600 What types of leases are covered by this subpart?

The regulations in this subpart apply to any leases other than agricultural leases, as defined in this part. To the extent that any of the regulations in this subpart conflict with the provisions of the Indian Land Consolidation Act Amendments of 2000, Pub. Law. 106–462, the provisions of that Act will govern.

### § 162.601 Grants of leases by Secretary.

(a) The Secretary may grant leases on individually owned land on behalf of:

(1) Persons who are non compos mentis;

(2) Orphaned minors;

(3) The undetermined heirs of a decedent's estate;

(4) The heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and

(5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

### § 162.602 Grants of leases by owners or their representatives.

The following may grant leases:

(a) Adults, other than those non compos mentis,

(b) Adults, other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative,

(c) The guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability,

(d) Tribes or tribal corporations acting through their appropriate officials.

### § 162.603 Use of land of minors.

The natural or legal guardian, or other person standing in loco parentis

of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

**§ 162.604 Special requirements and provisions.**

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

(1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the federal, state or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of federal, state, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

### § 162.605 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.602 of this subpart.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 162.602 of this subpart, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 162.601(a)(1), (2), (3), and (5) of this subpart.

(c) Where the Secretary may grant leases under § 162.601 of this subpart he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

### § 162.606 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 162.601 of this subpart the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

### § 162.607 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 162.604(b)(1) and (2) of this subpart, unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Secretary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz., N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque, and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., and Calif.; which leases may be made for terms of not to exceed 99 years.

(b) Leases granted by the Secretary pursuant to § 162.601(a)(3) of this subpart shall be for a term of not to exceed two years except as otherwise provided in § 162.605(b) of this subpart.

### § 162.608 Ownership of improvements.

Improvements placed on the leased land shall become the property of the

lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

### § 162.609 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

### § 162.610 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

### § 162.611 Payment of fees and drainage and irrigation charges.

(a) Any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.

(c) Except as provided in paragraph (d) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage or cropshare rent that can be reasonably estimated.

(d) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00, and any administrative fees that have been paid will be non-refundable. However, we may

waive all or part of these administrative fees, in our discretion.

(e) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

### § 162.612 Can a lease provide for negotiated remedies in the event of a violation?

(a) A lease of tribal land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. A lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.619(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) A lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.619 of this subpart.

### § 162.613 Will BIA notify a tenant when a rent payment is due under a lease?

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under a lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

### § 162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?

A lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.618 of this subpart.

### § 162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?

(a) A tenant's failure to pay rent in the time and manner required by a lease will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.618(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.619 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

(c) Partial payments and underpayments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any

other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

(d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. Any payment made to cure such a violation, and any future payments by the same tenant, must be made by an alternative payment method approved by us.

### § 162.616 Will any special fees be assessed on delinquent rent payments due under a lease?

The following special fees will be assessed if rent is not paid in the time and manner required, in addition to any interest or late payment penalties that must be paid to the Indian landowners under a lease. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

| The tenant will pay * * * | For * * * |
|---|---|
| (a) $50.00 | Administrative fee for dishonored checks. |
| (b) $15.00 | Administrative fee for BIA processing of each notice or demand letter. |
| (c) 18% of balance due. | Administrative fee charged by Treasury following referral for collection of delinquent debt. |

### § 162.617 How will BIA determine whether the activities of a tenant under a lease are in compliance with the terms of the lease?

(a) Unless a lease provides otherwise, we may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the tenant is in compliance with the operating requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

### § 162.618 What will BIA do in the event of a violation under a lease?

(a) If we determine that a lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within ten business days of the receipt of a notice of violation, the tenant must:

(1) Cure the violation and notify us in writing that the violation has been cured;

(2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or

(3) Request additional time to cure the violation.

### § 162.619 What will BIA do if a violation of a lease is not cured within the requisite time period?

(a) If the tenant does not cure a violation of a lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.620 through 162.621 of this subpart;

(2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the lease; or

(4) The tenant should be granted additional time in which to cure the violation.

(b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as

appropriate. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;

(3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.620 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

### § 162.620 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving leases?

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.619 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

### § 162.621 When will a cancellation of a lease be effective?

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.620 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.620 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us.

### § 162.622 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a lease, we will take appropriate emergency action. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

### § 162.623 What will BIA do if a tenant holds over after the expiration or cancellation of a lease?

If a tenant remains in possession after the expiration or cancellation of a lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

## PART 163—GENERAL FORESTRY REGULATIONS

### Subpart A—General Provisions

Sec.
163.1 Definitions.
163.2 Information collection.
163.3 Scope and objectives.
163.4 Secretarial recognition of tribal laws.

### Subpart B—Forest Management and Operations

163.10 Management of Indian forest land.
163.11 Forest management planning and sustained yield management.
163.12 Harvesting restrictions.
163.13 Indian tribal forest enterprise operations.
163.14 Sale of forest products.
163.15 Advertisement of sales.
163.16 Forest product sales without advertisement.

163.17 Deposit with bid.
163.18 Acceptance and rejection of bids.
163.19 Contracts for the sale of forest products.
163.20 Execution and approval of contracts.
163.21 Bonds required.
163.22 Payment for forest products.
163.23 Advance payment for timber products.
163.24 Duration of timber contracts.
163.25 Forest management deductions.
163.26 Forest product harvesting permits.
163.27 Free-use harvesting without permits.
163.28 Fire management measures.
163.29 Trespass.
163.30 Revocable road use and construction permits for removal of commercial forest products.
163.31 Insect and disease control.
163.32 Forest development.
163.33 Administrative appeals.
163.34 Environmental compliance.
163.35 Indian forest land assistance account.
163.36 Tribal forestry program financial support.
163.37 Forest management research.

### Subpart C—Forestry Education, Education Assistance, Recruitment and Training

163.40 Indian and Alaska Native forestry education assistance.
163.41 Postgraduation recruitment, continuing education and training programs.
163.42 Obligated service and breach of contract.

### Subpart D—Alaska Native Technical Assistance Program

163.60 Purpose and scope.
163.61 Evaluation committee.
163.62 Annual funding needs assessment and rating.
163.63 Contract, grant, or agreement application and award process.

### Subpart E—Cooperative Agreements

163.70 Purpose of agreements.
163.71 Agreement funding.
163.72 Supervisory relationship.

### Subpart F—Program Assessment

163.80 Periodic assessment report.
163.81 Assessment guidelines.
163.82 Annual status report.
163.83 Assistance from the Secretary of Agriculture.

AUTHORITY: 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 415, 466; and 3101–3120.

SOURCE: 60 FR 52260, Oct. 5, 1995, unless otherwise noted.

## Subpart A—General Provisions

### § 163.1 Definitions.

*Advance deposits* means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

*Advance payments* means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

*Alaska Native* means native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

*ANCSA corporation* means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

*Approval* means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

*Approving officer* means the officer approving instruments of sale for forest products or his/her authorized representative.

*Authorized representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

*Authorized tribal representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

*Beneficial owner* means an individual or entity who holds an ownership interest in Indian land.

*Bid deposit* means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated

volume contracts or an installment payment in predetermined volume contracts.

*Commercial forest land* means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

*Expenditure plan* means a written agreement between an Indian tribe and the Secretary documenting tribal commitment to undertake specified forest land management activities within general time frames.

*Forest or forest land* means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

*Forest land management activities* means all activities performed in the management of Indian forest land including:

(a) All aspects of program administration and executive direction such as:

(1) Development and maintenance of policy and operational procedures, program oversight, and evaluation;

(2) Securing of legal assistance and handling of legal matters;

(3) Budget, finance, and personnel management; and

(4) Development and maintenance of necessary data bases and program reports.

(b) All aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re- inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans where such plans exist.

(c) Forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment.

(d) Protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire breaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements.

(e) Protection against insects and disease, including:

(1) All aspects of detection and evaluation;

(2) Preparation of project proposals containing project descriptions, environmental assessments and statements, and cost- benefit analyses necessary to secure funding;

(3) Field suppression operations and reporting.

(f) Assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance and report, demand letter, and testimony preparation.

(g) All aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents, including;

(1) Cruising, product marketing, silvicultural prescription, appraisal and harvest supervision;

(2) Forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products;

(3) Archeological, historical, environmental and other land management reviews, clearances, and analyses;

(4) Advertising, executing, and supervising contracts;

(5) Marking and scaling of timber; and

(6) Collecting, recording and distributing receipts from sales.

(h) Provision of financial assistance for the education of Indians and Alaska Natives enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses.

(i) Participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands.

(j) Improvement and maintenance of extended season primary and secondary Indian forest land road systems.

(k) Research activities to improve the basis for determining appropriate management measures to apply to Indian forest land.

*Forest management deduction* means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

*Forest management plan* means the principal document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: Standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

*Forest products* means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

*Forestry-related field* or *forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to § 163.40(a)(1).

*Forest resources* means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

*Forester intern* means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to § 163.40(b).

*Indian* means a member of an Indian tribe.

*Indian enterprise* means an enterprise which is designated as such by the Secretary or tribe.

*Indian forest land* means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

*Indian land* means land title which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

*Indian tribe* or *tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

*Installment payments* means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract value based

on purchaser bid. Payments made are normally not refundable.

*Integrated resource management plan* means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

*Noncommercial forest land* means forest land that is available for extensive management, but is incapable of producing sustainable forest products within the general rotation period. Such land may be economically harvested, but the site quality does not warrant significant investment to enhance future crops.

*Productive forest land* means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

*Reservation* means an Indian reservation established pursuant to treaties, Acts of Congress, or Executive Orders and public domain Indian allotments, Alaska Native allotments, rancherias, and former Indian reservations in Oklahoma.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Stumpage rate* means the stumpage value per unit of measure for a forest product.

*Stumpage value* means the value of a forest product prior to extraction from Indian forest land.

*Sustained yield* means the yield of forest products that a forest can produce continuously at a given intensity of management.

*Timberland* means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

*Trespass* means the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.

*Tribal forest enterprise* means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

*Unproductive forest land* means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

*Woodland* means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

### § 163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) et seq.

### § 163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a

sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

### § 163.4 Secretarial recognition of tribal laws.

Subject to the Secretary's trust responsibilities, and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(a) Assistance in the enforcement of such laws;

(b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(c) Upon the request of an Indian tribe, the appearance in tribal forums.

## Subpart B—Forest Management and Operations

### § 163.10 Management of Indian forest land.

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3 of this part.

### § 163.11 Forest management planning and sustained yield management.

(a) To further the objectives identified in § 163.3 of this part, an appropriate forest management plan shall be prepared and revised as needed for all Indian forest lands. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out through participation in the development and implementation of integrated resource management plans which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a standalone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between net

growth and harvest at the earliest practical time.

### § 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless provisions for natural and/or artificial reforestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally appropriate, based on ecological principles, to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3 of this part.

### § 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the beneficial Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.22. However, the Secretary may issue special instructions for payment by methods other than those in § 163.22 of this part; and

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

### § 163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized by tribal resolution or resolution of recognized tribal government, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial Indian owner(s).

(b) On individually owned Indian forest land not formally designated for retention in its natural state, the Secretary may, after consultation, sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage value exceeding $15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in § 163.20 of this part.

(d) With the approval of the Secretary, authorized beneficial Indian owners who have been duly apprised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value.

(e) Except as provided in § 163.14(d) of this part, in all such sales, the forest products shall be appraised and sold at stumpage rates not less than those established by the Secretary.

### § 163.15 Advertisement of sales.

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26 of this part, sales of

forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a nonmember. If the estimated stumpage value of the forest products offered does not exceed $15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds $15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed $50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds $50,000 but not $250,000, for not less than 30 days; and if the estimated stumpage value exceeds $250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

### § 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

### § 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than $100,000 and in any event not less than $1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is $100,000 to $250,000 but in any event not less than $10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds $250,000 but in any event not less than $12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained

pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 of this part within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

### § 163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

### § 163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding $15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

### § 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary

may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

### § 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to this part in § 163.13 or in timber cutting permits issued pursuant to § 163.26 of this part.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed $15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds $15,000 but is not over $150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than $3,000.

(3) In sales in which the estimated stumpage value exceeds $150,000, but is not over $350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than $22,500.

(4) In sales in which the estimated stumpage value exceeds $350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than $35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act as trustee under terms of an appropriate trust;

(3) Negotiable U.S. Government securities supported by an appropriate trust instrument; or

(4) An irrevocable letter of credit.

### § 163.22 Payment for forest products.

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to § 163.13 of this part, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to § 163.25 of this part, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advance deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advance payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

### § 163.23 Advance payment for timber products.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in § 163.23(a) of this part.

### § 163.24 Duration of timber contracts.

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

### § 163.25 Forest management deductions.

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than $5,001.

(d) Except as provided in § 163.25(e) of this part, the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary may increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest

management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes allocation of tribal funds for Indian forest land management activities. Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) Forest management deductions shall be handled in the same manner as described under §163.25(f)(1) of this part if the expenditure plan approved by an Indian tribe and the Secretary provides for the conduct of forest land management activities on Indian forest lands located outside the boundaries of an Indian reservation.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within 120 days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books, or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in §163.25(f) of this part, only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury miscellaneous receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

### §163.26 Forest product harvesting permits.

(a) Except as provided in §§163.13 and 163.27 of this part, removal of forest products that are not under formal contract, pursuant to §163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the beneficial Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in §163.20 of this part. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed $5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in §163.25 of this part, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed $25,000. For the purpose of issuance of paid permits, individual shall mean an individual or

any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to §163.25 of this part. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by §163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary that he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

### §163.27 Free-use harvesting without permits.

With the consent of the beneficial Indian owners and the Secretary, Indians may harvest designated types of forest products from Indian forest land without a permit or contract, and without charge. Forest products harvested under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

### §163.28 Fire management measures.

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary is authorized to conduct a wildfire prevention program to reduce the number of person-caused fires and prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

### §163.29 Trespass.

(a) Trespassers will be liable for civil penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in Tribal Court.* For trespass actions brought in tribal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this §163.29 of this part. All other aspects of a tribal trespass prosecution brought under these regulations will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless otherwise prescribed under federal law. Absent applicable tribal or federal law, the measure of damages shall be that prescribed by the law of the state in which the trespass was committed.

(2) *Cases in Federal Court.* For trespass actions brought in Federal court

pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this §163.29. In the absence of applicable federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law, the law of the state in which it was committed.

(3) Civil penalties for trespass include, but are not limited to:

(i) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product as defined in §163.1 of this part. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under §163.29(a) of this part. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the reservation in which the trespass took place.

(d) Civil penalties and other damages collected under these regulations, except for penalties and damages provided for in §§163.29(a)(3) (ii) and (iii) of this part, shall be treated as proceeds from the sale of forest products from

the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative pursuant to §163.29(j) of this part has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under these regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through administrative appeal pursuant to part 2 of title 25, and shall provide the name and the address of the official with whom the appeal may be filed. Alternately, an official may exercise concurrent tribal seizure authority under these regulations using applicable tribal law. In such case, the Notice of Seizure shall identify the tribal law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to §163.29(k) of this part responsible for the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

(1) That such products could be Indian trust property involved in a trespass; and

(2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or tribe.

(g) A representative of the Secretary or authorized tribal representative pursuant to §163.29(j) of this part will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:

(1) That a determination has been made that a trespass has occurred;

(2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in civil and/or criminal action by the United States or the tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated

by a tribe exercising its concurrent jurisdiction pursuant to § 163.29(j) of this part.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce 25 U.S.C. 3106 and this section against any person.

(1) The Secretary shall acknowledge said concurrent civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction over trespass cases as set forth in § 163.29(j)(1) of this part, the Secretary and tribe's authorized representatives will be jointly responsible to coordinate prosecution of trespass actions. The Secretary shall, upon timely request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the authorized forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases. Where an Indian tribe has acquired concurrent civil jurisdiction, but does not request deferral of prosecution, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the tribal court or forum.

(3) The Secretary may rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this regulation if the Secretary or a court of competent jurisdiction determines that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If it is determined that said rescission is justified, the Secretary shall provide written Notice of the rescission, including the findings justifying the rescission and the steps needed to remedy the violations causing the rescission, to the chief judge of the tribal judiciary or other authorized tribal official should there be no chief judge. If said steps are not taken within 60 days, the Secretary's rescission of concurrent civil jurisdiction shall become final. The affected tribe(s) may appeal a Notice of Rescission under part 2 of title 25.

(4) Nothing shall be construed to prohibit or in any way diminish the authority of a tribe to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

### § 163.30 Revocable road use and construction permits for removal of commercial forest products.

(a) In accordance with 25 U.S.C. 415 as amended, the Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or those with an interest therein are unknown so long as the majority of owner(s) of interests whose whereabouts are known, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any land owner; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), that cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, under 25 CFR part 169, or conflict with provisions of that part.

### § 163.31 Insect and disease control.

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

### § 163.32 Forest development.

Forest development pertains to forest land management activities undertaken to improve the sustainable productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to reestablish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

### § 163.33 Administrative appeals.

Any challenge to action under 25 CFR part 163 taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

(a) Not stay any action unless otherwise directed by the Secretary; and

(b) Define ''interested party'' for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision.

### § 163.34 Environmental compliance.

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and tribal laws and regulations.

### § 163.35 Indian forest land assistance account.

(a) At the request of a tribe's authorized representatives, the Secretary may establish tribal-specific forest land assistance accounts within the trust fund system.

(b) Deposits shall be credited either to forest transportation or to general forest land management accounts.

(c) Deposits into the accounts may include:

(1) Funds from non-federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of §163.35(c)(3) of this part; unobligated forestry appropriations shall consist of balances that remain unobligated at the end of the fiscal year(s) for which funds are appropriated for the benefit of an Indian tribe.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) The Secretary may, where circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the audit results of to the tribe(s).

### §163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation (as defined under §163.36(b)(1)–(3)) with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes that has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee

General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs;

(2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs; and

(3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

(1) A funding level qualification value shall be determined for each eligible applicant using the formula below. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one (1) or greater shall qualify for level one assistance.

*Funding Level Qualification Formula*

$$\left[\frac{.5\times \mathrm{CA}}{\mathrm{Tot.\ CA}}+\frac{.5\times \mathrm{AAC}}{\mathrm{Tot.\ AAC}}\right]\times 1000$$

where:

CA=applicant's total commercial Indian forest land acres;

Tot. CA=national total commercial Indian forest land acres;

AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and

Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under § 163.36(d) of this part are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under § 163.36(d) of this part are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

(1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;

(2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and

(3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

### § 163.37 Forest management research.

The Secretary, with the consent of the authorized Indian representatives' is authorized to perform forestry research activities to improve the basis for determining appropriate land management activities to apply to Indian forest land.

## Subpart C—Forestry Education, Education Assistance, Recruitment and Training

### § 163.40 Indian and Alaska Native forestry education assistance.

(a) *Establishment and evaluation of the forestry education assistance programs.* (1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. This committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure that there are adequate Indian and Alaska Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and

evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.* (1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

(i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;

(ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related field which could include courses on indigenous culture; and

(iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in §163.40(b)(3) of this part may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

(i) Be eligible for Indian preference as defined in 25 CFR part 5, subchapter A;

(ii) Possess a high school diploma or its recognized equivalent;

(iii) Be able to successfully complete the intern program within a three year maximum time period; and

(iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semiannually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by §163.40(b)(3)(iv) of this part may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at a bachelor degree granting institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall

be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to §163.40(a)(1) of this part will evaluate annually the performance of forester intern program participants against requirements enumerated in §163.40(b)(6) of this part to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.* (1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b).

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in 5 CFR 213.3202;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants bachelor degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at the bachelor degree-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in §163.40(c)(3) of this part without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry- related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.* (1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry, to establish and grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to this part in §163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one half academic years of general, undergraduate course work leading to a

degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the bachelor degree granting institution.

(6) Pregraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a bachelor degree in a forestry or forestry-related curriculum; and

(ii) Be accepted into a forestry or forestry-related bachelor degree-granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to this part in §163.40(a)(1), for which funding is available.

(e) *Forestry education outreach.* (1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness that could include modern technologies as well as native indigenous forestry technologies;

(iii) Involve students in projects and activities oriented to forestry related professions early so students realize the need to complete required precollege courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to §163.40(a)(1) of this part.

(f) *Postgraduate studies.* (1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporations so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by §163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to §163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with §163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with §163.42(b) of this part.

### §163.41 Postgraduation recruitment, continuing education and training programs.

(a) *Postgraduation recruitment program.* (1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry- related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with §163.42(a) of this part. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with §163.42(b) of this part.

(b) *Postgraduate intergovernmental internships.* (1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of agencies of the Department of the Interior.

(2) Foresters or forestry-related personnel from other Department of the Interior agencies may apply through proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to 25 percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

(c) *Continuing education and training.* (1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training, including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

**§ 163.42 Obligated service and breach of contract.**

(a) *Obligated service.* (1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90-day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the forester intern program, which includes the special provisions outlined in § 163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferment of obligated service to pursue postgraduate or postdoctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferments granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated

service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for waiver. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for waiver.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement and who does not accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) *Forester intern program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Corporation, shall not be included in this total.

(2) *Cooperative education program*—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) *Scholarship program*—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) *Postgraduation recruitment program*—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) *Postgraduate studies program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.* Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.

## Subpart D—Alaska Native Technical Assistance Program

### § 163.60 Purpose and scope.

(a) The Secretary shall provide a technical assistance program to ANCSA corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA corporation forest land, and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

### § 163.61 Evaluation committee.

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

### § 163.62 Annual funding needs assessment and rating.

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

### § 163.63 Contract, grant, or agreement application and award process.

(a) At such time that the budget for ANCSA corporation technical assistance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

(1) Preparing the technical parts of the contract, grant, or agreement application; and

(2) Obtaining technical assistance from other Federal agencies.

## Subpart E—Cooperative Agreements

### § 163.70 Purpose of agreements.

(a) To facilitate administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

(1) Engage in cooperative manpower and job training and development programs;

(2) Develop and publish cooperative environmental education and natural resource planning materials; and

(3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefited. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

### § 163.71 Agreement funding.

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

### § 163.72 Supervisory relationship.

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

## Subpart F—Program Assessment

### § 163.80 Periodic assessment report.

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices

under the guidelines established in § 163.81 of this part.

(a) Assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83 of this part, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

### § 163.81 Assessment guidelines.

Assessments shall be national in scope and shall include:

(a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;

(b) A survey of the condition of Indian forest land, including health and productivity levels;

(c) An evaluation of the staffing patterns, by management activity, of forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

### § 163.82 Annual status report.

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, and the quantity of timber available for sale, offered for sale, and sold, for each Indian tribe.

### § 163.83 Assistance from the Secretary of Agriculture.

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80 of this part.

# PART 166—GRAZING PERMITS

## Subpart A—Purpose, Scope, and Definitions

Sec.
166.1 What is the purpose and scope of this part?
166.2 Can the BIA waive the application of these regulations?
166.3 May decisions under this part be appealed?
166.4 What terms do I need to know?

## Subpart B—Tribal Policies and Laws Pertaining to Permits

166.100 What special tribal policies will we apply to permitting on Indian agricultural lands?
166.101 May individual Indian landowners exempt their land from certain tribal policies for permitting on Indian agricultural lands?
166.102 Do tribal laws apply to permits?
166.103 How will tribal laws be enforced on Indian agricultural land?
166.104 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

## Subpart C—Permit Requirements

GENERAL REQUIREMENTS

166.200 When is a permit needed to authorize possession of Indian land for grazing purposes?
166.201 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?
166.202 May an emancipated minor grant a permit?
166.203 When can the Indian landowners grant a permit?
166.204 Who may represent an individual Indian landowner in granting a permit?
166.205 When can the BIA grant a permit on behalf of Indian landowners?
166.206 What requirements apply to a permit on a fractionated tract?
166.207 What provisions will be contained in a permit?
166.208 How long is a permit term?
166.209 Must a permit be recorded?
166.210 When is a decision by the BIA regarding a permit effective?
166.211 When are permits effective?
166.212 When may a permittee take possession of permitted Indian land?
166.213 Must I comply with any standards of conduct if I am granted a permit?
166.214 Will the BIA notify the permittee of any change in land title status?

OBTAINING A PERMIT

166.215 How can I find Indian land available for grazing?
166.216 Who is responsible for permitting Indian land?
166.217 In what manner may a permit on Indian land be granted?
166.218 How do I acquire a permit through tribal allocation?
166.219 How do I acquire a permit through negotiation?
166.220 What are the basic steps for acquiring a permit through negotiation?
166.221 How do I acquire an advertised permit through competitive bidding?
166.222 Are there standard permit forms?

PERMIT (LEASEHOLD) MORTGAGE

166.223 Can I use a permit as collateral for a loan?
166.224 What factors does the BIA consider when reviewing a leasehold mortgage?
166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?
166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

MODIFYING A PERMIT

166.227 How can Indian land be removed from an existing permit?
166.228 How will the BIA provide notice if Indian land is removed from an existing permit?
166.229 Other than to remove land, how can a permit be amended, assigned, subpermitted, or mortgaged?
166.230 When will a BIA decision to approve an amendment, assignment, subpermit, or mortgage under a permit be effective?
166.231 Must an amendment, assignment, subpermit, or mortgage approved under a permit be recorded?

## Subpart D—Land and Operations Management

166.300 How is Indian agricultural land managed?
166.301 How is Indian land for grazing purposes described?
166.302 How is a range unit created?
166.303 Can more than one parcel of Indian land be combined into one permit?
166.304 Can there be more than one permit for each range unit?
166.305 When is grazing capacity determined?
166.306 Can the BIA adjust the grazing capacity?
166.307 Will the grazing capacity be increased if I graze adjacent trust or nontrust rangelands not covered by the permit?

166.308 Can the number of animals and/or season of use be modified on the permitted land if I graze adjacent trust or non-trust rangelands under an on-and-off grazing permit?
166.309 Who determines livestock class and livestock ownership requirements on permitted Indian land?
166.310 What must a permittee do to protect livestock from exposure to disease?

MANAGEMENT PLANS AND ENVIRONMENTAL COMPLIANCE

166.311 Is an Indian agricultural resource management plan required?
166.312 Is a conservation plan required?
166.313 Is environmental compliance required?

CONSERVATION PRACTICES AND IMPROVEMENTS

166.314 Can a permittee apply a conservation practice on permitted Indian land?
166.315 Who is responsible for the completion and maintenance of a conservation practice if the permit expires or is canceled before the completion of the conservation practice?
166.316 Can a permittee construct improvements on permitted Indian land?
166.317 What happens to improvements constructed on Indian lands when the permit has been terminated?

## Subpart E—Grazing Rental Rates, Payments, and Late Payment Collections

RENTAL RATE DETERMINATION AND ADJUSTMENT

166.400 Who establishes grazing rental rates?
166.401 How does the BIA establish grazing rental rates?
166.402 Why must the BIA determine the fair annual rental of Indian land?
166.403 Will the BIA ever grant or approve a permit at less than fair annual rental?
166.404 Whose grazing rental rate will be applicable for a permit on tribal land?
166.405 Whose grazing rental rate will be applicable for a permit on individually-owned Indian land?
166.406 Whose grazing rental rate will be applicable for a permit on government land?
166.407 If a range unit consists of tribal and individually-owned Indian lands, what is the grazing rental rate?
166.408 Is the grazing rental rate established by the BIA adjusted periodically?

RENTAL PAYMENTS

166.409 How is my grazing rental payment determined?
166.410 When are grazing rental payments due?
166.411 Will a permittee be notified when a grazing rental payment is due?
166.412 What if the permittee does not receive an invoice that a grazing rental payment is due?
166.413 To whom are grazing rental payments made?
166.414 What forms of grazing rental payments are acceptable?
166.415 What will the BIA do if the permittee fails to make a direct payment to an Indian landowner?
166.416 May a permittee make a grazing rental payment in advance of the due date?
166.417 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?
166.418 When is a grazing rental payment late?

LATE RENTAL PAYMENT COLLECTIONS

166.419 What will the BIA do if grazing rental payments are not made in the time and manner required by the permit?
166.420 Will any special fees be assessed on delinquent grazing rental payments due under a permit?
166.421 If a permit is canceled for non-payment, does that extinguish the permittee's debt?

COMPENSATION TO INDIAN LANDOWNERS

166.422 What does the BIA do with grazing rental payments received from permittees?
166.423 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?
166.424 How will the BIA determine the grazing rental payment amount to be distributed to each Indian landowner?

## Subpart F—Administrative and Tribal Fees

166.500 Are there administrative fees for a permit?
166.501 How are annual administrative fees determined?
166.502 Are administrative fees refundable?
166.503 May the BIA waive administrative fees?
166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

## Subpart G—Bonding and Insurance Requirements

166.600 Must a permittee provide a bond for a permit?
166.601 How is the amount of the bond determined?
166.602 What form of bonds will the BIA accept?

166.603 If cash is submitted as a bond, how is it administered?
166.604 Is interest paid on a cash performance bond?
166.605 Are cash performance bonds refunded?
166.606 What happens to a bond if a violation occurs?
166.607 Is insurance required for a permit?
166.608 What types of insurance may be required?

## Subpart H—Permit Violations

166.700 What permit violations are addressed by this subpart?
166.701 How will the BIA determine whether the activities of a permittee under a permit are in compliance with the terms of the permit?
166.702 Can a permit provide for negotiated remedies in the event of a permit violation?
166.703 What happens if a permit violation occurs?
166.704 What will a written notice of a permit violation contain?
166.705 What will the BIA do if a permit violation is not cured within the required time period?
166.706 Will the BIA's regulations concerning appeal bonds apply to cancellation decisions involving permits?
166.707 When will a cancellation of a permit be effective?
166.708 Can the BIA take emergency action if the rangeland is threatened with immediate, significant, and irreparable harm?
166.709 What will the BIA do if a permittee holds over after the expiration or cancellation of a permit?

## Subpart I—Trespass

166.800 What is trespass?
166.801 What is the BIA's trespass policy?
166.802 Who can enforce this subpart?

NOTIFICATION

166.803 How are trespassers notified of a trespass determination?
166.804 What can I do if I receive a trespass notice?
166.805 How long will a written trespass notice remain in effect?

ACTIONS

166.806 What actions does the BIA take against trespassers?
166.807 When will we impound unauthorized livestock or other property?
166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?
166.809 What happens after my unauthorized livestock or other property are impounded?
166.810 How do I redeem my impounded livestock or other property?
166.811 How will the sale of impounded livestock or other property be conducted?

PENALTIES, DAMAGES, AND COSTS

166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?
166.813 How will the BIA determine the value of forage or crops consumed or destroyed?
166.814 How will the BIA determine the value of the products or property illegally used or removed?
166.815 How will the BIA determine the amount of damages to Indian agricultural land?
166.816 How will the BIA determine the costs associated with enforcement of the trespass?
166.817 What happens if I do not pay the assessed penalties, damages and costs?
166.818 How are the proceeds from trespass distributed?
166.819 What happens if the BIA does not collect enough money to satisfy the penalty?

## Subpart J—Agriculture Education, Education Assistance, Recruitment, and Training

166.900 How are the Indian agriculture education programs operated?
166.901 How will the BIA select an agriculture intern?
166.902 How can I become an agriculture educational employment student?
166.903 How can I get an agriculture scholarship?
166.904 What is agriculture education outreach?
166.905 Who can get assistance for postgraduate studies?
166.906 What can happen if we recruit you after graduation?
166.907 Who can be an intern?
166.908 Who can participate in continuing education and training?
166.909 What are my obligations to the BIA after I participate in an agriculture education program?
166.910 What happens if I do not fulfill my obligation to the BIA?

## Subpart K—Records

166.1000 Who owns the records associated with this part?
166.1001 How must records associated with this part be preserved?

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; Sec. 6, 96 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; Sec. 3, 26 Stat. 795, 25 U.S.C. 397; Sec. 1, 28 Stat. 305, 25 U.S.C. 402; Sec. 4, 36 Stat. 856, 25 U.S.C. 403; Sec. 1, 39 Stat. 128, 25 U.S.C. 394; Sec. 1, 41 Stat. 1232, 25 U.S.C. 393; Sec. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; Sec. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011; 44 U.S.C. § 3101, *et seq.*)

SOURCE: 66 FR 7126, Jan. 22, 2001, unless otherwise noted.

## Subpart A—Purpose, Scope, and Definitions

### § 166.1 What is the purpose and scope of this part?

(a) The purpose of this part is to describe the authorities, policies, and procedures the BIA uses to approve, grant, and administer a permit for grazing on tribal land, individually-owned Indian land, or government land.

(b) If the BIA's approval is not required for a permit, these regulations will not apply.

(c) These regulations do not apply to any tribal land which is permitted under a corporate charter issued by us pursuant to 25 U.S.C. § 477, or under a special act of Congress authorizing permits without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such permits on behalf of the Indian landowners.

(d) To the extent that any provisions of this part conflict with Section 213 of the Indian Land Consolidation Act Amendments of 2000, the provisions of that act will govern.

(e) In approving a permit on behalf of the Indian landowners, the BIA will not permit for fee interest owners nor will we collect rent on behalf of fee interest owners. Our permitting of the trust and restricted interests of the Indian landowners will not be conditioned on a permit having been obtained from any fee interest owners. However, where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a permit of the remainder interests of the Indian landowners only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners. Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be permitted under these regulations, unless the permit is for less than one year in duration. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the permit must be paid to the holder of the life estate under part 179 of this title.

### § 166.2 Can the BIA waive the application of these regulations?

Yes. In any case in which these regulations conflict with the objectives of the agricultural resource management plan provided for in § 166.311 of this part, or with a tribal law, the BIA may waive the application of such regulations unless the waiver would constitute a violation of a federal statute or judicial decision or would conflict with the BIA's general trust responsibility under federal law.

### § 166.3 May decisions under this part be appealed?

Yes. Except where otherwise provided in this part, appeals from decisions by the BIA under this part may be taken pursuant to 25 CFR part 2.

### § 166.4 What terms do I need to know?

*Adult* means an individual Indian who is 18 years of age or older.

*Agency* means the agency or field office or any other designated office in the Bureau of Indian Affairs (BIA) having jurisdiction over trust or restricted property or money.

*Agricultural product* means:

(1) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(2) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;

(3) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of

livestock, sold for commercial profit, or used for other purposes; and

(4) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

*Agricultural resource management plan* means a ten-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and Indian tribal governments.

*AIARMA* means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).

*Allocation* means the apportionment of grazing privileges without competition to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

*Animal Unit Month (AUM)* means the amount of forage required to sustain one cow or one cow with one calf for one month.

*Approving/approval* means the action taken by the BIA to approve a permit.

*Assign/assignment* means an agreement between a permittee and an assignee, whereby the assignee acquires all of the permittee's rights, and assumes all of the permittee's obligations under a permit.

*Assignee* means the person to whom the permit rights for use of Indian land are assigned.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the BIA under this part.

*Bond* means security for the performance of certain permit obligations, as furnished by the permitee, or a guaranty of such performance as furnished by a third-party surety.

*Conservation plan* means a statement of management objectives for grazing, including contract stipulations defining required uses, operations, and improvements.

*Conservation practice* means a management action to protect, conserve, utilize, and maintain the sustained yield productivity of Indian agricultural land.

*Day* means a calendar day.

*Encumbrance* means mortgage, deed of trust or other instrument which secures a debt owed by a permittee to a lender or other holder of a leasehold mortgage on the permit interest.

*Emancipated minor* means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

*Fair annual rental* means the amount of rental income that a permitted parcel of Indian land would most probably command in an open and competitive market.

*Farmland* means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products, and may be either dry land, irrigated land, or irrigated pasture.

*Fee interest* means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

*Fractionated tract* means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

*Government land* means any tract, or interest therein, in which the surface estate is owned by the United States and administered by the BIA, not including tribal land which has been reserved for administrative purposes.

*Grant/granting* means the process of the BIA or the Indian landowner agreeing or consenting to a permit.

*Grazing capacity* means the maximum sustainable number of livestock that may be grazed on a defined area and within a defined period, usually expressed in an Animal Unit Month (AUM).

*Grazing rental payment* means the total of the grazing rental rate multiplied by the number of AUMs or acres in the permit.

*Grazing rental rate* means the amount you must pay for an AUM or acre based on the fair annual rental.

*I/You* means the person to whom these regulations directly apply.

*Immediate family* means the spouse, brothers, sisters, lineal ancestors, lineal descendants, or members of the household of an individual Indian landowner.

*Indian agricultural land* means Indian land, including farmland and rangeland, excluding Indian forest land, that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

*Indian land* means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

*Indian landowner* means a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

*Individually-owned Indian land* means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

*Interest* means, when used with respect to Indian land, an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

*Life estate* means an interest in Indian land which is limited in duration to the life of the permittor holding the interest, or the life of some other person.

*Majority interest* means the ownership interest(s) that are greater than 50 percent of the trust or restricted ownership interest(s) in a tract of Indian land.

*Minor* means an individual who is less than 18 years of age.

*Mortgage* means a mortgage, deed of trust or other instrument which pledges a permittee's permit (leasehold) interest as security for a debt or other obligation owed by the permittee to a lender or other mortgagee.

*Non compos mentis* means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of transacting or conducting business and managing one's own affairs.

*On-and-off grazing permit* means a written agreement with a permittee for additional grazing capacity for other rangeland not covered by the permit.

*Permit* means a written agreement between Indian landowners and a permittee, whereby the permittee is granted a revocable privilege to use Indian land or Government land, for a specified purpose.

*Permittee* means an a person or entity who has acquired a legal right of possession to Indian land by a permit for grazing purposes under this part.

*Range unit* means rangelands consolidated to form a unit of land for the management and administration of grazing under a permit. A range unit may consist of a combination of tribal, individually-owned Indian, and/or government land.

*Rangeland* means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

*Restricted land or restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Subpermit* means a written agreement, whereby the permittee grants to an individual or entity a right to possession (i.e., pasturing authorization), no greater than that held by the permittee under the permit.

*Surety* means one who guarantees the performance of another.

*Sustained yield* means the yield of agricultural products that a unit of land can produce continuously at a given level of use.

*Trespass* means any unauthorized occupancy, use of, or action on Indian lands.

*Tribal land* means the surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a

tribe, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476).

*Tribal law* means the body of non-federal law that governs lands and activities under the jurisdiction of a tribe, including ordinances or other enactments by the tribe, tribal court rulings, and tribal common law.

*Trust land* means any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

*Undivided interest* means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

*Us/We/Our* means the BIA and any tribe acting on behalf of the BIA under 166.1 of this part.

*Uniform Standards of Professional Appraisal Practices (USPAP)* means the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

*Written notice* means a written letter mailed by way of United States mail, certified return receipt requested, postage prepaid, or hand-delivered letter.

## Subpart B—Tribal Policies and Laws Pertaining to Permits

### § 166.100 What special tribal policies will we apply to permitting on Indian agricultural lands?

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, the BIA will:

(1) Waive the general prohibition against Indian operator preferences in permits advertised for bid under § 166.221 of this part, by allowing prospective Indian operators to match the highest responsible bid (unless the tribal law or leasing policy specifies some other manner in which the preference must be afforded);

(2) Waive or modify the requirement that a permittee post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of surety or other bonds; and

(4) Approve permits of tribally-owned agricultural lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, and subject to paragraph (c) of this section, the BIA may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a permit on ''highly fractionated undivided heirship lands'' as defined by tribal law.

(c) The BIA may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes ''highly fractionated undivided heirship lands'';

(2) The tribe adopts an alternative plan for notifying individual Indian landowners; and

(3) The BIA's action is necessary to prevent waste, reduce idle land acreage and ensure income.

### § 166.101 May individual Indian landowners exempt their land from certain tribal policies for permitting on Indian agricultural lands?

(a) The individual Indian landowners of Indian land may exempt their land from our application of a tribal policy referred to under § 166.100 of this part if:

(1) The Indian landowners have at least a 50% interest in such fractionated tract; and

(2) The Indian landowners submit a written objection to the BIA of all or any part of such tribal policies to the permitting of such parcel of land.

(b) Upon verification of the written objection we will notify the tribe of the Indian landowners' exemption from the specific tribal policy.

(c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

### § 166.102 Do tribal laws apply to permits?

Tribal laws will apply to permits of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

### § 166.103 How will tribal laws be enforced on Indian agricultural land?

(a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on Indian agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the tribe is primarily responsible for enforcing tribal laws pertaining to Indian agricultural land, we will:

(1) Assist in the enforcement of tribal laws;

(2) Provide notice of tribal laws to persons or entities undertaking activities on Indian agricultural land, under § 166.104(b) of this part; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as such an appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR Part 2, Subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of our actions by a tribal court.

(c) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 166.2 of this part, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

### § 166.104 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

(a) Tribes must notify us of the content and effective dates of new tribal laws.

(b) We will then notify affected Indian landowners and any persons or entities undertaking activities on Indian agricultural lands of the superseding or modifying effect of the tribal law. We will:

(1) Provide individual written notice; or

(2) Post public notice. This notice will be posted at the tribal community building, U.S. Post Office, and/or published in the local newspaper nearest to the Indian lands where activities are occurring.

## Subpart C—Permit Requirements

GENERAL REQUIREMENTS

### § 166.200 When is a permit needed to authorize possession of Indian land for grazing purposes?

(a) Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a permit under these regulations before taking possession of Indian land for grazing purposes.

(b) An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession of that Indian land without a permit or any other prior authorization from us.

(c) If an Indian landowner does not own 100 percent (%) of his or her Indian land and wants to use the Indian land for grazing purposes, a permit must be granted by the majority interest of the fractionated tract.

### § 166.201 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?

Parents or guardians need not obtain a permit for Indian lands owned by their minor Indian children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use of the land. We may require the user to provide evidence of the direct benefits to the minor children. When one of the minor children becomes an adult, the permit will have to be obtained from the majority interest.

### § 166.202 May an emancipated minor grant a permit?

Yes. An emancipated minor may grant a permit.

### § 166.203 When can the Indian landowners grant a permit?

(a) Tribes grant permits of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A permit granted by the tribe must be approved by us, unless the permit is authorized by a charter approved by us under 25 U.S.C. § 477, or unless our approval is not required under other applicable federal law. In order to permit tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the permit, subject to our approval.

(b) Individual Indian landowners may grant a permit of their land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these Indian landowners may include the owner of a life estate holding 100 percent (%) interest in their land.

(c) The owners of a majority interest in the Indian ownership of a fractionated tract may grant a permit, subject to our approval, without giving prior notice to the minority Indian landowners as long as the minority interest owners receive fair annual rental.

### § 166.204 Who may represent an individual Indian landowner in granting a permit?

The following individuals or entities may represent an individual Indian landowner in granting a permit:

(a) An adult with custody acting on behalf of their minor children;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be permitted; and

(3) Describes the scope of the power granted and any limits thereon.

### § 166.205 When can the BIA grant a permit on behalf of Indian landowners?

(a) We may grant a permit on behalf of:

(1) An individual who is adjudicated to be non compos mentis by a court of competent jurisdiction;

(2) An orphaned minor;

(3) An Indian landowner who has granted us written authority to permit his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the Indian landowner;

(6) Indian landowners, where:

(i) We have provided written notice of our intent to grant a permit on their behalf, but the Indian landowners are unable to agree upon a permit during a three-month negotiation period immediately following such notice, or any other notice period established by a tribe under § 166.100(c)(2) of this part; and

(ii) The land is not being used by an individual Indian landowner under § 166.200 of this part.

(7) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

### § 166.206 What requirements apply to a permit on a fractionated tract?

We may grant a permit on behalf of all Indian landowners of a fractionated tract as long as the owners receive fair annual rental. Before granting such a permit, we may offer a preference right to any Indian landowner who:

(a) Is in possession of the entire tract;

(b) Submits a written offer to permit the land, subject to any required or negotiated terms and conditions, prior to our granting a permit to another party; and

(c) Provides any supporting documents needed to demonstrate the ability to perform all of the obligations under the proposed permit.

### § 166.207 What provisions will be contained in a permit?

A permit, at a minimum, must include:

(a) Authorized user(s);

(b) Conservation plan requirements;

(c) Prohibition against creating a nuisance, any illegal activity, and negligent use or waste or resources;

(d) Numbers and types of livestock allowed;

(e) Season(s) of use;

(f) Grazing rental payment, payment schedule, and late payment interest and penalties;

(g) Administrative fees;

(h) Tribal fees, if applicable;

(i) Payment method;

(j) Range unit number or name;

(k) Animal identification requirements;

(l) A description (preferably a legal description) of the permitted area;

(m) Term of permit (including beginning and ending dates of the term allowed, as well as any option to renew, extend or terminate);

(n) Conditions for making improvements, if any;

(o) A right of entry by the BIA for purposes of inspection or enforcement purposes;

(p) A provision concerning the applicability of tribal jurisdiction;

(q) A provision stating how trespass proceeds are to be distributed; and

(r) A provision for the permittee to indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials or the release or discharge of any hazardous material from the permitted premises that occur during the permit term, regardless of fault.

### § 166.208 How long is a permit term?

(a) The duration must be reasonable given the purpose of the permit and the level of investment required by the permittee to place the property into productive use.

(b) On behalf of the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant or approve permits for a maximum term of two years.

(c) Permits granted for agricultural purposes will not usually exceed ten years. A term longer than ten years, but not to exceed 25 years unless authorized by other federal law, may be authorized when a longer term is determined by us to be in the best interest of the Indian landowners and when such permit requires substantial investment in the development of the lands by the permittee.

(d) A tribe may determine the duration of permits composed entirely of its tribal land or in combination with government land, subject to the same limitations provided in paragraph (d) of this section.

(e) A permit will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

(f) Permits granted by us for protection of the Indian land will be for no more than two years.

### § 166.209 Must a permit be recorded?

A permit must be recorded in our Land Titles and Records Office which has jurisdiction over the land. We will record the permit immediately following our approval under this subpart.

### § 166.210 When is a decision by the BIA regarding a permit effective?

Our decision to approve a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of the approved permit will be provided to the permitee and made available to the Indian landowners upon request.

### § 166.211 When are permits effective?

Unless otherwise provided in the permit, a permit will be effective on the date on which the permit is approved by us. A permit may be made effective on some past or future date, by agreement, but such a permit may not be granted or approved more than one year prior to the date on which the permit term is to commence.

### § 166.212 When may a permittee take possession of permitted Indian land?

The permittee may take possession of permitted Indian land on the date

specified in the permit as the beginning date of the term, but not before we approve the permit.

### § 166.213 Must I comply with any standards of conduct if I am granted a permit?

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in tribal laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. You must also pay all applicable penalties that may be assessed for non-compliance.

(c) Fulfill all financial obligations of your permit owed to the Indian landowners and the United States.

(d) Conduct only those activities authorized by the permit.

### § 166.214 Will the BIA notify the permittee of any change in land title status?

Yes. We will notify the permittee if a fee patent is issued or if restrictions are removed. After we notify the permittee our obligation under § 166.228 of this part ceases.

## OBTAINING A PERMIT

### § 166.215 How can I find Indian land available for grazing?

You may contact a local BIA office or tribal office to determine what Indian land may be available for grazing permits.

### § 166.216 Who is responsible for permitting Indian land?

The Indian landowner is primarily responsible for granting permits on their Indian land, with the assistance and approval of the BIA, except where otherwise provided by law. You may contact the local BIA or tribal office for assistance in obtaining a permit for grazing purposes on Indian land.

### § 166.217 In what manner may a permit on Indian land be granted?

(a) A tribe may grant a permit on tribal land through tribal allocation, negotiation, or advertisement in accordance with § 166.203 of this part. We must approve all permits of tribal land in order for the permit to be valid, except where otherwise provided by law.

(b) Individual Indian landowners may grant a permit on their Indian land through negotiation or advertisement in accordance with § 166.203 of this part. We must approve all permits of Individual Indian land in order for the permit to be valid.

(c) We will grant permits through negotiation or advertisement for range units containing, in whole or part, individually-owned Indian land and range units that consist of, or in combination with individually-owned Indian land, tribal or government land, under § 166.205 of this part. We will consult with tribes prior to granting permits for range units that include tribal land.

### § 166.218 How do I acquire a permit through tribal allocation?

(a) A tribe may allocate grazing privileges on range units containing trust or restricted land which is entirely tribally-owned or which contains only tribal and government land under the control of the tribe.

(b) A tribe may allocate grazing privileges to its members and to tribally-authorized entities without competitive bidding on tribal and tribally-controlled government land.

(c) We will implement the tribe's allocation procedure by authorizing the grazing privileges on individually-owned Indian land and government land, subject to the rental rate provisions in § 166.400(b) and (c) of this part.

(d) A tribe may prescribe the eligibility requirements for allocations 60 days before granting a new permit or before an existing permit expires.

(e) 120 days before the expiration of existing permits, we will notify the tribe of the 60-day period during which the tribe may prescribe eligibility requirements.

(f) We will prescribe the eligibility requirements after the expiration of the 60-day period in the event satisfactory action is not taken by the tribe.

(g) Grazing rental rates for grazing privileges allocated from an existing permit, in whole or in part, must equal

or exceed the rates paid by the preceding permittee(s). Tribal members will pay grazing rental rates established by the tribe on tribal lands.

### § 166.219 How do I acquire a permit through negotiation?

(a) Permits may be negotiated and granted by the Indian landowners with the permittee of their choice. The BIA may negotiate and grant permits on behalf of Indian landowners pursuant to § 166.205 of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed permit and any required supporting documents to us for appropriate action. Where a permit is in a form that has previously been accepted or approved by us, and all of the documents needed to support the findings required by this part have been received, we will decide whether to approve the permit within 30 days of the date of our receipt of the permit and supporting documents. If we decide to approve or disapprove a permit, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this title.

(c) In negotiating a permit, the Indian landowners may choose to include their land in the permit in exchange for their receipt of a share of the revenues or profits generated by the permit. Under such an arrangement, the permit may be granted to a joint venture or other legal entity owned, in part, by the Indian landowners.

(d) Receipt of permit payments based upon income received from the land will not, of itself, make the Indian landowner a partner, joint venturer, or associate of the permittees.

(e) We will assist prospective permittees in contacting the Indian landowners or their representatives, for the purpose of negotiating a permit.

### § 166.220 What are the basic steps for acquiring a permit through negotiation?

The basic steps for acquiring a permit by negotiation are as follows:

(a) The BIA or the Indian landowner will:

(1) Receive a request to permit from an Indian landowner or the potential permittee;

(2) Prepare the permit documents; and

(3) Grant the permit.

(b) A potential permittee will complete the requirements for securing a permit, (e.g., bond, insurance, payment of administrative fee, etc.);

(c) We will:

(1) Review the permit for proper documentation and compliance with all applicable laws and regulations;

(2) Approve the permit after our review;

(3) Send the approved permit to the permittee and, upon request, to the Indian landowner; and

(4) Record and maintain the approved permit.

### § 166.221 How do I acquire an advertised permit through competitive bidding?

(a) As part of the negotiation of a permit, Indian landowners may advertise their Indian land to identify potential permittees with whom to negotiate.

(b) When the BIA grants and approves a permit on behalf of an individual Indian landowner using an advertisement for bids, we will:

(1) Prepare and distribute an advertisement of lands available for permit that identifies the terms and conditions of the permit sale, including, for agricultural permits, any preference rights;

(2) Solicit sealed bids and conduct the public permit sale;

(3) Determine and accept the highest or best responsible bidder(s), which may require further competitive bidding after the bid opening; and

(4) Prepare permits for successful bidders.

(c) After completion of the steps in paragraph (b) of this section, the successful bidder must complete and submit the permit and satisfy all applicable requirements, (e.g., bond, insurance, payment of administrative fee, etc.).

(d) After review of the permit documentation for proper completion and compliance with all applicable laws and regulations, within 30 days we will:

(1) Grant and approve the permit on behalf of Indian landowners where we are authorized to do so by law;

(2) Distribute the approved permit to the permittee(s) and, upon request, to the Indian landowner(s); and

(3) Record and maintain the approved permit.

### § 166.222 Are there standard permit forms?

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

PERMIT (LEASEHOLD) MORTGAGE

### § 166.223 Can I use a permit as collateral for a loan?

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the permit interest before it can be effective. We will record the approved leasehold mortgage instrument.

### § 166.224 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the permit interest, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a ''new permit'' to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

### § 166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

### § 166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

MODIFYING A PERMIT

### § 166.227 How can Indian land be removed from an existing permit?

(a)We will remove Indian land from the permit if:

(1)The trust status of the Indian land terminates;

(2) The Indian landowners request removal of their interest, with the written approval of the majority interest of the fractionated tract to be removed,

and we determine that the removal is beneficial to such interests;

(3) A tribe allocates grazing privileges for Indian land covered by your permit under § 166.218 of this part;

(4) The permittee requests removal of the Indian land, the owners of the majority interest of the Indian land provides written approval of the removal of the Indian land, and we determine that the removal is warranted; or

(5) We determine that removal of the Indian land is appropriate, with the written approval of the owners of the majority interest of the Indian land.

(b) We will revise the grazing capacity to reflect the removal of Indian land and show it on the permit.

### § 166.228 How will the BIA provide notice if Indian land is removed from an existing permit?

If the reason for removal is:

(a) Termination of trust status. We will notify the parties to the permit in writing within 30 days. The removal will be effective on the next anniversary date of the permit.

(b) A request from Indian landowners or the permittee, or our determination. We will notify the parties to the permit in writing within 30 days of such request. The removal will be effective immediately if all sureties, Indian landowners, and permittee agree. Otherwise, the removal will be effective upon the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(c) Tribal allocation under § 166.218 of this part. We will notify the parties to the permit in writing within 180 days of such action. The removal of tribal land will be effective on the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

### § 166.229 Other than to remove land, how can a permit be amended, assigned, subpermitted, or mortgaged?

(a) We must approve an amendment, assignment, subpermit, or mortgage with the written consent of the parties to the permit in the same manner that the permit was approved, and the consent of the sureties.

(b) Indian landowners may designate in writing one or more of their co-owners or representatives to negotiate and/or agree to amendments on their behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the grazing rental payments payable to the other Indian landowners; or

(ii) Terminate the permit or modify the term of the permit.

(c) We may approve a permit for tribal land to individual members of a tribe which contains a provision permitting the assignment of the permit by the permittee or the lender without our approval when a lending institution or an agency of the United States:

(1) Accepts the interest in the permit (leasehold) as security for the loan; and

(2) Obtains the interest in the permit (leasehold) through foreclosure or otherwise.

(d) We will revise the grazing capacity and modify the permit.

### § 166.230 When will a BIA decision to approve an amendment, assignment, subpermit, or mortgage under a permit be effective?

Our decision to approve an amendment, assignment, subpermit, or mortgage under a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

### § 166.231 Must an amendment, assignment, subpermit, or mortgage approved under a permit be recorded?

An amendment, assignment, subpermit, or mortgage approved under a permit must be recorded in our Land Titles and Records Office which has jurisdiction over the Indian land. We will

record the document immediately following our approval.

## Subpart D—Land and Operations Management

### § 166.300 How is Indian agricultural land managed?

Tribes, individual Indian landowners, and the BIA will manage Indian agricultural land either directly or through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Public Law 93–638, as amended).

### § 166.301 How is Indian land for grazing purposes described?

Indian land for grazing purposes should be described by legal description (e.g., aliquot parts, metes and bounds) or other acceptable description. Where there are undivided interests owned in fee status, the aggregate portion of trust and restricted interests should be identified in the description of the permitted land.

### § 166.302 How is a range unit created?

We create a range unit after we consult with the Indian landowners of rangeland, by designating units of compatible size, availability, and location.

### § 166.303 Can more than one parcel of Indian land be combined into one permit?

Yes. A permit may include more than one parcel of Indian land. Permits may include tribal land, individually-owned Indian land, or government land, or any combination thereof.

### § 166.304 Can there be more than one permit for each range unit?

Yes. There can be more than one permit for each range unit.

### § 166.305 When is grazing capacity determined?

Before we grant, modify, or approve a permit, in consultation with the Indian landowners, we will establish the total grazing capacity for each range unit based on the summation of each parcel's productivity. We will also establish the season(s) of use on Indian lands.

### § 166.306 Can the BIA adjust the grazing capacity?

Yes. In consultation with the Indian landowners or in the BIA's discretion based on good cause, we may adjust the grazing capacity using the best evaluation method(s) relevant to the ecological region.

### § 166.307 Will the grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?

No. You will not receive an increase in grazing capacity in the permit if you graze trust or non-trust rangeland in common with the permitted land. Grazing capacity will be established only for Indian land covered by your permit.

### § 166.308 Can the number of animals and/or season of use be modified on the permitted land if I graze adjacent trust or non-trust rangelands under an on-and-off grazing permit?

Yes. The number of animals and/or season of use may be modified on permitted Indian land with an on-and-off grazing permit only when a conservation plan includes the use of adjacent trust or non-trust rangelands not covered by the permit and when that land is used in common with permitted land.

### § 166.309 Who determines livestock class and livestock ownership requirements on permitted Indian land?

(a) Tribes determine the class of livestock and livestock ownership requirements for livestock that may be grazed on range units composed entirely of tribal land or which include government land, subject to the grazing capacity prescribed by us under § 166.305 of this part.

(b) For permits on range units containing, in whole or part, individually-owned Indian land, we will adopt the tribal determination in paragraph (a) of this section.

### § 166.310 What must a permittee do to protect livestock from exposure to disease?

In accordance with applicable law, permittees must:

(a) Vaccinate livestock;

(b) Treat all livestock exposed to or infected with contagious or infectious diseases; and

(c) Restrict the movement of exposed or infected livestock.

MANAGEMENT PLANS AND ENVIRONMENTAL COMPLIANCE

### § 166.311 Is an Indian agricultural resource management plan required?

(a) Indian agricultural land under the jurisdiction of a tribe must be managed in accordance with the goals and objectives in any agricultural resource management plan developed by the tribe, or by us in close consultation with the tribe, under the AIARMA.

(b) The ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the tribe and its members and provide identified holistic management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the regulations in this subpart are inconsistent with a tribe's agricultural resource management plan, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

### § 166.312 Is a conservation plan required?

A conservation plan must be developed for each permit with the permittee and approved by us prior to the issuance of the permit. The conservation plan must be consistent with the tribe's agricultural resource management plan and must address the permittee's management objectives regarding animal husbandry and resource conservation. The conservation plan must cover the entire permit period and reviewed by us on an annual basis.

### § 166.313 Is environmental compliance required?

Actions taken by the BIA under the regulations in this part must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), applicable regulations of the Council on Environmental Quality (40 CFR part 1500), and applicable tribal laws and regulations.

CONSERVATION PRACTICES AND IMPROVEMENTS

### § 166.314 Can a permittee apply a conservation practice on permitted Indian land?

Yes. A permittee can apply a conservation practice on permitted Indian land as long as the permittee has approval from the BIA and majority interest and the conservation practice is consistent with the conservation plan.

### § 166.315 Who is responsible for the completion and maintenance of a conservation practice if the permit expires or is canceled before the completion of the conservation practice?

Prior to undertaking a conservation practice, the BIA, landowner, and permittee will negotiate who will complete and maintain a conservation practice if the permit expires or is canceled before the conservation practice is completed. That conservation practice agreement will be reflected in the conservation plan and permit.

### § 166.316 Can a permittee construct improvements on permitted Indian land?

Improvements may be constructed on permitted Indian land if the permit contains a provision allowing improvements.

### § 166.317 What happens to improvements constructed on Indian lands when the permit has been terminated?

(a) If improvements are to be constructed on Indian land, the permit must contain a provision that improvements will either:

(1) Remain on the land upon termination of the permit, in a condition that is in compliance with applicable codes, to become the property of the Indian landowner; or

(2) Be removed and the land restored within a time period specified in the permit. The land must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the permittee we may, at our discretion, grant an extension of time for the removal of improvements and restoration of the land for circumstances beyond the control of the permittee.

(b) If the permittee fails to remove improvements within the time allowed in the permit, the permittee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner or at the request of the Indian landowner, we will apply the bond for the removal of the improvement and restoration of the land.

## Subpart E—Grazing Rental Rates, Payments, and Late Payment Collections

RENTAL RATE DETERMINATION AND ADJUSTMENT

### § 166.400 Who establishes grazing rental rates?

(a) For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by us. We will assist a tribe to establish a grazing rental rate by providing the tribe with available information concerning the value of grazing on tribal lands.

(b) We will establish the grazing rental rate by determining the fair annual rental for:

(1) Individually-owned Indian lands; and

(2) Tribes that have not established a rate under paragraph (a) of this section.

(c) Indian landowners may give us written authority to grant grazing privileges on their individually-owned Indian land at a grazing rental rate that is:

(1) Above the grazing rental rate set by us; or

(2) Below the grazing rental rate set by us, subject to our approval, when the permittee is a member of the Indian landowner's immediate family as defined in this part.

### § 166.401 How does the BIA establish grazing rental rates?

An appraisal can be used to determine the rental value of real property. The development and reporting of the valuation will be completed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). If an appraisal is not desired, competitive bids, negotiations, advertisements, or any other method can be used in conjunction with a market study, rent survey, or feasibility analysis developed in accordance with the USPAP.

### § 166.402 Why must the BIA determine the fair annual rental of Indian land?

The BIA must determine the fair annual rental of Indian land to:

(a) Assist the Indian landowner in negotiating a permit with potential permittees; and

(b) Enable us to determine whether a permit is in the best interests of the Indian landowner.

### § 166.403 Will the BIA ever grant or approve a permit at less than fair annual rental?

(a) We will grant a permit for grazing on individually-owned Indian land at less than fair annual rental if, after competitive bidding of the permit, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a permit for grazing on individually-owned Indian land at less than fair annual rental if:

(1) The permit is for the Indian landowner's immediate family or co-owner; or

(2) We determine it is in the best interest of the Indian landowners.

(c) We may approve a permit for grazing on tribal land at less than fair annual rental if the tribe sets the rate.

### § 166.404 Whose grazing rental rate will be applicable for a permit on tribal land?

The following grazing rental rate schedule will apply for tribal land:

| If you are * * * | And if * * * | Then you will pay * * * |
|---|---|---|
| (a) Grazing livestock on tribal land ..... | The tribe established the grazing rental rate. | The rate set by the tribe. |
| (b) Grazing livestock on tribal land ..... | No tribal grazing rental rate has been established. | The rate set by the BIA. |
| (c) The successful bidder for use of any of these specific parcels of Indian land. | | Your rental rate bid, but not less than the minimum bid rate advertised. |

### § 166.405 Whose grazing rental rate will be applicable for a permit on individually-owned Indian land?

The following grazing rental rate schedule will apply for individually-owned Indian land:

| If you are * * * | Then you will pay * * * |
|---|---|
| (a) Grazing livestock on Individually-owned Indian land. | The rate set by the BIA or by the individual Indian landowner and approved by us. |
| (b) The successful bidder for use of any of these specific parcels of Indian land. | Your rental rate bid, but not less than the minimum bid rate advertised, unless the permit is granted at less than fair annual rental under § 166.403. |
| (c) The recipient of an allocation from a bid unit. | The bid rate or the appraised rate, whichever is higher. |

### § 166.406 Whose grazing rental rate will be applicable for a permit on government land?

The following grazing rental rate schedule will apply for government land:

| If you are * * * | And if * * * | Then you will pay * * * |
|---|---|---|
| (a) Grazing livestock on government land | The tribe has control over the land or the tribe has authority to set the rate. | The rate set by the tribe. |
| (b) Grazing livestock on government land | Government controls all use of the land | The rate set by the BIA. |

### § 166.407 If a range unit consists of tribal and individually-owned Indian lands, what is the grazing rental rate?

The grazing rental rate for tribal land will be the rate set by the tribe. The grazing rental rate for individually-owned Indian land will be the grazing rental rate set by us.

### § 166.408 Is the grazing rental rate established by the BIA adjusted periodically?

Yes. To ensure that Indian landowners are receiving the fair annual return, we may adjust the grazing rental rate established by the BIA, based upon an appropriate valuation method, taking into account the value of improvements made under the permit, unless the permit provides otherwise, following the Uniform Standards of Professional Appraisal Practice.

(a) We will:

(1) Review the grazing rental rate prior to each anniversary date or when specified by the permit.

(2) Provide you with written notice of any adjustment of the grazing rental rate 60 days prior to each anniversary date.

(3) Allow the adjusted grazing rental rate to be less than the fair annual rental if we determine that such a rate is in the best interest of the Indian landowner.

(b) If adjusted, the grazing rental rate will become effective on the next anniversary date of the permit.

(c) These adjustments will be retroactive, if they are not made at the time specified in the permit.

(d) For permits granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the grazing rental payment should be made. The permit must be modified to document the granting tribe's waiver of the adjustment. A tribe may grant a permit without providing for a rental adjustment, if the tribe establishes such a policy under § 166.100(a)(4) of this part and negotiates such a permit.

RENTAL PAYMENTS

### § 166.409 How is my grazing rental payment determined?

The grazing rental payment is the total of the grazing rental rate multiplied by the number of AUMs or acres covered by the permit.

### § 166.410 When are grazing rental payments due?

The initial grazing rental payment is due and payable as specified in the permit or 15 days after the BIA approves the permit, whichever is later. Subsequent payments are due as specified in the permit.

### § 166.411 Will a permittee be notified when a grazing rental payment is due?

Each permit states the schedule of rental payments agreed to by the parties. We will issue an invoice to the permittee 30 to 60 days prior to the rental payment due date.

### § 166.412 What if the permittee does not receive an invoice that a grazing rental payment is due?

If we fail to send an invoice or if we send an invoice and the permittee does not receive it, the permittee is still responsible for making timely payment of all amounts due under the permit.

### § 166.413 To whom are grazing rental payments made?

(a) A permit must specify whether grazing rental payments will be made directly to the Indian landowners or to us on behalf of the Indian landowners. If the permit provides for payment to be made directly to the Indian landowners, the permit must also require that the permittee retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of §§ 166.1000 and 166.1001 of this part.

(b) Grazing rental payments made directly to the Indian landowners must be made to the parties specified in the permit, unless the permittee receives a notice of a change of ownership. Unless otherwise provided in the permit, grazing rental payments may not be made payable directly to anyone other than the Indian landowners.

(c) A permit which provides for grazing rental payments to be made directly to the Indian landowners must also provide for such payments to be suspended and rent thereafter paid to us, rather than directly than to the Indian landowners, if:

(1) An Indian landowner dies;

(2) An Indian landowner requests that payment be made to us;

(3) An Indian landowner is found by us to be in need of assistance in managing his/her financial affairs; or

(4) We determine, in our discretion and after consultation with the Indian landowner(s), that direct payment should be discontinued.

### § 166.414 What forms of grazing rental payments are acceptable?

(a) When grazing rental payments are made directly to the Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) Payments made to us may be delivered in person or by mail. We will not accept cash, foreign currency, or third-party checks. We will accept:

(1) Personal or business checks drawn on the account of the permittee;

(2) Money orders;

(3) Cashier's checks;

(4) Certified checks; or

(5) Electronic funds transfer payments.

### § 166.415 What will the BIA do if the permittee fails to make a direct payment to an Indian landowner?

Within five business days of the Indian landowner's notification to us that a payment has not been received, we will contact the permittee either in writing or by telephone requesting that the permittee provide documentation (e.g., canceled check, cash receipt voucher, copy of a money order or cashier's check) showing that payment has been made to the Indian landowner. If the permitee fails to provide such documentation, we will follow the procedures identified in § 166.419 of this part to collect the money on behalf of the Indian landowner or to cancel the permit.

### § 166.416 May a permittee make a grazing rental payment in advance of the due date?

Rent may be paid no more than 30 days in advance, unless otherwise specified in the permit.

### § 166.417 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?

No. An individual Indian landowner of a fractionated tract may not modify a permit to allow a grazing rental payment in advance of the due date specified in the initial approved permit.

### § 166.418 When is a grazing rental payment late?

A grazing rental payment is late if it is not received on or before the due date.

## LATE RENTAL PAYMENT COLLECTIONS

### § 166.419 What will the BIA do if grazing rental payments are not made in the time and manner required by the permit?

(a) A permitee's failure to pay grazing rental payments in the time and manner required by a permit will be a violation of the permit, and a notice of violation will be issued under § 166.703 of this part. If the permit requires that grazing rental payments be made to us, we will send the permittee and its sureties a notice of violation within five business days of the date on which the grazing rental payment was due. If the permit provides for payment directly to the Indian landowner(s), we will send the permittee and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the Indian landowner(s).

(b) If a permittee fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 166.704 of this part, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the permit under § 166.705 of this part, or invoke any other remedies available under the permit or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the permit or any further notice to the permittee, nor will such an action be precluded by a prior cancellation.

(c) Partial payments may be accepted, under special circumstances, by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing permit violations. Unless otherwise provided in the permit, overpayments may be credited as an advance against future grazing rental payments.

(d) If a personal or business check is dishonored, and a grazing rental payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the permit, and a written notice of violation will be issued under § 166.703 of this part. Any payment made to cure such a default, and any future payments by the same permittee, must be made by one of the alternative payment methods listed in § 166.414(b) of this part.

### § 166.420 Will any special fees be assessed on delinquent grazing rental payments due under a permit?

The following special fees will be assessed if a grazing rental payment is not paid in the time and manner required, in addition to any interest or

late payment penalties which must be paid to the Indian landowners under a permit. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

| The permittee will pay * * * | For * * * |
|---|---|
| (a) $50.00 ..... | Administrative fee for checks returned by the bank for insufficient funds. |
| (b) $15.00 ..... | Administrative fee for the BIA processing of each demand letter. |
| (c) 18% of balance due. | Administrative fee charged by the Department of Treasury for collection. |

### § 166.421 If a permit is canceled for non-payment, does that extinguish the permittee's debt?

No. The permittee remains liable for any delinquent payment. No future permits will be issued until all outstanding debts related to Indian agricultural lands are paid.

COMPENSATION TO INDIAN LANDOWNERS

### § 166.422 What does the BIA do with grazing rental payments received from permittees?

Unless arrangements for direct payment to the Indian landowners has been provided, the rent will be deposited to the appropriate account maintained by the Office of Trust Funds Management in accordance with part 115 of this title.

### § 166.423 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

### § 166.424 How will the BIA determine the grazing rental payment amount to be distributed to each Indian landowner?

Unless otherwise specified in the permit, the grazing rental payment will be distributed to each Indian landowner according to the forage production that each parcel of Indian land contributes to the permit, annual rental rate of each parcel, and the Indian landowner's interest in each parcel.

## Subpart F—Administrative and Tribal Fees

### § 166.500 Are there administrative fees for a permit?

Yes. We will charge an administrative fee before approving any permit, subpermit, assignment, encumbrance, modification, or other related document.

### § 166.501 How are annual administrative fees determined?

(a) Except as provided in subsection (b), we will charge a three percent (%) administrative fee based on the annual grazing rent.

(b) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00.

(c) If a tribe performs all or part of the administrative duties for this part, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

### § 166.502 Are administrative fees refundable?

No. We will not refund administrative fees.

### § 166.503 May the BIA waive administrative fees?

Yes. We may waive the administrative fee for a justifiable reason.

### § 166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

Yes. The permittee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe. Failure to make such payments will constitute a permit violation under subpart H of this part.

## Subpart G—Bonding and Insurance Requirements

### § 166.600 Must a permittee provide a bond for a permit?

Yes. A permittee, assignee or subpermittee must provide a bond for each permit interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

**§ 166.601 How is the amount of the bond determined?**

(a) The amount of the bond for each permit is based on the:

(1) Value of one year's grazing rental payment;

(2) Value of any improvements to be constructed;

(3) Cost of performance of any additional obligations; and

(4) Cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 166.100 of this part may establish or waive specific bond requirements for permits.

**§ 166.602 What form of bonds will the BIA accept?**

(a) We will only accept bonds in the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to the BIA to sell such securities in case of a violation of the terms of the permit.

(3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;

(4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:

(i) Contain a clause that grants the BIA authority to demand immediate payment if the permittee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;

(ii) Be payable to the ''Department of the Interior, BIA'';

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date we receive it; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which our approval is required prior to redemption by any party.

(b) Indian landowners may negotiate a permit term that specifies the use of any of the bond forms described in paragraph (a) of this section.

(c) A tribe may accept and hold any form of bond described in paragraph (a) of this section, to secure performance under a permit of tribal land.

**§ 166.603 If cash is submitted as a bond, how is it administered?**

If cash is submitted as a bond, we will establish an account in the name of the permittee and retain it.

**§ 166.604 Is interest paid on a cash performance bond?**

No. Interest will not be paid on a cash performance bond.

**§ 166.605 Are cash performance bonds refunded?**

If the cash performance bond has not been forfeited for cause, the amount deposited will be refunded to the depositor at the end of the permit period.

**§ 166.606 What happens to a bond if a violation occurs?**

We may apply the bond to remedy the violation, in which case we will require the permittee to submit a replacement bond of an appropriate amount.

**§ 166.607 Is insurance required for a permit?**

When we determine it to be in the best interest of the Indian landowners, we will require a permittee to provide insurance. If insurance is required, it must:

(a) Be provided in an amount sufficient to:

(1) Protect any improvements on the permit premises;

(2) Cover losses such as personal injury or death; and

(3) Protect the interest of the Indian landowner.

(b) Identify the tribe, individual Indian landowners, and United States as insured parties.

**§ 166.608 What types of insurance may be required?**

We may require liability or casualty insurance (such as for fire, hazard, or flood), depending upon the activity conducted under the permit.

## Subpart H—Permit Violations

**§ 166.700 What permit violations are addressed by this subpart?**

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart I of this part.

**§ 166.701 How will the BIA determine whether the activities of a permittee under a permit are in compliance with the terms of the permit?**

Unless the permit provides otherwise, we may enter the range unit at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the permittee is in compliance with the operating requirements of the permit.

**§ 166.702 Can a permit provide for negotiated remedies in the event of a permit violation?**

(a) A permit of tribal land may provide the tribe with certain negotiated remedies in the event of a permit violation, including the power to terminate the permit. A permit of individually-owned Indian land may provide the individual Indian landowners with similar remedies, so long as the permit also specifies the manner in which those remedies may be exercised by or on behalf of the Indian landowners. Any notice of violation must be provided by written notice.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 166.705(c) of this subpart. If the permit specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) A permit may provide for permit disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 166.705 of this subpart.

**§ 166.703 What happens if a permit violation occurs?**

(a) If an Indian landowner notifies us that a specific permit violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

(b) If we determine that a permit violation has occurred based on facts known to us, we will provide written notice to the permittee and the sureties of the violation within five business days.

**§ 166.704 What will a written notice of a permit violation contain?**

The written notice of a permit violation will provide the permittee with ten days from the receipt of the written notice to:

(a) Cure the permit violation and notify us that the violation is cured.

(b) Explain why we should not cancel the permit; or

(c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that certain corrective actions be taken immediately.

**§ 166.705 What will the BIA do if a permit violation is not cured within the required time period?**

(a) If the permittee does not cure a violation within the required time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) The permit should be canceled by us under paragraph (c) of this section and §§ 166.706 through 166.707 of this subpart;

(2) We should invoke any other remedies available to us under the permit, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the permit; or

(4) The permittee should be granted additional time in which to cure the violation.

(b) If we decide to grant a permittee additional time in which to cure a violation, the permittee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the permit, we will send the permittee and its sureties a written notice of cancellation within five business days of that decision. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The written notice of cancellation will:

(1) Explain the grounds for cancellation;

(2) Notify the permittee of the amount of any unpaid rent, interest charges, or late payment penalties due under the permit;

(3) Notify the permittee of its right to appeal under Part 2 of this chapter, as modified by § 166.706 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the permittee to vacate the property within 30 days of the date of receipt of the written notice of cancellation, if an appeal is not filed by that time.

### § 166.706 Will the BIA's regulations concerning appeal bonds apply to cancellation decisions involving permits?

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from permit cancellation decisions made under § 166.705 of this subpart. Instead, when we decide to cancel a permit, we may require the permittee to post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the permit cancellation decision.

### § 166.707 When will a cancellation of a permit be effective?

A cancellation decision involving a permit will not be effective for 30 days after the permittee receives a written notice of cancellation from us. The cancellation decision will remain ineffective if the permittee files an appeal under § 166.706 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the permittee must continue to pay rent and comply with the other terms of the permit. If an appeal is not filed in accordance with § 166.706 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from us.

### § 166.708 Can the BIA take emergency action if the rangeland is threatened with immediate, significant, and irreparable harm?

Yes. If a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Indian land during the term of a permit, we will take appropriate emergency action. Emergency action may include trespass proceedings under subpart I of this part, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

### § 166.709 What will the BIA do if a permittee holds over after the expiration or cancellation of a permit?

If a permittee remains in possession of Indian land after the expiration or cancellation of a permit, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the permittee is engaged in negotiations with the Indian landowners to obtain a new permit, we will take action to recover possession of the Indian land on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, including

the assessment of civil penalties and costs under subpart I of this part.

## Subpart I—Trespass

### § 166.800 What is trespass?

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural lands. These provisions also apply to Indian agricultural land managed under an agricultural lease or permit under part 162 of this title.

### § 166.801 What is the BIA's trespass policy?

We will:

(a) Investigate accidental, willful, and/or incidental trespass on Indian agricultural land;

(b) Respond to alleged trespass in a prompt, efficient manner;

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

### § 166.802 Who can enforce this subpart?

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) Nothing in this subpart shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass.

NOTIFICATION

### § 166.803 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, within five business days, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of ownership of unauthorized property (*e.g.*, brands in the State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

(6) Potential consequences and penalties for failure to take corrective action; and

(7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by us.

(b) If we determine that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

### § 166.804 What can I do if I receive a trespass notice?

If you receive a trespass notice, you will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone but any explanation of trespass you wish to provide must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

### § 166.805 How long will a written trespass notice remain in effect?

A written trespass notice will remain in effect for the same conduct identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

ACTIONS

### § 166.806 What actions does the BIA take against trespassers?

If the trespasser fails to take the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.

(b) Assess penalties, damages, and costs, under § 166.812 of this subpart.

### § 166.807 When will we impound unauthorized livestock or other property?

We will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

### § 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, we will send written notice of our intent to impound unauthorized livestock or other property to the unauthorized livestock or property owner or representative, and any known lien holder of the unauthorized livestock or other property.

(b) If we determine that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, we will post a public notice of intent to impound at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described above, we will impound unauthorized livestock or other property without any further notice.

### § 166.809 What happens after my unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

### § 166.810 How do I redeem my impounded livestock or other property?

You may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under § 166.812 of this subpart and completing all corrective actions identified by us under § 166.804 of this subpart.

### § 166.811 How will the sale of impounded livestock or other property be conducted?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under § 166.804 and § 166.812 of this subpart, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the

owner, condemned and destroyed, or otherwise disposed of.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

PENALTIES, DAMAGES, AND COSTS

### § 166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?

Trespassers on Indian agricultural land must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Indian agricultural land and/or property;

(c) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 166.807 of this subpart; and

(e) All other penalties authorized by law.

### § 166.813 How will the BIA determine the value of forage or crops consumed or destroyed?

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

### § 166.814 How will the BIA determine the value of the products or property illegally used or removed?

We will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

### § 166.815 How will the BIA determine the amount of damages to Indian agricultural land?

We will determine the damages by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

### § 166.816 How will the BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

### § 166.817 What happens if I do not pay the assessed penalties, damages and costs?

Unless otherwise provided by applicable tribal law:

(a) We will refuse to issue you a permit for use, development, or occupancy of Indian agricultural lands; and

(b) We will forward your case for appropriate legal action.

### § 166.818 How are the proceeds from trespass distributed?

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 166.812 of this subpart as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) Proceeds recovered under § 166.812 of this subpart may be distributed to:

(1) Repair damages of the Indian agricultural land and property;

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit; and

(3) Reimburse for costs associated with the enforcement of this subpart.

(c) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, we will return it to the trespasser or, where we cannot identify the owner of the impounded property within 180 days, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

### § 166.819 What happens if the BIA does not collect enough money to satisfy the penalty?

We will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within five business days from the date of receipt, we will forward the case for appropriate legal action. We may send a copy of the notice to the Indian landowner, permittee, and any known lien holders.

## Subpart J—Agriculture Education, Education Assistance, Recruitment, and Training

### § 166.900 How are the Indian agriculture education programs operated?

(a) The purpose of the Indian agriculture education programs is to recruit and develop promising Indian and Alaska Natives who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional resource managers and other agriculture-related professionals by approved organizations.

(b) We will operate the student educational employment program as part of our Indian agriculture education programs in accordance with the provisions of 5 CFR 213.3202(a) and (b).

(c) We will establish an education committee to coordinate and carry out the agriculture education assistance programs and to select participants for all agriculture education assistance programs. The committee will include at least one Indian professional educator in the field of natural resources or agriculture, a personnel specialist, a representative of the Intertribal Agriculture Council, and a natural resources or agriculture professional from the BIA and a representative from American Indian Higher Education Consortium. The committee's duties will include the writing of a manual for the Indian and Alaska Native Agriculture Education and Assistance Programs.

(d) We will monitor and evaluate the agriculture education assistance programs to ensure that there are adequate Indian and Alaska Native natural resources and agriculture-related professionals to manage Indian natural resources and agriculture programs by or for tribes and Alaska Native Corporations. We will identify the number of participants in the intern, student educational employment program, scholarship, and outreach programs; the number of participants who completed the requirements to become a natural resources or agriculture-related professional; and the number of participants completing advanced degree requirements.

### § 166.901 How will the BIA select an agriculture intern?

(a) The purpose of the agriculture intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native agricultural land. In keeping with this purpose, we will work with tribes and Alaska Natives:

(1) To obtain the maximum degree of participation from Indians and Alaska Natives in the agriculture intern program;

(2) To encourage agriculture interns to complete an undergraduate degree program in natural resources or agriculture-related field; and

(3) To create an opportunity for the advancement of natural resources and agriculture-related technicians to professional resource management positions with the BIA, other federal agencies providing an agriculture service to their respective tribe, a tribe, or tribal agriculture enterprise.

(b) Subject to restrictions imposed by agency budgets, we will establish and maintain in the BIA at least 20 positions for the agriculture intern program. All Indians and Alaska Natives who satisfy the qualification criteria may compete for positions.

(c) Applicants for intern positions must meet the following criteria:

(1) Be eligible for Indian preference as defined in 25 CFR part 5;

(2) Possess a high school diploma or its recognized equivalent;

(3) Be able to successfully complete the intern program within a three-year period; and

(4) Possess a letter of acceptance to an accredited post-secondary school or

demonstrate that one will be sent within 90 days.

(d) We will advertise vacancies for agriculture intern positions semi-annually, no later than the first day of April and October, to accommodate entry into school.

(e) In selecting agriculture interns, we will seek to identify candidates who:

(1) Have the greatest potential for success in the program;

(2) Will take the shortest time period to complete the intern program; and

(3) Provide the letter of acceptance required by paragraph (c)(4) of this section.

(f) Agriculture interns must:

(1) Maintain full-time status in an agriculture-related curriculum at an accredited post-secondary school;

(2) Maintain good academic standing;

(3) Enter into an obligated service agreement to serve as a professional resource manager or agriculture-related professional with an approved organization for one year in exchange for each year in the program; and

(4) Report for service with the approved organization during any break in attendance at school of more than three weeks.

(g) The education committee will evaluate annually the performance of the agriculture intern program participants against requirements to ensure that they are satisfactorily progressing toward completion of program requirements.

(h) We will pay all costs for tuition, books, fees, and living expenses incurred by an agriculture intern while attending an accredited post-secondary school.

### § 166.902 How can I become an agriculture educational employment student?

(a) To be considered for selection, applicants for the student educational employment program must:

(1) Meet the eligibility requirements in 5 CFR part 308; and

(2) Be accepted into or enrolled in a course of study at an accredited post-secondary institution which grants degrees in natural resources or agriculture-related curricula.

(b) Student educational employment steering committees established at the field level will select program participants based on eligibility requirements without regard to applicants' financial needs.

(c) A recipient of assistance under the student educational employment program will be required to enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year in exchange for each year in the program.

(d) We will pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for the cooperative education program.

### § 166.903 How can I get an agriculture scholarship?

(a) We may grant agriculture scholarships to Indians and Alaska Natives enrolled as full-time students in accredited post-secondary and graduate programs of study in natural resources and agriculture-related curricula.

(b) The education committee established in § 166.900(c) of this subpart will select program participants based on eligibility requirements stipulated in paragraphs (e) through (g) of this section without regard to applicants' financial needs or past scholastic achievements.

(c) Recipients of scholarships must reapply annually to continue to receive funding beyond the initial award period. Students who have received scholarships in past years, are in good academic standing, and have been recommended for continuation by their academic institution will be given priority over new applicants for scholarship assistance.

(d) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and is subject to yearly change.

(e) Preparatory scholarships may be available for a maximum of three academic years of general, undergraduate course work leading to a degree in natural resources or agriculture-related curricula and may be awarded to individuals who:

(1) Possess a high school diploma or its recognized equivalent; and

(2) Are enrolled and in good academic standing at an acceptable post-secondary school.

(f) Undergraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who:

(1) Have completed a minimum of 55 semester hours toward a bachelor's degree in a natural resources or agriculture-related curriculum; and

(2) Have been accepted into a natural resource or agriculture-related degree-granting program at an accredited college or university.

(g) Graduate scholarships are available for a maximum of five academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in natural resources or agriculture-related fields.

(h) A recipient of assistance under the scholarship program must enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with the BIA, other federal agency providing assistance to their respective tribe, a tribe, tribal agriculture enterprise, or an ANCSA Corporation for one year for each year in the program.

(i) We will pay all scholarships approved by the education committee established in § 166.900 of this subpart for which funding is available.

### § 166.904 What is agriculture education outreach?

(a) We will establish and maintain an agriculture education outreach program for Indian and Alaska Native youth that will:

(1) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(2) Promote agriculture career awareness;

(3) Involve students in projects and activities oriented to agriculture related professions early so students realize the need to complete required pre-college courses; and

(4) Integrate Indian and Alaska Native agriculture program activities into the education of Indian and Alaska Native students.

(b) We will develop and carry out the program in consultation with appropriate community education organizations, tribes, ANCSA Corporations, Alaska Native organizations, and other federal agencies providing agriculture services to Indians.

(c) The education committee established under § 166.900(c) of this subpart will coordinate and implement the program nationally.

### § 166.905 Who can get assistance for postgraduate studies?

(a) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native natural resource and agriculture-related professionals working for an approved organization so that the best possible service is provided to Indian and Alaska Natives.

(b) We may pay the cost of tuition, fees, books, and salary of Alaska Natives and Indians who are employed by an approved organization and who wish to pursue advanced levels of education in natural resource or agriculture-related fields.

(c) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a natural resources or agriculture-related field. Requirements of the postgraduate study program are:

(1) The duration of course work cannot be less than one semester or more than three years; and

(2) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program.

(d) Program applicants must submit application packages to the education committee. At a minimum, such packages must contain a resume and an endorsement signed by the applicant's supervisor clearly stating the need for and benefits of the desired training.

(e) The education committee must use the following criteria to select participants:

(1) Need for the expertise sought at both the local and national levels;

(2) Expected benefits, both locally and nationally; and

(3) Years of experience and the service record of the employee.

(f) Program participants will enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year for each year in the program. We may reduce the obligated service requirement if the employee receives supplemental funding such as research grants, scholarships, or graduate stipends and, as a result, reduces the need for financial assistance under this part. If the obligated service agreement is breached, we will collect the amount owed us in accordance with § 166.910 of this subpart.

### § 166.906 What can happen if we recruit you after graduation?

(a) The purpose of the post graduation recruitment program is to recruit Indian and Alaska Native natural resource and trained agriculture technicians into the agriculture programs of approved organizations.

(b) We may assume outstanding student loans from established lending institutions of Indian and Alaska Native natural resources and agriculture technicians who have successfully completed a post-secondary natural resources or agriculture-related curriculum at an accredited institution.

(c) Indian and Alaska Natives receiving benefits under this program will enter into an obligated service agreement in accordance with § 166.901 of this subpart. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(d) If the obligated service agreement is breached, we will collect student loan(s) in accordance with § 166.910 of this subpart.

### § 166.907 Who can be an intern?

(a) Natural resources or agriculture personnel working for an approved organization may apply for an internship within agriculture-related programs of agencies of the Department of the Interior or other federal agencies providing an agriculture service to their respective reservations.

(b) Natural resources or agriculture-related personnel from other Department of the Interior agencies may apply through proper channels for ''internships'' within the BIA's agriculture programs. With the consent of a tribe or Alaska Native organization, the BIA can arrange for an Intergovernmental Personnel Act assignment in tribal or Alaska Native agriculture programs.

(c) Natural resources and agriculture personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an ''internship'' within the BIA and, with the consent of a tribe or Alaska Native organization, we can facilitate an Intergovernmental Personnel Act assignment in a tribe, tribal agriculture enterprise, or Alaska Native Corporation.

(d) Natural resources or agriculture personnel from a tribe, tribal agriculture enterprise, or Alaska Native Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise, or ANCSA Corporation agriculture program.

(e) The employing agency of participating federal employees will provide for the continuation of salary and benefits.

(f) The host agency for participating tribal, tribal agriculture enterprise, or Alaska Native Corporation agriculture employees will provide for salaries and benefits.

(g) A bonus pay incentive, up to 25 percent (%) of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and must be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

### § 166.908 Who can participate in continuing education and training?

(a) The purpose of continuing education and training is to establish a program to provide for the ongoing

education and training of natural resources and agriculture personnel employed by approved organizations. This program will emphasize continuing education and training in three areas:

(1) Orientation training including tribal-federal relations and responsibilities;

(2) Technical agriculture education; and

(3) Developmental training in agriculture-based enterprises and marketing.

(b) We will maintain an orientation program to increase awareness and understanding of Indian culture and its effect on natural resources management and agriculture practices and on federal laws that effect natural resources management and agriculture operations and administration in the Indian agriculture program.

(c) We will maintain a continuing technical natural resources and agriculture education program to assist natural resources managers and agriculture-related professionals to perform natural resources and agriculture management on Indian land.

(d) We will maintain an agriculture land-based enterprise and marketing training program to assist with the development and use of Indian and Alaska Native agriculture resources.

### § 166.909 What are my obligations to the BIA after I participate in an agriculture education program?

(a) Individuals completing agriculture education programs with an obligated service requirement may be offered full time permanent employment with an approved organization to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If employment is not offered within the 90-day period, the student will be relieved of obligated service requirements. Not less than 30 days before the start of employment, the employer must notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the BIA, the employer must also notify us.

(b) Employment time that can be credited toward obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the agriculture intern program which includes the special provisions outlined in § 166.901(f)(4) of this subpart. The minimum service obligation period will be one year of full time employment.

(c) The employer has the right to designate the location of employment for fulfilling the service obligation.

(d) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, we will issue a decision within 30 days of receipt of the request for deferral. We may grant such a request; however, deferments granted in no way waive or otherwise affect obligated service requirements.

(e) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a waiver of obligated service based on personal or family hardship. We may grant a full or partial waiver or deny the request for wavier. In such cases, we will issue a decision within 30 days of receiving the request for waiver.

### § 166.910 What happens if I do not fulfill my obligation to the BIA?

(a) Any individual who accepts financial support under agriculture education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates employment must repay us in accordance with the following table:

| If you are... | Then the costs that you must repay are... | And then the costs that you do not need to repay are... |
|---|---|---|
| (1) Agriculture intern ..... | Living allowance, tuition, books, and fees received while occupying position plus interest. | Salary paid during school breaks or when recipient was employed by an approved organization. |
| (2) Cooperative education | Tuition, books, and fees plus interest. | |
| (3) Scholarship ..... | Costs of scholarship plus interest. | |

| If you are... | Then the costs that you must repay are... | And then the costs that you do not need to repay are... |
|---|---|---|
| (4)Post graduation recruitment. | All student loans assumed by us under the program plus interest. | |
| (5) Postgraduate studies | Living allowance, tuition, books, and fees received while in the program plus interest. | Salary paid during school breaks or when recipient was employed by an approved organization. |

(b) For agriculture education programs with an obligated service requirement, we will adjust the amount required for repayment by crediting toward the final amount of debt any obligated service performed before breach of contract.

## Subpart K—Records

### § 166.1000 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

### § 166.1001 How must a records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 166.1000(a) of this part must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 166.1000(b) of this part for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

# PART 167—NAVAJO GRAZING REGULATIONS

Sec.
167.1 Authority.
167.2 General regulations.
167.3 Objectives.
167.4 Regulations; scope; exceptions.
167.5 Land management districts.
167.6 Carrying capacities.
167.7 Records.
167.8 Grazing rights.
167.9 Grazing permits.
167.10 Special grazing permits.
167.11 Tenure of grazing permits.
167.12 Grazing fees.
167.13 Trespass.
167.14 Movement of livestock.
167.15 Control of livestock disease and introduction of livestock.
167.16 Fences.
167.17 Construction near permanent livestock water developments.

AUTHORITY: R.S. 465, 2117, as amended, sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, as amended; 25 U.S.C. 9, 179, 397, 345, 402.

SOURCE: 22 FR 10578, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 167.1 Authority.

It is within the authority of the Secretary of the Interior to protect Indian tribal lands against waste. Subject to regulations of this part, the right exists for Indian tribes to authorize the granting of permits upon their tribal

lands and to prescribe by appropriate tribal action the conditions under which their lands may be used.

### § 167.2 General regulations.

Part 166 of this subchapter authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on Indian lands under conditions set forth therein. In accordance with this authority and that of the Navajo Tribal Council, the Central Grazing Committee and the District Grazing Committees, the grazing of livestock on the Navajo Reservation shall be governed by the regulations in this part.

### § 167.3 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the Navajo Reservation, and the building up of those resources where they have deteriorated.

(b) The protection of the interests of the Navajo Indians from the encroachment of unduly aggressive and anti-social individuals who may or may not be members of the Navajo Tribe.

(c) The adjustment of livestock numbers to the carrying capacity of the range in such a manner that the livestock economy of the Navajo Tribe will be preserved.

(d) To secure increasing responsibility and participation of the Navajo people, including tribal participation in all basic policy decisions, in the sound management of one of the Tribe's greatest assets, its grazing lands, and to foster a better relationship and a clearer understanding between the Navajo people and the Federal Government in carrying out the grazing regulations.

(e) The improvement of livestock through proper breeding practices and the maintenance of a sound culling policy. Buck and bull pastures may be established and maintained either on or off the reservation through District Grazing Committee and Central Grazing Committee action.

### § 167.4 Regulations; scope; exceptions.

The grazing regulations in this part apply to all lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe and all the trust lands hereafter added to the Navajo Reservation. The regulations in this part do not apply to any of the area described in the Executive order of December 16, 1882, to individually owned allotted lands within the Navajo Reservation nor to tribal purchases, allotted or privately owned Navajo Indian lands outside the exterior boundaries of the Navajo Reservation.

[34 FR 14599, Sept. 19, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 167.5 Land management districts.

The Commissioner of Indian Affairs has established and will retain the present land management districts within the Navajo Indian Reservation, based on the social and economic requirements of the Navajo Indians and the necessity of rehabilitating the grazing lands. District boundary changes may be made when deemed necessary and advisable by the District Grazing Committees, Central Grazing Committee and Tribal Council, with approval by the Superintendent, Area Director, and the Commissioner of Indian Affairs.

### § 167.6 Carrying capacities.

(a) The Commissioner of Indian Affairs on June 26, 1943, promulgated the authorized carrying capacity for each land management district of the Navajo Reservation.

(b) Recommended adjustments in carrying capacities shall be referred by the Superintendent to District Grazing Committee, Central Grazing Committee, and the Navajo Tribal Council for review and recommendations prior to presentation to the Area Director and the Commissioner of Indian Affairs for approval.

(c) Upon the request of the District Grazing Committee, Central Grazing Committee and Navajo Tribal Council to the Superintendent; recommendations for future adjustments to the established carrying capacities shall be made by Range Technicians based on

the best information available through annual utilization studies and range condition studies analyzed along with numbers of livestock and precipitation data. The recommendations of the Range Technicians shall be submitted to the Superintendent, the Area Director and the Commissioner of Indian Affairs.

(d) Carrying capacities shall be stated in terms of sheep units yearlong, in the ratio of horses, mules, and burros 1 to 5; cattle 1 to 4; goats 1 to 1. The latter figure in each case denotes sheep units. Sheep, goats, cattle, horses, mules, and burros one year of age or older shall be counted against the carrying capacity.

**§ 167.7 Records.**

The District Grazing Committee, the Superintendent, and his authorized representatives shall keep accurate records of all grazing permits and ownership of all livestock. Master files shall be maintained by the Superintendent or his authorized representatives.

(a) The District Grazing Committee shall be responsibile for and assist in organizing the sheep and goat dipping and horse and cattle branding program and obtaining the annual live- stock count.

(b) In order to obtain true records of ownership the permittee shall personally appear at the dipping vat or tallying point designated by the Grazing Committee with his or her sheep and goats and at branding and tallying points for cattle and horses. Should the permittee be unable to appear personally he or she shall designate a representative to act for and in his or her behalf. The sheep and goats will be dipped and the cattle and horses will be branded and recorded in the name of the permittee.

(c) The Superintendent shall prepare and keep current a register containing the names of all permittees using the range, the number of each class of stock by age classes grazed annually and the periods during which grazing shall be permitted in each part thereof. An annual stock census will be taken to insure that the carrying capacity is not exceeded. All classes of livestock twelve months of age or over will be counted against range use and permitted number, except that yearling colts will not be counted against permitted numbers on all permits with less than six horses. (Cross Reference § 167.9.)

**§ 167.8 Grazing rights.**

(a) The Superintendent shall determine grazing rights of bona fide livestock owners based on recommendations of District Grazing Committees. Grazing rights shall be recognized for those permittees having ownership records as established in accordance with § 167.7 or who have acquired grazing rights by marriage, inheritance, purchase or division of permits. Whenever the permitted number of sheep units within a district is less than the carrying capacity, new permits to the carrying capacity limit may be granted as provided in § 167.9.

(b) All enrolled members of the Navajo Tribe over 18 years of age are eligible to acquire and hold grazing permits. Minors under 18 years of age can get possession of grazing permits only through inheritance or gift, and in each case Trustees must be appointed by the Tribal Courts to manage the permits and livestock of such minors until they become 18 years of age and can hold grazing permits in their own right.

(c) No person can hold a grazing permit in more than one district on the Navajo Reservation.

(d) Determination of rights to grazing permits involved in cases of divorce, separation, threatened family disruption, and permits of deceased permittees shall be the responsibility of the Navajo Court of Indian Offenses under existing laws, rules, and regulations.

**§ 167.9 Grazing permits.**

(a) All livestock grazed on the Navajo Reservation must be covered by an authorized grazing permit issued by the Superintendent based upon the recommendations of the District Grazing Committee. All such grazing permits will be automatically renewed annually until terminated. District Grazing Committees shall act on all grazing permit changes resulting from negotiability within their respective Districts.

The number of livestock that may be grazed under each permit shall be the number originally permitted plus or minus any changes as indicated by Transfer Agreements and Court Judgment Orders.

(b) Any permittee who has five or more horses on his current permit will be required to apply any acquired sheep units in classes of stock other than horses. If the purchaser wishes more than his present number of horses, he must have his needs evaluated by the District Grazing Committee. Yearling colts will be counted against permitted number on all permits with six or more horses. Yearling colts will not be counted against permitted number on all permits with less than six horses. In hardship cases the District Grazing Committee may reissue horses removed from grazing permits through negotiability to permit holders who are without sufficient horses on their present permits to meet minimum needs.

(c) No permittee shall be authorized to graze more than ten head of horses or to accumulate a total of over 350 sheep units.

(d) Upon recommendation of the District Grazing Committee and with the approval of the Superintendent, grazing permits may be transferred from one permittee to another in accordance with instructions provided by the Advisory Committee of the Navajo Tribal Council, or may be inherited; provided that the permitted holdings of any individual permittee shall not exceed 350 sheep units or the equivalent thereof. Should inheritance or other acquisition of permits increase the holdings of any permittee to more than 350 sheep units, said permittee shall dispose of all livestock in excess of 350 sheep units not later than November 15 following date of inheritance or other acquisition, and that portion of his or her permit in excess of 350 sheep units within one year from date of inheritance.

(e) By request of a permittee to sublet all or a part of his or her regular grazing permit to a member of his family or to any person who would receive such permit by inheritance, such subletting of permits may be authorized by the District Grazing Committee and the Superintendent or his authorized representative.

### § 167.10 Special grazing permits.

The problem of special grazing permits shall be settled by the Bureau of Indian Affairs working in cooperation with the Tribal Council, or any Committee designated by it, with a view to terminating these permits at a suitable date and with the least hardship to the Indians concerned.

### § 167.11 Tenure of grazing permits.

(a) All active regular grazing permits shall be for one year and shall be automatically renewed annually until terminated. Any Navajo eligible to hold a grazing permit as defined in § 167.8 may become a livestock operator by obtaining an active grazing permit through negotiability or inheritance or both.

(b) In many Districts, and portions of all districts, unused grazing permits or portions of grazing permits are beneficial in aiding range recovery. Each District Grazing Committee will handle each matter of unused grazing permit or portions of grazing permits on individual merits. Where ample forage is available operators will be encouraged to fill their permits with livestock or dispose of their unused permits through negotiability. In those areas where forage is in need of rehabilitation permittees will not be encouraged to stock to their permitted numbers until the range has sufficiently recovered to justify the grazing of additional livestock.

### § 167.12 Grazing fees.

Grazing fees shall not be charged at this time.[1]

[1] Grazing Committees were organized in May 1953. These committees have not had ample time to fully acquaint themselves or the stockmen in their respective districts with all of the various items of range administration and range management. Also the drought of several years has not broken. The Navajo Tribe therefore requests that the matter of establishing regulations regarding the adoption of grazing fees be deferred until such a time as a full understanding of the advantages of fees can be had by the majority of the stockmen in all Districts. The assessment of grazing fees will not aid materially in obtaining proper range use. At this time it

### § 167.13 Trespass.

The owner of any livestock grazing in trespass in Navajo Tribal ranges shall be subject to action by the Navajo Court of Indian Offenses as provided in part 11 of this chapter, however, upon recommendations of the District Grazing Committee, first offenses may be referred to the Central Grazing Committee and the Superintendent or his authorized representative for proper settlement out of court. The following acts are considered as trespass:

(a) Any person who sells an entire permit must dispose of all his livestock or be in trespass. Any person selling a portion of his permit must not run more stock than covered by his remaining permit, or be subject to immediate trespass.

(b) All persons running livestock in excess of their permitted number must by April 25, 1959, either obtain permits to cover their total livestock numbers or reduce to their permitted number, or be in trespass. Additional time may be granted in unusual individual cases as determined and approved by the District Grazing Committee, General Grazing Committee, and the Superintendent or his authorized representative.

(c) Failure to comply with the provisions in §167.9, shall be considered as trespass.

(d) Any person who willfully allows his livestock to drift from one district to another shall be subject to trespass action. The grazing of livestock in customary use areas extending over District Boundary lines, when such customary use areas are defined and agreed upon by the District Grazing Committees involved, shall not be considered as willful trespass.

(e) The owner of any livestock who violates the customary or established use units of other permittees shall be subject to trespass action.

[22 FR 10578, Dec. 24, 1957, as amended at 24 FR 1178, Feb. 17, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

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is more important that other sections of these grazing regulations be adopted and enforced. Resolution of Navajo Tribal Council No. CJ-22-54 of June 9, 1954.

### § 167.14 Movement of livestock.

Annually, prior to the normal lamb buying season, the Central Grazing Committee after consultation with District Grazing Committees shall issue regulations covering the buying period and the procedures and methods to be used in moving livestock to market. All movements of livestock other than trucking from buying areas to loading or shipping points must be authorized by Trailing Permits issued by the District Grazing Committees on the approved forms. Failure to comply with this section and with annual lamb buying regulations will be considered as trespass.

### § 167.15 Control of livestock disease and introduction of livestock.

(a) The District Grazing Committees with the approval of the Superintendent shall require livestock to be dipped, vaccinated, inspected and be restricted in movement when necessary to prevent the introduction and spread of contagious or infectious disease in the economic interest of the Navajo stock owners. Upon the recommendation of the District Grazing Committee livestock shall be dipped annually when such dipping is necessary to prevent the spread of contagious diseases. These annual dippings shall be completed on or before September 1st each year. Livestock, however, may be dipped at other times when necessary. The Superintendent or his authorized representative and the District Grazing Committee may also require the rounding up of cattle, horses, mules, etc., in each District for the purpose of inspection for disease, vaccinating, branding and other related operations.

(b) No livestock shall be brought onto the Reservation without a permit issued by the Superintendent or his authorized representative following inspection, in order to safeguard Indian livestock from infections and contagious disease and to insure the introduction of good quality sires and breeding stock.

(c) Any unusual disease conditions beyond the control measures provided herein shall be immediately reported by the District Grazing Committee to the Chairman of the Navajo Tribal Council and the Superintendent who

shall attempt to obtain specialists and provide emergency funds to control and suppress the disease.

### § 167.16 Fences.

Favorable recommendation from the District Grazing Committee and a written authorization from the Superintendent or his authorized representative must be secured before any fences may be constructed in non-agricultural areas. The District Grazing Committee shall recommend to the Superintendent the removal of unauthorized existing fences, or fences enclosing demonstration areas no longer used as such, if it is determined that such fences interfere with proper range management or an equitable distribution of range privileges. All enclosures fenced for the purpose of protecting agricultural land shall be kept to a size commensurate with the needs for protection of agricultural land and must be enclosed by legal four strand barbed wire fence or the equivalent.

### § 167.17 Construction near permanent livestock water developments.

(a) The District Grazing Committee shall regulate the construction of all dwellings, corrals and other structures within one-half mile of Government or Navajo Tribal developed permanent livestock waters such as springs, wells, and charcos or deep reservoirs.

(b) A written authorization from the District Grazing Committee must be secured before any dwellings, corrals, or other structures may be constructed within one-half mile of Government or Navajo Tribal developed springs, wells and charcos or deep reservoirs.

(c) No sewage disposal system shall be authorized to be built which will drain into springs or stream channels in such a manner that it would cause contamination of waters being used for livestock or human consumption.

## PART 168—GRAZING REGULATIONS FOR THE HOPI PARTITIONED LANDS AREA

Sec.

168.1 Definitions.
168.2 Authority.
168.3 Purpose.
168.4 Establishment of range units.
168.5 Grazing capacity.
168.6 Grazing on range units authorized by permit.
168.7 Kind of livestock.
168.8 Grazing fees.
168.9 Assignment, modification and cancellation of permits.
168.10 Conservation and land use provisions.
168.11 Range improvements; ownership; new construction.
168.12 Special permit requirements and provisions.
168.13 Fences.
168.14 Livestock trespass.
168.15 Control of livestock diseases and parasites.
168.16 Impoundment and disposal of unauthorized livestock.
168.17 Concurrence procedures.
168.18 Appeals.
168.19 Information collection.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 640d–8, and 640d–18.

SOURCE: 47 FR 39817, Sept. 10, 1982, unless otherwise noted.

### § 168.1 Definitions.

As used in this part, terms shall have the meanings set forth in this section.

(a) *Secretary* means the Secretary of Interior or his designee;

(b) *Area Director* means the officer in charge of the Phoenix Bureau of Indian Affairs Area Office (or his successor; and/or his authorized representative) to whom has been delegated the authority of the Assistant Secretary—Indian Affairs to act in all matters pertaining to lands partitioned to the Hopi Tribe under its jurisdiction, within the boundaries of the former Joint Use Area.

(c) *Superintendent* means the Superintendent, Hopi Agency or his designee.

(d) *Tribal Government* means the Hopi Tribal Council, or its duly designated representative.

(e) *Project Officer* means the former Special Project Officer of the Bureau of Indian Affairs, Administrative Office, Flagstaff, Arizona 86001, who had been delegated the authority of the Commissioner of Indian Affairs to act in matters respecting the former Joint Use Area.

(f) *Former Joint Use Area* means the area established by the United States District Court for the District of Arizona in the case entitled *Healing* v. *Jones*, 210 F. Supp. 125 (1962), which is

inside the Executive order area (Executive order of December 16, 1882) but outside Land Management District 6 and which was partitioned by the judgment of partition dated April 18, 1979.

(g) *Hopi Partition Area* means that portion of the Former Joint Use Area which has been added to the Hopi Tribe's reservation.

(h) *Range Unit* means a tract of range land designated as a management unit for administration of grazing.

(i) *Range improvements* means fences, stockwater devices, corrals, trails and other similar devices or practices which are applied to the land to enhance range productivity or usability.

(j) *Permit* means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term as used herein shall include written authorizations issued to enable the crossing or trailing of domestic livestock across specified tracts or range units.

(k) *Interim permit* means a permit granted to members of the Navajo tribe residing on Hopi Partitioned Lands who meet the qualifications of § 168.6(b) in accordance with Pub. L. 93–531 as amended.

(l) *Animal unit* (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: sheep and goats, one ewe, doe, buck or ram equals 0.25 A.U.; one sheep unit year long (SUYL) equals 0.25 Animal Unit year long; horses and mules, one horse, mule, donkey or burro equals 1.25 A.U.

(m) *Tribe* means the Hopi Tribe including all villages and clans.

(n) *Allocate* means to apportion grazing, including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

(o) *Person awaiting relocation* means a resident of the Hopi Partitioned Area who meets each of the following criteria:

(1) Is listed on the Bureau of Indian Affairs enumeration (as defined in (q) below);

(2) Has a livestock inventory listed with the project Officer (see (r) below);

(3) Is awaiting relocation under the Settlement Act; and

(4) Was grazing livestock on the date of the entry of the Judgment of Partition, April 18, 1979.

(p) *Carrying capacity* means the maximum stocking rate possible without inducing damage to vegetation or related resources.

(q) *BIA enumeration* means the list of persons living on and improvements located within the former Joint Use Area obtained by interviews by the Project Officer's staff.

(r) *Livestock inventory* means the original list as amended (developed by the Project Officer in 1976–77) of livestock owned by persons having customary grazing use in the former Joint Use Area.

(s) *Settlement Act* means the Act of December 22, 1974, 88 Stat. 1712, as amended.

(t) *Life tenant* means a person who has applied for and been granted a life estate lease pursuant to section 30 of the Settlement Act, 25 U.S.C. 640d–28.

### § 168.2 Authority.

It is within the general authority of the Secretary to protect Indian trust lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Also, under the Navajo-Hopi Settlement Act as amended, 25 U.S.C. 640d–8 and 18, the Secretary is authorized and directed to:

(a) Reduce livestock grazing within the former Joint Use Area to carrying capacity,

(b) Restore the grazing range potential of the resource to maximum grazing extent feasible,

(c) Survey, monument and fence the partition boundary,

(d) Protect the rights and property of individuals awaiting relocation or authorized to reside on life estates, and

(e) To administer conservation practices, including grazing control and range restoration activities on the Hopi Partitioned Lands.

### § 168.3 Purpose.

These regulations are issued to implement the Secretary's responsibilities mandated by the Settlement Act and subsequent U.S. District Court

Judgement filed May 4, 1982, in the case, *Hopi Tribe* v. *Watt*, Civ. No. 81-272 PCT-EHC. This portion of the regulations apply only to lands partitioned to the Hopi Tribe within the former Joint Use Area.

### § 168.4 Establishment of range units.

The Area Director will use Soil and Range Inventory data to establish range units on the Hopi Partitioned Area to provide for a surface land management program to restore the land to its full grazing potential and maintain that potential to the maximum extent feasible. The establishment of range units on Hopi Partitioned Lands is subject to the concurrence of the Hopi Tribe in accordance with § 168.17 of these regulations.

### § 168.5 Grazing capacity.

(a) The Area Director shall prescribe the maximum number of each kind of livestock which may be grazed on land under his jurisdiction without inducing damage to vegetation or related resources on each range unit and the season or seasons of use to achieve the objectives of the land recovery program required by the Settlement Act.

(b) The Area Director shall review the stocking rate upon which the grazing permits are issued on a continuing basis and adjust that rate as conditions warrant.

### § 168.6 Grazing on range units authorized by permit.

Grazing use on range units is authorized only by permits granted under paragraph (a) or (b) of this section.

(a) *Grazing permits to Hopi tribal members on their partitioned lands*. The Area Director shall assign grazing privileges to the Hopi Tribe for lands within Hopi Partitioned Lands. The tribal government will then allocate use to their tribal members for permit periods not to exceed five years. Grazing use by Hopi tribal enterprises may be authorized. The Area Director will issue permits based on the determination of the Hopi tribal government.

(b) *Interim Grazing Permit for persons awaiting relocation*. Navajo Tribal members who have maintained both a permanent residence on Hopi Partitioned lands; a livestock inventory since enumeration; and meet all the criteria listed in § 168.1(o), shall be eligible for an interim grazing allocation on Hopi Partitioned Lands under the following terms and conditions:

(1) The Area Director shall first verify that an applicant meets the criteria of the definition in § 168.1(o) and will issue all permits.

(2) The permitted number shall not exceed either (i) 10 SUYL (See § 168.1(1)) for each eligible family member, or (ii) the grazing applicant's livestock inventory reduced by voluntary sales as adjusted by reproduction, in accordance with procedures developed by the Project Officer based upon the study by Stubblefield and Camfield, 1975 page 5. The determination of the person to whom permits will be issued and the number of livestock to be permitted will be based on information provided by the permit applicant and an assessment of the number of dependents residing in the immediate household.

(3) The permit shall authorize grazing for a specific number and kind of animal(s) in a specified range unit. Interim grazing permits will not be issued in excess of one-half the authorized carrying capacity of the Hopi Partition area.

(4) Subject to the provisions of § 168.9(b), permits shall expire when the person awaiting relocation is relocated pursuant to the Settlement Act. No interim permit will be issued for a term greater than one year. Permits may be reissued upon application and redetermination of eligibility. All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99–190. When a Navajo permit holder discontinues grazing livestock or reduces the number being grazed whether by reason of his relocating or for any other reason, his grazing permit will be cancelled or reduced and no permit will be issued in lieu thereof. The total number of authorized animal units grazed by the Navajo permit holders awaiting relocation will reduced by the number of animal units authorized under the cancelled or reduced permit.

[47 FR 39817, Sept. 10, 1982, as amended at 51 FR 23052, June 25, 1986]

### § 168.7 Kind of livestock.

Unless determined otherwise by the Area Director for conservation purposes, the Hopi Tribe may determine, subject to the authorized carrying capacity, the kind of livestock that may be grazed by their tribal members on the range units within the Hopi Partitioned Land area.

### § 168.8 Grazing fees.

(a) The rental value of all uses of Hopi Partitioned lands by persons who are not members of the Hopi Tribe, including eligible holders of interim permits, will be determined, and assessed by the Area Director and paid in accordance with 25 U.S.C. 640d–15.

(b) The Hopi Tribe has established an annual grazing fee to be assessed all range users on Hopi Partitioned Lands. The annual Hopi grazing fee shall be paid in full in advance of the annual effective date of the permit, prior to the issuance of a grazing permit. All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99–190. Failure of the permittee to make payment in full in advance will be cause to deny issuance of the grazing permit.

[47 FR 39817, Sept. 10, 1982, as amended at 51 FR 23052, June 25, 1986]

### § 168.9 Assignment, modification and cancellation of permits.

(a) Grazing permits to Hopi tribal members shall not be reassigned, subpermitted or transferred without the approval of the permit issuer(s).

(b) The Area Director may revoke or withdraw all or any part of any grazing permit in Hopi Partitioned Lands by cancellation or modification on 30 days written notice of a violation of the permit or special conditions affecting the land or the safety of the livestock thereon, as may result from flood, disaster, drought, contagious diseases, etc. Except in the case of extreme necessity, cancellation or modification shall be effected on the next annual anniversay date of the grazing permit following the date of notice. Revocation or withdrawal of all or any of the grazing permit by cancellation or modification as provided herein is effective on the date the notice of cancellation or modification is received and shall be appealable under 25 CFR part 2.

### § 168.10 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Conservation management plans necessary to accomplish this will be made a part of the grazing permit by stipulation.

### § 168.11 Range improvements; ownership; new construction.

Except as provided by the Relocation Act, range improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct or remove improvements must be obtained from the Hopi Tribe.

### § 168.12 Special permit requirements and provisions.

All grazing permits shall contain the following provisions:

(a) Because the lands covered by the permit are in trust status, all of the permittees' obligations on the permit and the obligations of his sureties are to the United States as well as to the beneficial owners of the lands.

(b) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(c) The permit authorizes only the grazing of livestock.

### § 168.13 Fences.

Fencing will be erected by the Federal Government around the perimeter of the 1882 Executive Order Area, Land Management District 6, and on the boundary of the former Joint Use Area partitioned to each tribe by the Judgment of Partition of April 18, 1979. Fencing of other areas in the former Joint Use Area will be required for a range recovery program in accordance with the range units established under § 168.4. Such fencing shall be erected at Government expense and ownership shall be clearly identified by appropriate posting on the fencing. Intentional destruction of Federal property

will be treated as a violation of 18 U.S.C. 1164.

### § 168.14 Livestock trespass.

The owner of any livestock grazing in trespass on the Hopi Partitioned Lands Area is liable to a civil penalty of $1 per head per day for each animal in trespass, together with the replacement value of the forage consumed and a reasonable value for damages to property injured or destroyed. The Superintendent may take appropriate action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the Tribe. The following acts are prohibited:

(a) The grazing upon or driving across any of the Hopi Partitioned Lands of any livestock without an approved grazing or crossing permit;

(b) Allowing livestock to drift and graze on lands without an approved permit;

(c) The grazing of livestock upon lands within an area closed to grazing of that class of livestock;

(d) The grazing of livestock by permittees upon any land withdrawn from use for grazing purpose to protect it from damage, after the receipt of notice from the Area Director; and

(e) Grazing livestock in excess of those numbers and kinds authorized on a livestock grazing permit approved by the Area Director.

### § 168.15 Control of livestock diseases and parasites.

Whenever livestock within the Hopi Partitioned Lands become infected with contagious or infectious diseases or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable laws.

### § 168.16 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the Hopi Partitioned Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Superintendent as provided herein.

(a) When the Area Director determines that unauthorized livestock use is occurring and has definite knowledge of the kind of unauthorized livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound unauthorized livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Area Director determines that unauthorized livestock use is occurring but does not have complete knowledge of the number and class of livestock or if the name and address of the owner thereof are unknown, such livestock will be impounded anytime 15 days after the date of a General Notice of Intent to Impound unauthorized livestock is first published in the local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the Hopi Partitioned Lands which are owned by persons given notice under paragraph (a) of this section, and any unauthorized livestock in areas for which a notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the twelve-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock a notice of sale of impounded livestock will be published in the local newspaper, posted at the nearest chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least 5 days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder, provided his bid is at or above the minimum amount set by the Superintendent based upon U.S.D.A.'s current Agricultural Statistic's Report for Arizona. If a bid at or above the minimum is not received the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the superintendent shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock;

(2) In payment of any penalties or damages assessed pursuant to § 168.14 of this part which penalties or damages shall be credited to the Hopi tribe as provided in said section;

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above not claimed with one year from the date of sale, will be credited to the Hopi Tribe.

**§ 168.17 Concurrence procedures.**

(a) *Definitions*. As used in this section, terms shall have the meaning set forth as follows:

(1) *Concurrence* means agreement by the Area Director and the Hopi Tribe, speaking through the Chairman of the Tribe (or his designee).

(2) *Non-concurrence* means disagreement between the Area Director and the Hopi Tribe, speaking through the Chairman of the Hopi Tribe (or his designee), or a failure of the Hopi Tribe to respond to a proposal by the Area Director in a timely manner.

(3) *Timely manner* means a period of thirty days, unless this period is shortened by the existence of an emergency. Upon request by the Tribal Council, the Area Director may extend the 30 day period. In instances where this period applies to the Area Director, he may extend the period by so notifying the Tribe.

(4) *An emergency* is a condition that the Area Director finds threatens the rights and property of life tenants and persons awaiting relocation or one that the Area Director finds is causing the condition of the range land to deteriorate.

(5) *Conservation practice* is a program consisting of a series of acts in conformance with the Bureau's range management policies and procedures which maintains or seeks to achieve the grazing potential of range lands on a continuing basis.

(6) *Range restoration activities* is a program consisting of a series of range management acts, including but not limited to procedures which increase range forage production, reduce erosion, improve range usability and reduce stocking by issuing grazing permits to persons residing on Hopi partitioned lands at rates which maximize the carrying capacity of the range lands on a continuing basis.

(7) *Grazing control* is a program consisting of a series of range management acts, including but not limited to procedures by which grazing permits are issued to persons residing on Hopi partitioned lands, which limit the grazing on range lands to its carrying capacity.

(b) The Area Director will seek the participation of the Hopi Tribe in his investigation, formulation and planning of conservation practices for Hopi partitioned lands. The Area Director will submit, in writing, the proposed plan to the Hopi Tribe.

(c) Upon receipt of the Area Director's proposed conservation practices, the Hopi Tribe will deliver, in writing, to the Area Director its concurrence or non-concurrence on all of the proposed conservation practices in a timely manner. The Area Director will continue to seek Hopi Tribal participation during the review process.

(d) Concurrence of the Hopi Tribe will be sought on all conservation practices, range restoration activities, and grazing control programs on the Hopi Partitioned Lands.

(1) If the Area Director and the Hopi Tribe concur on all or part of the proposed conservation practices in writing in a timely manner, those practices concurred upon may be immediately implemented.

(2) If the Hopi Tribe does not concur on all or part of the proposed conservation practices in a timely manner, the Area Director will submit in writing to the Hopi Tribe a declaration of non-concurrence. The Area Director will then notify the Hopi Tribe in writing of a formal hearing to be held not sooner than 15 days from the date of the non-concurrence declaration.

(i) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. Minutes of the hearing will be taken. Following the hearing, the Area Director may amend, alter or otherwise change his proposed conservation practices. Except as provided in §168.17(d)(1) of this section, if following the hearing, the Area Director altered or amends portions of his proposed plan of action, he will submit those individual altered or amended portions of the plan to the Tribe in a timely manner for their concurrence.

(ii) In the event the Tribe fails or refuses to give its concurrence to the proposal at the hearing, then the implementation of such proposal may only be undertaken in those situations where the Area Director expressly determines in a written order, based upon findings of fact, that the proposed action is necessary to protect the rights and property of life tenants and/or persons awaiting relocation.

### § 168.18 Appeals.

Appeals from decisions issued under this part will be in accordance with procedures in 25 CFR part 2.

### § 168.19 Information collection.

The information collection requirement(s) contained in this regulation have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076–0027. The information is being collected in order to ascertain eligibility for the issuance of a grazing permit. Response is mandatory in order to obtain a permit.

## PART 169—RIGHTS-OF-WAY OVER INDIAN LANDS

Sec.

169.1 Definitions.
169.2 Purpose and scope of regulations.
169.3 Consent of landowners to grants of right-of-way.
169.4 Permission to survey.
169.5 Application for right-of-way.
169.6 Maps.
169.7 Field notes.
169.8 Public survey.
169.9 Connection with natural objects.
169.10 Township and section lines.
169.11 Affidavit and certificate.
169.12 Consideration for right-of-way grants.
169.13 Other damages.
169.14 Deposit and disbursement of consideration and damages.
169.15 Action on application.
169.16 Affidavit of completion.
169.17 Change of location.
169.18 Tenure of approved right-of-way grants.
169.19 Renewal of right-of-way grants.
169.20 Termination of right-of-way grants.
169.21 Condemnation actions involving individually owned lands.
169.22 Service lines.
169.23 Railroads.
169.24 Railroads in Oklahoma.
169.25 Oil and gas pipelines.
169.26 Telephone and telegraph lines; radio, television, and other communications facilities.
169.27 Power projects.
169.28 Public highways.

AUTHORITY: 5 U.S.C. 301; 62 Stat. 17 (25 U.S.C. 323–328), and other acts cited in the text.

SOURCE: 33 FR 19803, Dec. 27, 1968, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 169.1 Definitions.

As used in this part 169:

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority. Before proceeding under these regulations anyone desiring a right-of-way should inquire at the Indian Agency, Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary for the purposes of this part 169.

(b) *Individually owned land* means land or any interest therein held in

trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) *Tribe* means a tribe, band, nation, community, group or pueblo of Indians.

(d) *Tribal land* means land or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(e) *Government owned land* means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definitions set out in paragraphs (b) and (d) of this section.

### § 169.2 Purpose and scope of regulations.

(a) Except as otherwise provided in § 1.2 of this chapter, the regulations in this part 169 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land and Government owned land may be granted.

(b) Appeals from administrative action taken under the regulations in this part 169 shall be made in accordance with part 2 of this chapter.

(c) The regulations contained in this part 169 do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works which shall constitute a part of any project for which a license is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. (16 U.S.C. 797(e)). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(e)).

### § 169.3 Consent of landowners to grants of right-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over and across individually owned lands without the consent of the individual Indian owners when

(1) The individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant;

(3) The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant;

(4) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof;

(5) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable

to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

[36 FR 14183, July 31, 1971. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.4 Permission to survey.

Anyone desiring to obtain permission to survey for a right-of-way across individually owned, tribal or Government owned land must file a written application therefor with the Secretary. The application shall adequately describe the proposed project, including the purpose and general location, and it shall be accompanied by the written consents required by § 169.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover twice the estimated damages which may be sustained as a result of the survey. With the approval of the Secretary, a surety bond may be substituted in lieu of a check or money order accompanying an application, provided the company issuing the surety bond is licensed to do business in the State where the land to be surveyed is located. The application shall contain an agreement to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees. When the applicant is an agency or instrumentality of the Federal or a State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the application was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this part 169, the Secretary may grant the applicant written permission to survey.

### § 169.5 Application for right-of-way.

Written application identifying the specific use requested shall be filed in duplicate with the Secretary. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by satisfactory evidence of the good faith and financial responsibility of the applicant. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the applicant was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied be a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the

applicant has previously filed with the Secretary an application accompanied by the evidence required by this section, a reference to the date and place of such filing will be sufficient. Except as otherwise provided in this section, the application shall be accompanied by a duly executed stipulation, in duplicate, expressly agreeing to the following:

(a) To construct and maintain the right-of-way in a workmanlike manner.

(b) To pay promptly all damages and compensation, in addition to the deposit made pursuant to § 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.

(c) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.

(e) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(f) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.

(g) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(i) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition.

(j) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

When the applicant is the U.S. Government or a State Government or an instrumentality thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement that the applicant agree to any stipulations so prohibited.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.6 Maps.

(a) Each application for a right-of-way shall be accompanied by maps of definite location consisting of an original on tracing linen or other permanent and reproducible material and two reproductions thereof. The field notes shall accompany the application, as provided in § 169.7. The width of the right-of-way shall be clearly shown on the maps.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary and when an increase in scale cannot be avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient handling and filing.

(d) The maps shall show the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and

ranges in which the lands crossed by the right-of-way are situated.

### § 169.7 Field notes.

Field notes of the survey shall appear along the line indicating the right-of-way on the maps, unless the maps would be too crowded thereby to be easily legible, in which event the field notes may be filed separately on tracing linen in such form that they may be folded readily for filing. Where field notes are placed on separate tracing linen, it will be necessary to place on the maps only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the maps or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

### § 169.8 Public survey.

(a) The terminal of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the maps, in the engineer's affidavit, and in the certificate. The notes and all data for the computation of the traverse must be given.

### § 169.9 Connection with natural objects.

When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The maps must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the maps must state the connections.

### § 169.10 Township and section lines.

Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The maps shall show these distances and the station numbers at the points of intersections. The field notes shall show these distances and the station numbers.

### § 169.11 Affidavit and certificate.

(a) There shall be subscribed on the maps of definite location an affidavit executed by the engineer who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and maps and both designating by termini and length in miles and decimals, the line of route for which the right-of-way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or State government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the State or county engineer or other authorized State or county officer accepting the right-of-way and stating that he is satisfied as to the accuracy of the survey and maps.

### § 169.12 Consideration for right-of-way grants.

Except when waived in writing by the landowners or their representatives as defined in § 169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate.

The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

[45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.13 Other damages.

In addition to the consideration for a grant of right-of-way provided for by the provisions of § 169.12, the applicant for a right-of-way will be required to pay all damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

### § 169.14 Deposit and disbursement of consideration and damages.

At the time of filing an application for right-of-way, the applicant must deposit with the Secretary the total estimated consideration and damages, which shall include consideration for the right-of-way, severance damages, damages caused during the survey, and estimated damages to result from construction less any deposit previously made under § 169.4. In no case shall the amount deposited as consideration for the right-of-way over any parcel be less than the amount specified in the consent covering that parcel. If in reviewing the application, the Secretary determines that the amounts deposited are inadequate to compensate the owners, the applicant shall increase the deposit to an amount determined by the Secretary to be adequate. The amounts so deposited shall be held in a ''special deposit'' account for distribution to or for the account of the landowners and authorized users and occupants of the land. Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have been sustained. Amounts deposited to cover consideration for the right-of-way and severance damages shall be disbursed upon the granting of the right-of-way. Any part of the deposit which is not required for disbursement as aforesaid shall be refunded to the applicant promptly following receipt of the affidavit of completion of construction filed pursuant to § 169.16.

### § 169.15 Action on application.

Upon satisfactory compliance with the regulations in this part 169, the Secretary is authorized to grant the right-of-way by issuance of a conveyance instrument in the form approved by the Secretary. Such instrument shall incorporate all conditions or restrictions set out in the consents obtained pursuant to § 169.3. A copy of such instrument shall be promptly delivered to the applicant and thereafter the applicant may proceed with the construction work. Maps of definite location may be attached to and incorporated into the conveyance document by reference. In the discretion of the Secretary, one conveyance document may be issued covering all of the tracts of land traversed by the right-of-way, or separate conveyances may be made covering one or several tracts included in the application. A duplicate original copy of the conveyance instrument, permanent and reproducible maps, a copy of the application and stipulations, together with any other pertinent documents shall be transmitted by the Secretary to the office of record for land documents affecting the land covered by the right-of-way, where they will be recorded and filed.

### § 169.16 Affidavit of completion.

Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Secretary an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Secretary shall transmit one copy of the affidavit to the office of record mentioned in § 169.15. Failure to file an affidavit in accordance with this section shall subject the right-of-way to cancellation in accordance with § 169.20.

### § 169.17 Change of location.

If any change from the location described in the conveyance instrument is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to consent, approval, the ascertainment of damages, and the payment thereof, in all respects as in

the case of the original location. Before a revised conveyance instrument is issued, the applicant shall execute such instruments deemed necessary by the Secretary extinguishing the right-of-way at the original location. Such instruments shall be transmitted by the Secretary to the office of record mentioned in § 169.15 for recording and filing.

### § 169.18 Tenure of approved right-of-way grants.

All rights-of-way granted under the regulations in this part 169 shall be in the nature of easements for the periods stated in the conveyance instrument. Except as otherwise determined by the Secretary and stated in the conveyance instrument, rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), for railroads, telephone lines, telegraph lines, public roads and highways, access roads to homesite properties, public sanitary and storm sewer lines including sewage disposal and treatment plants, water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals), oil, gas, and public utility water pipelines (including pumping stations and appurtenant facilities), electric power projects, generating plants, switchyards, electric transmission and distribution lines (including poles, towers, and appurtenant facilities), and for service roads and trails essential to any of the aforestated use purposes, may be without limitation as to term of years; whereas, rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as determined by the Secretary and stated in the conveyance instrument.

[37 FR 12937, June 30, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.19 Renewal of right-of-way grants.

On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Secretary, with the consent required by § 169.3, may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in § 169.12. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

### § 169.20 Termination of right-of-way grants.

All rights-of-way granted under the regulations in this part may be terminated in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with § 169.5(j) for any of the following causes:

(a) Failure to comply with any term or condition of the grant or the applicable regulations;

(b) A nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted;

(c) An abandonment of the right-of-way.

If within the 30-day notice period the grantee fails to correct the basis for termination, the Secretary shall issue an appropriate instrument terminating the right-of-way. Such instrument shall be transmitted by the Secretary to the office of record mentioned in § 169.15 for recording and filing.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.21 Condemnation actions involving individually owned lands.

The facts relating to any condemnation action to obtain a right-of-way over individually owned lands shall be reported immediately by officials of the Bureau of Indian Affairs having knowledge of such facts to appropriate officials of the Interior Department so that action may be taken to safeguard the interests of the Indians.

### § 169.22 Service lines.

(a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of individually owned land and the applicant before any work by the applicant

may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 14.5 kv. or less except lines to serve irrigation pumps and commercial and industrial uses which shall be limited to a voltage not to exceed 34.5 kv. A service line shall be for the sole purpose of supplying the individual owner or authorized occupant or user of land, including schools and churches, with telephone, water, electric power, gas, and other utilities for use by such owner, occupant, or user of the land on the premises.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken for the construction of a service line across tribal land. A service line shall be for the sole purpose of supplying an occupant or user of tribal land with any of the utilities specified in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected, unless the contract under which the occupant or user of the land obtained his rights specifically authorizes such occupant or user to enter into service agreements for utilities without further tribal consent.

(c) In order to encourage the use of telephone, water, electric power, gas and other utilities and to facilitate the extension of these modern conveniences to sparsely settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization when required.

(d) An executed copy of the agreement, together with a plat or diagram, and in the case of tribal land, an authenticated copy of the tribal authorization, when required, shall be filed with the Secretary within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placing of such improvements and subject such party to the payment of damages caused by his unauthorized act.

### § 169.23 Railroads.

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312–318); the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma, for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines. Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line,

separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in § 169.8 and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(f) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(g) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government officials in charge, of the right-of-way by canals, ditches, and other projects.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use the land for such purposes for a continuous period of 2 years.

### § 169.24 Railroads in Oklahoma.

(a) The Act of February 28, 1902 (32 Stat. 43), authorizes right-of-way grants across tribal and individually owned land in Oklahoma. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, railroad rights-of-way in Oklahoma granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) One copy on tracing linen of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately as provided in § 169.21.

### § 169.25 Oil and gas pipelines.

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), authorizes right-of-way grants for oil and gas pipelines across tribal, individually owned and Government-owned land. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be

subject to the provisions of this section.

(b) Rights-of-way, granted under aforesaid Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites shall not extend beyond a term of 20 years and may be extended for another period of not to exceed 20 years following the procedures set out in § 169.19 of this part.

(c) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(d) The size of the proposed pipeline must be shown in the application, on the maps, and in the engineer's affidavit and applicant's certificate. The application and maps shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the grantee of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Secretary and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Secretary.

(e) Applicants for oil or gas pipeline rights-of-way may apply for additional land for pumping stations or tank sites. The maps shall show clearly the location of all structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and that the structures for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(f) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Secretary a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(g) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

### § 169.26 Telephone and telegraph lines; radio, television, and other communications facilities.

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land for telephone and telegraph lines and offices, for poles and lines for communication purposes, and for radio, television, and

other forms of communication transmitting, relay, and receiving structures and facilities. Rights-of-way granted under these acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), shall also be subject to the provisions of this section.

(b) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(c) No right-of-way shall be granted for a width in excess of 50 feet on each side of the centerline, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the centerline.

(d) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) Rights-of-way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio and television, and other forms of communication transmitting, relay, and receiving structures and facilities shall be limited to an area not to exceed 400 feet by 400 feet.

### § 169.27 Power projects.

(a) The Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328) shall also be subject to the provisions of this section.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher involving Government-owned lands shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the Secretary, upon notification to the effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

(c) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(d) Rights-of-way for power lines shall be limited to those widths which can be justified and in no event shall exceed a width of 200 feet on each side of the centerline.

(e) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any

project transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(f) An applicant for a right-of-way for a transmission line across Government-owned lands having a voltage of 66 kV or more must, in addition to the stipulation required by §169.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the

total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

[33 FR 19803, Dec. 27, 1968, as amended at 38 FR 14680, June 4, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.28 Public highways.

(a) The appropriate State or local authorities may apply under the regulations in this part 169 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this part 169, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in part 265 of this chapter.

# PART 170—INDIAN RESERVATION ROADS PROGRAM

## Subpart A—Policies, Applicability, and Definitions

Sec.
170.1 What does this part do?
170.2 What is the IRR Program and BIA Road Maintenance Program policy?
170.3 When do other requirements apply to the IRR Program?
170.4 What is the effect of this part on existing tribal rights?
170.5 What definitions apply to this part?
170.6 Information collection.

## Subpart B—Indian Reservation Roads Program Policy and Eligibility

CONSULTATION, COLLABORATION, COORDINATION

170.100 What do the terms ''consultation, collaboration, and coordination'' mean?
170.101 What is the IRR Program consultation and coordination policy?
170.102 How do the Departments consult, collaborate, and coordinate with tribal governments?
170.103 What goals and principles guide the Secretaries?
170.104 Must the Secretary consult with tribal governments before obligating IRR Program funds?
170.105 Are funds available for consultation, collaboration, and coordination activities?
170.106 When must State governments consult with tribes?
170.107 Should planning organizations and local governments consult with tribes when planning for transportation projects?
170.108 Should Indian tribes and BIA consult with States' planning organizations and local governments in the development of their IRRTIP?
170.109 How do the Secretaries prevent discrimination or adverse impacts?
170.110 How can State and local governments prevent discrimination or adverse impacts?
170.111 What can a tribe do if discrimination or adverse impacts occur?

ELIGIBLE USES OF IRR PROGRAM FUNDS

170.115 What activities may be funded with IRR Program funds?
170.116 What activities are not eligible for IRR Program funding?
170.117 How can a tribe determine whether a new use of funds is allowable?

USE OF IRR AND CULTURAL ACCESS ROADS

170.120 What restrictions apply to the use of an Indian Reservation Road?
170.121 What is a cultural access road?
170.122 Can a tribe close a cultural access road?

SEASONAL TRANSPORTATION ROUTES

170.123 What are seasonal transportation routes?
170.124 Does the IRR Program cover seasonal transportation routes?

IRR HOUSING ACCESS ROADS

170.127 What terms apply to access roads?
170.128 Are housing access roads and housing streets eligible for IRR Program funding?

TOLL, FERRY AND AIRPORT FACILITIES

170.130 How can tribes use Federal highway funds for toll and ferry facilities?
170.131 How can a tribe find out more about designing and operating a toll facility?
170.132 When can a tribe use IRR Program funds for airport facilities?

RECREATION, TOURISM AND TRAILS

170.135 Can a tribe use Federal funds for its recreation, tourism, and trails program?
170.136 How can a tribe obtain funds?
170.137 What types of activities can a recreation, tourism, and trails program include?
170.138 Can roads be built in roadless and wild areas?

HIGHWAY SAFETY FUNCTIONS

170.141 What Federal funds are available for a tribe's highway safety activities?
170.142 How can tribes obtain funds to perform highway safety projects?
170.143 How can IRR Program funds be used for highway safety?
170.144 What are eligible highway safety projects?
170.145 Are other funds available for a tribe's highway safety efforts?

TRANSIT FACILITIES

170.148 What is a tribal transit program?
170.149 How do tribes identify transit needs?
170.150 What Federal funds are available for a tribe's transit program?
170.151 May a tribe or BIA use IRR Program funds as matching funds?
170.152 What transit facilities and activities are eligible for IRR Program funding?

IRR PROGRAM COORDINATING COMMITTEE

170.155 What is the IRR Program Coordinating Committee?
170.156 What are the IRR Program Coordinating Committee's responsibilities?

170.157 What is the IRR Program Coordinating Committee's role in the funding process?
170.158 How does the IRR Program Coordinating Committee conduct business?

INDIAN LOCAL TECHNICAL ASSISTANCE PROGRAM

170.161 What is the Indian Local Technical Assistance Program?
170.162 How is the Indian LTAP funded?
170.163 How are Indian LTAP recipients selected?
170.164 How are tribal representatives nominated and chosen for the selection committee?
170.165 May a tribe enter into a contract or agreement for Indian LTAP funds?
170.166 What services do Indian LTAP centers provide?
170.167 How does a tribe obtain services from an Indian LTAP center?
170.168 Do Indian LTAP centers offer services similar to those of State LTAPs?
170.169 What can a tribe do if Indian LTAP services are unsatisfactory?
170.170 How are Indian LTAP centers managed?
170.171 How are tribal advisory technical panel members selected?

INDIAN LTAP-SPONSORED EDUCATION AND TRAINING OPPORTUNITIES

170.175 What Indian LTAP-sponsored transportation training and educational opportunities exist?
170.176 Where can tribes get scholarships and tuition for Indian LTAP-sponsored education and training?

APPENDIX A TO SUBPART B—ALLOWABLE USES OF IRR PROGRAM FUNDS
APPENDIX B TO SUBPART B—SOURCES OF TRIBAL TRANSPORTATION TRAINING AND EDUCATION OPPORTUNITIES

## Subpart C—Indian Reservation Roads Program Funding

TRIBAL TRANSPORTATION ALLOCATION METHODOLOGY (TTAM)

170.200 How does BIA allocate IRR Program funds?
170.201 How does BIA allocate and distribute tribal transportation planning funds?
170.202 Does the Relative Need Distribution Factor allocate funding among tribes?

IRR HIGH PRIORITY PROJECT (IRRHPP)

170.205 What is an IRR High Priority Project (IRRHPP)?
170.206 How is an emergency/disaster defined?
170.207 What is the intent of IRRHPP emergency/disaster funding?
170.208 What funding is available for IRRHPP?
170.209 How will IRRHPP applications be ranked and funded?
170.210 How may a tribe apply for IRRHPP?
170.211 What is the IRRHPP Funding Priority List?
170.212 What is the timeline for IRRHPPs?
170.213 How long are IRRHPP funds available for a project?
170.214 How does award of an emergency/disaster project affect projects on the FPL?

POPULATION ADJUSTMENT FACTOR

170.220 What is the Population Adjustment Factor?
170.221 What funding is available for distribution using the PAF?

RELATIVE NEED DISTRIBUTION FACTOR

170.223 What is the Relative Need Distribution Factor (RNDF)?

IRR INVENTORY AND LONG-RANGE TRANSPORTATION PLANNING (LRTP)

170.225 How does the LRTP process relate to the IRR Inventory?
170.226 How will this part affect the IRR Inventory?
170.227 How does BIA develop and use the IRR Inventory?
170.228 Are all facilities included in the IRR Inventory used to calculate CTC?

GENERAL DATA APPEALS

170.231 May a tribe challenge the data BIA uses in the RNDF?
170.232 How does a tribe appeal a disapproval from the BIA Regional Director?

FLEXIBLE FINANCING

170.300 May tribes use flexible financing to finance IRR transportation projects?
170.301 Can a tribe use IRR Program funds to leverage other funds or pay back loans?
170.302 Can BIA regional offices borrow IRR Program funds from each other?
170.303 Can a tribe apply for loans or credit from a State infrastructure bank?

APPENDIX A TO SUBPART C—IRR HIGH PRIORITY PROJECT SCORING MATRIX
APPENDIX B TO SUBPART C—POPULATION ADJUSTMENT FACTOR
APPENDIX C TO SUBPART C—RELATIVE NEED DISTRIBUTION FACTOR

APPENDIX D TO SUBPART C—COST TO CONSTRUCT

## Subpart D—Planning, Design, and Construction of Indian Reservation Roads Program Facilities

TRANSPORTATION PLANNING

170.400 What is the purpose of transportation planning?
170.401 What is BIA's role in transportation planning?
170.402 What is the tribal role in transportation planning?
170.403 What IRR Program funds can be used for transportation planning?
170.404 What happens when a tribe uses its IRR Program construction funds for transportation planning?
170.405 Can tribal transportation planning funds be used for road construction and other projects?
170.406 How must tribes use planning funds?
170.407 What happens to unobligated planning funds?

LONG-RANGE TRANSPORTATION PLANNING

170.410 What is the purpose of tribal long-range transportation planning?
170.411 What can a long-range transportation plan include?
170.412 How is the tribal IRR long-range transportation plan developed and approved?
170.413 What is the public role in developing the long-range transportation plan?
170.414 How is the tribal long-range transportation plan used and updated?
170.415 What is pre-project planning?

TRANSPORTATION IMPROVEMENT PROGRAM

170.420 What is the tribal priority list?
170.421 What is the Tribal Transportation Improvement Program (TTIP)?
170.422 What is the IRR Transportation Improvement Program (IRRTIP)?
170.423 How are projects placed on the IRRTIP?
170.424 How does the public participate in developing the IRRTIP?
170.425 How does BIA update the IRRTIP?
170.426 What is the approval process for the IRRTIP?
170.427 How may an IRRTIP be amended?
170.428 How is the State Transportation Improvement Program related to the IRRTIP?

PUBLIC HEARINGS

170.435 How does BIA or the tribe determine the need for a public hearing?
170.436 How are public hearings for IRR planning and projects funded?
170.437 How must BIA or a tribe inform the public when no hearing is held?
170.438 How must BIA or a tribe inform the public when a hearing is held?
170.439 How is a public hearing conducted?
170.440 How can the public learn the results of a public hearing?
170.441 Can a decision resulting from a hearing be appealed?

IRR INVENTORY

170.442 What is the IRR Inventory?
170.443 How can a tribe list a proposed transportation facility in the IRR Inventory?
170.444 How is the IRR Inventory updated?
170.445 What is a strip map?

ENVIRONMENTAL AND ARCHEOLOGICAL REQUIREMENTS

170.450 What archeological and environmental requirements must the IRR Program meet?
170.451 Can IRR Program funds be used for archeological and environmental compliance?

DESIGN

170.454 What design standards are used in the IRR Program?
170.455 How are design standards used in IRR projects?
170.456 When can a tribe request an exception from the design standards?
170.457 Can a tribe appeal a denial?

REVIEW AND APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES

170.460 What must a project package include?
170.461 May a tribe approve plans, specifications, and estimates?
170.462 When may a self-determination contract or self-governance agreement include PS&E review and approval?
170.463 What should the Secretary do if a design deficiency is identified?

CONSTRUCTION AND CONSTRUCTION MONITORING

170.470 What are the IRR construction standards ?
170.471 How are projects administered?
170.472 What construction records must tribes and BIA keep?
170.473 What happens when a construction project ends?
170.474 Who conducts the project closeout?

PROGRAM REVIEWS AND MANAGEMENT SYSTEMS

170.500 What program reviews do the Secretaries conduct?
170.501 What happens when the review process identifies areas for improvement?
170.502 Are management systems required for the IRR Program?

170.503 How are IRR Program management systems funded?

BRIDGE INSPECTION

170.504 When and how are bridge inspections performed?
170.505 How must bridge inspections be coordinated?
170.506 What are the minimum qualifications for certified bridge inspectors?
170.507 Who reviews bridge inspection reports?

APPENDIX A TO SUBPART D—CULTURAL RESOURCE AND ENVIRONMENTAL REQUIREMENTS FOR THE IRR PROGRAM
APPENDIX B TO SUBPART D—DESIGN STANDARDS FOR THE IRR PROGRAM

## Subpart E—Service Delivery for Indian Reservation Roads

FUNDING PROCESS

170.600 What must BIA include in the notice of availability of funds?
170.601 What happens to the unused portion of IRR Program management and oversight funds reserved by the Secretary?
170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

MISCELLANEOUS PROVISIONS

170.605 When may BIA use force account methods in the IRR Program?
170.606 How do legislation and procurement requirements affect the IRR Program?
170.607 Can a tribe use its allocation of IRR Program funds for contract support costs?
170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?

CONTRACTS AND AGREEMENTS UNDER ISDEAA

170.610 What IRR Program functions may a tribe assume under ISDEAA?
170.611 What special provisions apply to ISDEAA contracts and agreements?
170.612 How are non-contractible functions funded?
170.613 When does BIA determine the amount of funds needed for non-contractible non-project related functions?
170.614 Can a tribe receive funds before BIA publishes the notice of funding availability?
170.615 Can a tribe receive advance payments for non-construction activities?
170.616 How are advance payments made when additional IRR Program funds are made available after execution of the self-governance agreement?
170.617 May a tribe include a contingency in its proposal budget?
170.618 Can a tribe keep savings resulting from project administration?
170.619 Do tribal preference and Indian preference apply to IRR Program funding?
170.620 How do ISDEAA's Indian preference provisions apply?
170.621 What if a tribe fails to substantially perform work under a contract or agreement?
170.622 What IRR programs, functions, services, and activities are subject to the self-governance construction regulations?
170.623 How are IRR Program projects and activities included in a self-governance agreement?
170.624 Is technical assistance available?
170.625 What regulations apply to waivers?
170.626 How does a tribe request a waiver of a Department of Transportation regulation?

APPENDIX A TO SUBPART E—IRR PROGRAM FUNCTIONS THAT ARE NOT OTHERWISE CONTRACTIBLE

## Subpart F—Program Oversight and Accountability

170.700 What is the IRR Program stewardship plan?
170.701 May a direct service tribe and BIA Region sign a Memorandum of Understanding?
170.702 What activities may the Secretary review and monitor?

## Subpart G—BIA Road Maintenance

170.800 Who owns IRR transportation facilities?
170.801 What is the BIA Road Maintenance Program?
170.802 How is road maintenance funded?
170.803 What facilities are eligible under the BIA Road Maintenance Program?
170.804 How is BIA's Road Maintenance Program related to the IRR Program?
170.805 What are the local, tribal, and BIA roles in transportation facility maintenance?
170.806 What is an IRR Transportation Facilities Maintenance Management System (IRR TFMMS)?
170.807 What must BIA include when it develops an IRR Transportation Facilities Maintenance Management System?
170.808 Can BIA Road Maintenance Program funds be used to improve IRR transportation facilities?
170.809 Can a tribe perform road maintenance under a self-determination contract or self-governance agreement?
170.810 To what standards must an IRR transportation facility be maintained?
170.811 What happens if lack of funds results in inadequate maintenance?
170.812 What is emergency maintenance?
170.813 When can access to IRR transportation facilities be restricted?

APPENDIX A TO SUBPART G—LIST OF ACTIVITIES ELIGIBLE FOR FUNDING UNDER BIA TRANSPORTATION FACILITY MAINTENANCE PROGRAM

Subpart H—Miscellaneous Provisions

HAZARDOUS AND NUCLEAR WASTE TRANSPORTATION

170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste?
170.901 What standards govern transportation of radioactive and hazardous materials?
170.902 What is the role of State, tribal, and local governments?
170.903 Who notifies tribes of the transport of radioactive waste?
170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?
170.905 How can tribes obtain training in handling hazardous material?
170.906 Who cleans up radioactive and hazardous material spills?

REPORTING REQUIREMENTS AND INDIAN PREFERENCE

170.910 What information on the IRR Program or projects must BIA provide to tribes?
170.911 Are Indians entitled to employment and training preferences?
170.912 Does Indian employment preference apply to Federal-aid Highway Projects?
170.913 Do tribal-specific employment rights and contract preference laws apply?
170.914 What is the difference between tribal employment preference and Indian employment preference?
170.915 May tribal employment taxes or fees be included in an IRR project budget?
170.916 May tribes impose taxes or fees on those performing IRR Program services?
170.917 Can tribes receive direct payment of tribal employment taxes or fees?

EMERGENCY RELIEF

170.920 What is the purpose of the provisions relating to emergency relief?
170.921 What emergency or disaster assistance programs are available?
170.922 How can States get Emergency Relief Program funds to repair IRR System damage?
170.923 What qualifies for ERFO funding?
170.924 What happens if DOT denies an ERFO claim?
170.925 Is ERFO funding supplemental to IRR Program funding?
170.926 Can a tribe administer approved ERFO repairs under a self-determination contract or a self-governance agreement?
170.927 How can FEMA Program funds be used to repair damage?

TRIBAL TRANSPORTATION DEPARTMENTS

170.930 What is a tribal transportation department?
170.931 Can tribes use IRR Program funds to pay tribal transportation department operating costs?
170.932 Are there other funding sources for tribal transportation departments?
170.933 Can tribes regulate oversize or overweight vehicles?

RESOLVING DISPUTES

170.934 Are alternative dispute resolution procedures available?
170.935 How does a direct service tribe begin the alternative dispute resolution process?

OTHER MISCELLANEOUS PROVISIONS

170.941 May tribes become involved in transportation research?
170.942 Can a tribe use Federal funds for transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality-of-life improvement programs?

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## Subpart A—Policies, Applicability, and Definitions

### § 170.1 What does this part do?

This part provides rules and a funding formula for the Department of the Interior (DOI) in implementing the Indian Reservation Roads (IRR) Program. Included in this part are other Title 23 programs administered by the Secretary and implemented by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act of 1975, as amended (ISDEAA).

### § 170.2 What is the IRR Program and BIA Road Maintenance Program policy?

(a) It is the policy of the Secretary of the Interior and the Secretary of Transportation (Secretaries) to do the following in relation to the IRR and BIA Road Maintenance Programs:

(1) Provide a uniform and consistent set of rules;

(2) Foster knowledge of the programs by providing information about them and the opportunities that they create;

(3) Facilitate tribal planning, conduct, and administration of the programs;

(4) Encourage the inclusion of these programs under self-determination contracts or self-governance agreements;

(5) Make available all contractible administrative functions under self-determination contracts or self-governance agreements; and

(6) Implement policies, procedures, and practices in consultation with Indian tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

(b) Where this part differs from provisions in the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), this part should advance the policy of increasing tribal autonomy and discretion in program operation.

(c) This part is designed to enable Indian tribes to participate in all contractible IRR and BIA Road Maintenance programs. The Secretary of the Interior will afford Indian tribes the flexibility, information, and discretion to design roads programs under self-determination contracts and self-governance agreements to meet the needs of their communities consistent with this part.

(d) The Secretaries recognize that programs, functions, services, and activities, regardless of how they are administered, are an exercise of Indian tribes' self-determination and self-governance.

(1) The tribe is responsible for managing the day-to-day operation of its contracted Federal programs, functions, services, and activities.

(2) The tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts and self-governance agreements for:

(i) Use of the funds; and

(ii) Satisfactory performance of all activities funded under the contract or agreement.

(3) The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of tribes and the trust resources of individual Indians.

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by this part in the government-to-government agreements authorized under ISDEAA.

(f) The administrative functions referenced in paragraph (a)(5) of this section are contractible without regard to the organizational level within the Department of the Interior that carries out these functions. Including IRR Program administrative functions under self-determination contracts and self-governance agreements does not limit or reduce the funding for any program or service serving any other tribe.

(g) The Secretary is not required to reduce funding for a tribe under these programs to make funds available to another tribe.

(h) This part must be liberally construed for the benefit of tribes and to implement the Federal policy of self-determination and self-governance.

(i) Any ambiguities in this part must be construed in favor of the tribes so as to facilitate and enable the transfer of programs authorized by 23 U.S.C. 202 and title 25 U.S.C.

### § 170.3 When do other requirements apply to the IRR Program?

IRR Program Policy and Guidance Manuals and directives apply to the IRR Program only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR part 900.5 for when a tribe must comply with other unpublished requirements.

### § 170.4 What is the effect of this part on existing tribal rights?

This part does not:

(a) Affect the sovereign immunity from suit enjoyed by tribes;

(b) Terminate or reduce the trust responsibility of the United States to tribes or individual Indians;

(c) Require a tribe to assume a program relating to the IRR Program; or

(d) Impede awards by other agencies of the United States or a State to tribes to administer programs under any other law.

### § 170.5 What definitions apply to this part?

*AASHTO* means the American Association of State Highway and Transportation Officials.

*Annual Funding Agreement* means a negotiated agreement of the Secretary to fund, on an annual basis, the programs, functions, services, and activities transferred to a tribe under the Indian Self-Determination and Education Assistance Act, as amended.

*Appeal* means a request by a tribe or consortium for an administrative review of an adverse agency decision.

*BIA* means the Bureau of Indian Affairs of the Department of the Interior.

*BIADOT* means the Bureau of Indian Affairs, Division of Transportation.

*BIA force account* means the performance of work done by BIA employees.

*BIA Road System* means the Bureau of Indian Affairs Road System under the IRR system. It includes those existing and proposed IRR's for which BIA has or plans to obtain legal right-of-way. BIA has the primary responsibility to improve and maintain the roads on this system.

*CFR* means the United States Code of Federal Regulations.

*Construction* means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of an IRR transportation facility, as defined in 23 U.S.C. 101. This includes bond costs and other related costs of bonds or other debt financing instruments. It also includes costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. The term includes—

(1) Locating, surveying, and mapping (including establishing temporary and permanent geodetic markers in accordance with specifications of the U.S. Geological Survey);

(2) Resurfacing, restoration, and rehabilitation;

(3) Acquiring rights-of-way;

(4) Providing relocation assistance; acquiring replacement housing sites; and acquiring, rehabilitating, relocating, and constructing replacement housing;

(5) Eliminating hazards of railway grade crossings;

(6) Eliminating roadside obstacles;

(7) Making improvements that facilitate and control traffic flow, such as grade separation of intersections, widening lanes, channelizing traffic, installing traffic control systems, and establishing passenger loading and unloading areas; and

(8) Making capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

*Construction contract* means a fixed price or cost reimbursement self-determination contract for a construction project, except that such term does not include any contract—

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the housing improvement program or roads maintenance program of the BIA administered by the Secretary of the Interior; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

*Consultation* means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Secure meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

*Contract* means a self-determination contract as defined in section 4(j) of ISDEAA or a procurement document issued under Federal or tribal procurement acquisition regulations.

*Days* means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

*Design* means services performed by licensed design professionals related to preparing drawings, specifications, and other design submissions specified in the contract or agreement, as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project.

*DOI* means the Department of the Interior.

*FHWA* means the Federal Highway Administration of the Department of Transportation.

*FTA* means the Federal Transit Administration of the Department of Transportation.

*Governmental subdivision of a tribe* means a unit of a federally-recognized tribe which is authorized to participate in an IRR Program activity on behalf of the tribe.

*Indian* means a person who is a member of a Tribe or as otherwise defined in 25 U.S.C. 450b.

*Indian Reservation Road (IRR)* means a public road that is located within or provides access to an Indian reservation or Indian trust land, or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian or Alaska Native Villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

*IRR Bridge Program* means the program authorized under 23 U.S.C. 202(d)(4) using IRR Program funds for the improvement of deficient IRR highway bridges.

*IRR Inventory* means a comprehensive database of all transportation facilities eligible for IRR Program funding by tribe, reservation, BIA agency and region, Congressional district, State, and county. Other specific information collected and maintained under the IRR Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, and ownership.

*IRR Program* means a part of the Federal Lands Highway Program established in 23 U.S.C. 204 to address transportation needs of tribes.

*IRR Program construction funds* means the pool of funds BIA distributes according to the Relative Need Distribution Factor.

*IRR Program funds* means the funds covered in chapter 2 of title 23 U.S.C. and the associated program management costs. These funds are used for:

(1) Transportation planning, research, and engineering; and

(2) Construction of highways, roads, parkways, or transit facilities within or providing access to Indian lands, communities, and Alaska Native villages.

*IRR Program management and oversight funds* means those funds authorized by Congress to pay the cost of performing IRR Program management activities.

*IRR System* means all the roads and bridges that comprise the IRR.

*IRR transportation facilities* means public roads, bridges, drainage structures, culverts, ferry routes, marine terminals, transit facilities, boardwalks, pedestrian paths, trails, and their appurtenances, and other transportation facilities as designated by the tribe and the Secretary.

*IRR Transportation Improvement Program (IRRTIP)* means a list developed by BIA of projects programmed for construction in the next 3 to 5 years.

*ISDEAA* means the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

*Maintenance* means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

*NBI* means the national bridge inventory, which is the database of structural and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards, as defined in 23 CFR part 650, subpart C. Each State and BIA must maintain an inventory of all bridges that are subject to the NBI standards and provide this data to the Federal Highway Administration (FHWA). The NBI is maintained and monitored by the FHWA Office of Bridge Technology.

*Office of Self-Governance (OSG)* means the office within the Office of the Assistant Secretary—Indian Affairs, Department of the Interior, that is responsible for implementing and developing tribal self-governance.

*Program* means any program, function, service, activity, or portion thereof.

*Project Planning* means project-related activities that precede the design

phase of a transportation project. Examples of these activities are: Collecting data on traffic, accidents, or functional, safety or structural deficiencies; corridor studies; conceptual studies, environmental studies; geotechnical studies; archaeological studies; project scoping; public hearings; location analysis; preparing applications for permits and clearances; and meetings with facility owners and transportation officials.

*Proposed road* means a road which does not currently exist and needs to be constructed.

*Public Authority* means a Federal, State, county, town, or township, Indian tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

*Public road* means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

*Real Property* means any interest in land together with the improvements, structures, and fixtures and appurtenances.

*Regionally significant project* means a project that modifies a facility that serves regional transportation needs and would normally be included in the modeling of a metropolitan area's transportation network. The term includes work on principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel. (''Regional transportation needs'' includes access to and from the area outside of the region; major planned developments such as new retail malls, sports complexes, etc.; or transportation terminations, as well as most terminals themselves).

*Rehabilitation* means the work required to restore the structural integrity of transportation facilities as well as work necessary to correct safety defects.

*Relocation* means the adjustment of transportation facilities and utilities required by a highway project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on the new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

*Relocation Services* means payment and assistance authorized by the Uniform Relocation and Real Property Acquisitions Policy Act, 42 U.S.C. 4601 *et seq.*, as amended.

*Rest area* means an area or site established and maintained within or adjacent to the highway right-of-way or under public supervision or control for the convenience of the traveling public.

*Secretaries* means the Secretary of the Interior and the Secretary of Transportation.

*Secretary* means the Secretary of the Interior or her/his designee authorized to act on behalf of the Secretary.

*Secretary of Transportation* means the Secretary of Transportation or a designee authorized to act on behalf of the Secretary.

*State transportation agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term ''State'' would be considered equivalent to ''State transportation agency'' if the context so implies.

*STIP* means Statewide Transportation Improvement Program. It is a financially constrained, multi-year list of transportation projects. The STIP is developed under 23 U.S.C. 134 and 135, and 49 U.S.C. 5303–5305. The Secretary of Transportation reviews and approves the STIP for each State.

*Transit* means services, equipment, and functions associated with the public movement of people served within a community or network of communities.

*Transportation planning* means developing land use, economic development, traffic demand, public safety, health and social strategies to meet transportation current and future needs.

*Tribal transportation planning funds* means funds referenced in 23 U.S.C. 204(j).

*Tribe* means any tribe, nation, band, pueblo, rancheria,colony, or community, including any Alaska Native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act that is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians.

*TTIP* means Tribal Transportation Improvement Program. It is a multi-year financially constrained list of proposed transportation projects developed by a tribe from the tribal priority list or the long-range transportation plan.

*U.S.C.* means the United States Code.

### § 170.6 Information Collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned clearance number 1076–0161. This information collection is specifically found in subparts C and D of this part and represent a total reporting burden to the public of 31,470 hours or an average of 56.5 hours per respondent. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Comments and suggestions on the burden estimate or any other aspect of the form should be sent directly to the Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240.

## Subpart B—Indian Reservation Roads Program Policy and Eligibility

CONSULTATION, COLLABORATION, COORDINATION

### § 170.100 What do the terms "consultation, collaboration, and coordination" mean?

(a) *Consultation* means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Secure meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

(b) *Collaboration* means that all parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective.

(c) *Coordination* means that each party:

(1) Shares and compares in a timely manner its transportation plans, programs, projects, and schedules with the related plans, programs, projects, and schedules of the other parties; and

(2) Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services.

### § 170.101 What is the IRR Program consultation and coordination policy?

(a) The IRR Program's government-to-government consultation and coordination policy is to foster and improve communication, cooperation, and coordination among tribal, Federal, state, and local governments and other transportation organizations when undertaking the following, similar, or related activities:

(1) Identifying high-accident locations and locations for improving both vehicle and pedestrian safety;

(2) Developing State, metropolitan, regional, IRR, and tribal transportation improvement programs that impact tribal lands, communities, and members;

(3) Developing short- and long-range transportation plans;

(4) Developing IRR Program transportation projects;

(5) Developing environmental mitigation measures necessary to protect and/or enhance Indian lands and the environment, and counteract the impacts of the projects;

(6) Developing plans or projects to replace or rehabilitate deficient IRR bridges;

(7) Developing plans or projects for disaster and emergency relief response

and the repair of eligible damaged IRR transportation facilities;

(8) Assisting in the development of State and tribal agreements related to the IRR Program;

(9) Developing and improving transit systems serving Indian lands and communities; and

(10) Assisting in the submission of discretionary grant applications for State and Federal funding for IRR transportation facilities.

(b) Tribes and State and Federal Government agencies may enter into intergovernmental Memoranda of Agreement (MOA) to streamline and facilitate consultation, collaboration, and coordination.

### § 170.102 How do the Departments consult, collaborate, and coordinate with tribal governments?

The Department of the Interior and the Department of Transportation operate within a government-to-government relationship with federally recognized tribes. As a critical element of this relationship, these agencies should assess the impact of Federal transportation policies, plans, projects, and programs on tribal rights and interests to ensure that these rights and concerns are appropriately considered.

### § 170.103 What goals and principles guide the Secretaries?

When undertaking transportation activities affecting tribes, the Secretaries should, to the maximum extent permitted by law:

(a) Establish regular and meaningful consultation and collaboration with affected tribal governments, including facilitating the direct involvement of tribal governments in short- and long-range Federal transportation planning efforts;

(b) Promote the rights of tribal governments to govern their own internal affairs;

(c) Promote the rights of tribal governments to receive direct transportation services from the Federal Government or to enter into agreements to directly operate any tribally related transportation programs serving tribal members;

(d) Ensure the continuation of the trust responsibility of the United States to tribes and Indian individuals;

(e) Reduce the imposition of unfunded mandates upon tribal governments;

(f) Encourage flexibility and innovation in the implementation of the IRR Program;

(g) Reduce, streamline, and eliminate unnecessarily restrictive transportation policies, guidelines, or procedures;

(h) Ensure that tribal rights and interests are appropriately considered during program development;

(i) Ensure that the IRR Program is implemented consistent with tribal sovereignty and the government-to-government relationship; and

(j) Consult with, and solicit the participation of, tribes in the development of the annual BIA budget proposals.

### § 170.104 Must the Secretary consult with tribal governments before obligating IRR Program funds?

Yes. Before obligating IRR program funds on any project that is for direct service activities, the Secretary must consult with the affected tribe to determine the tribal preferences concerning the project. The Secretary must provide information in accordance with § 170.600 within 30 days of the Notice of Availability of Funds publication in the FEDERAL REGISTER.

### § 170.105 Are funds available for consultation, collaboration, and coordination activities?

To fund consultation, collaboration, and coordination of IRR Program activities, tribes may use:

(a) The tribes' IRR Program allocations;

(b) Tribal Priority Allocation (TPA) funds;

(c) Administration for Native Americans (ANA) funds;

(d) Economic Development Administration (EDA) funds;

(e) United States Department of Agriculture (USDA) Rural Development funds;

(f) Community Development Block Grant (CDBG) funds; Indian Housing Block Grant (IHBG) funds;

(g) Indian Health Service Tribal Management Grant (IHSTMG) funds;

(h) General funds of the tribal government; and

(i) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

### § 170.106 When must State governments consult with tribes?

Each State must develop the State Transportation Improvement Program (STIP) in consultation with tribes and BIA in those areas under Indian tribal jurisdiction. This includes providing for a fully coordinated transportation planning process that coordinates transportation planning efforts carried out by the State with transportation planning efforts carried out by tribes. The statewide and metropolitan planning organization requirements are in 23 U.S.C. 134 and 135. Regulations can be found at 23 CFR part 450.

### § 170.107 Should planning organizations and local governments consult with tribes when planning for transportation projects?

Yes. The Department's policy is to foster and improve communication, cooperation, and coordination among metropolitan planning organizations (MPOs), regional planning organizations (RPOs), local governments, municipal governments, and tribes on transportation matters of common concern. Accordingly, planning organizations and local governments should consult with tribal governments when planning for transportation projects.

### § 170.108 Should Indian tribes and BIA consult with States' planning organizations and local governments in the development of their IRRTIP?

Yes.

(a) All regionally significant IRR Program projects must be:

(1) Developed in cooperation with State and metropolitan planning organizations; and

(2) Included in appropriate Federal Lands Highway Program transportation improvement programs for inclusion in state and metropolitan plans.

(b) BIA and tribes are encouraged to consult with States, metropolitan and regional planning organizations, and local and municipal governments, on transportation matters of common concern.

### § 170.109 How do the Secretaries prevent discrimination or adverse impacts?

In administering the IRR Program, the Secretaries ensure that nondiscrimination and environmental justice principles are integral program elements. The Secretaries consult with tribes early in the program development process to identify potential discrimination and to recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

### § 170.110 How can State and local governments prevent discrimination or adverse impacts?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials should consult and work with tribes early in the development of programs to:

(1) Identify potential discrimination; and

(2) Recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

(b) Examples of adverse effects include, but are not limited to:

(1) Impeding access to tribal communities or activities;

(2) Creating excessive access to culturally or religiously sensitive areas;

(3) Negatively affecting natural resources, trust resources, tribal businesses, religious, and cultural sites;

(4) Harming indigenous plants and animals; and

(5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

### § 170.111 What can a tribe do if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:

(a) Take reasonable steps to resolve the problem directly with the State or local government involved;

(b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and

seek assistance in resolving the problem.

ELIGIBLE USES IF IRR PROGRAM FUNDS

### § 170.115 What activities may be funded with IRR Program funds?

(a) IRR Program funds may be used:

(1) For all of the items listed in appendix A to this subpart;

(2) For other purposes identified in this part; or

(3) For other purposes recommended by the IRR Program Coordinating Committee under the procedures in Appendix A to Subpart B (35) and § 170.156 and approved by FHWA or BIA pursuant to § 170.117.

(b) Each of the items listed in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

### § 170.116 What activities are not eligible for IRR Program funding?

IRR Program funds cannot be used for any of the following:

(a) Routine maintenance work such as: grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and the maintaining, cleaning, or repair of bridge appurtenances;

(b) Structures and erosion protection unrelated to transportation and roadways;

(c) General reservation planning not involving transportation;

(d) Landscaping and irrigation systems not involving transportation programs and projects;

(e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;

(f) Purchase of equipment unless authorized by Federal law or in this part; or

(g) Condemnation of land for recreational trails.

### § 170.117 How can a tribe determine whether a new use of funds is allowable?

(a) A tribe that proposes new uses of IRR Program funds must ask BIA in writing whether the proposed use is eligible under Federal law. The tribe must also provide a copy of its inquiry to FHWA.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of IRR Program funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street, NW., MS 4058–MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the IRR Program or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting tribe within 45 days of receiving the written inquiry from the tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 400 7th St., SW., HFL–1, Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the IRR Program Coordinating Committee before denying a request. BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA Regional offices.

(c) If either BIA or FHWA fails to issue the requesting tribe a timely response to the eligibility inquiry, the proposed use will be deemed to be allowable for that specific project.

USE OF IRR AND CULTURAL ACCESS ROADS

### § 170.120 What restrictions apply to the use of an Indian Reservation Road?

Indian Reservation Roads (IRRs) must be open and available for public use. However, the public authority having jurisdiction over these roads may:

(a) Restrict road use or close roads temporarily when required for public safety, fire prevention or suppression, fish or game protection, low load capacity bridges, prevention of damage to unstable roadbeds, or as contained in §§ 170.122 and 170.813;

(b) Conduct engineering and traffic analysis to determine maximum speed

limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(c) Erect, maintain, and enforce compliance with signs and pavement markings.

### § 170.121 What is a cultural access road?

(a) A cultural access road is a public road that provides access to sites for cultural purposes as defined by individual tribal traditions, which may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A tribal government may unilaterally designate a tribal road as a cultural access road. A cultural access road designation is an entirely voluntary and internal decision made by the tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a tribal government to designate a non-tribal road as a cultural access road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural access roads may be included in the IRR Inventory if they meet the definition of an IRR.

### § 170.122 Can a tribe close a cultural access road?

(a) A tribe with jurisdiction over a cultural access road can close it. The tribe can do this:

(1) During periods when the tribe or tribal members are involved in cultural activities; and

(2) In order to protect the health and safety of the tribal members or the general public.

(b) Cultural access roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.121(c).

## SEASONAL TRANSPORTATION ROUTES

### § 170.123 What are seasonal transportation routes?

Seasonal transportation routes are non-recreational transportation routes in the IRR Inventory that provide access to Indian communities or villages and may not be open for year-round use. They include snowmobile trails, ice roads, and overland winter roads.

### § 170.124 Does the IRR Program cover seasonal transportation routes?

Yes. IRR Program funds can be used to build seasonal transportation routes and a tribe may request that BIA include seasonal transportation routes in the IRR Inventory.

(a) Standards for seasonal transportation routes are found in the design standards identified in appendix B to subpart D. A tribe can also develop or adopt standards that are equal to or exceed these standards.

(b) Construction of a seasonal transportation route requires a right-of-way or use permit.

## IRR HOUSING ACCESS ROADS

### § 170.127 What terms apply to access roads?

(a) *IRR housing access road* means a public road on the IRR System that provides access to a housing cluster.

(b) *IRR housing street* means a public road on the IRR System that provides access to adjacent homes within a housing cluster.

(c) *Housing cluster* means three or more existing or proposed housing units.

### § 170.128 Are housing access roads and housing streets eligible for IRR Program funding?

Yes. IRR housing access roads and housing streets on public rights-of-way are eligible for construction, reconstruction, and rehabilitation funding under the IRR Program. Tribes, following the transportation planning process as required in subpart D, may include housing access roads and housing street projects on the Tribal Transportation Improvement Program (TTIP). IRR Program funds are available after the projects are listed on the FHWA-approved IRRTIP.

TOLL, FERRY AND AIRPORT FACILITIES

### § 170.130 How can tribes use Federal highway funds for toll and ferry facilities?

(a) A tribe can use Federal-aid highway funds, including IRR Program funds, to study, design, construct, and operate toll highways, bridges, and tunnels, as well as ferry boats and ferry terminal facilities. The following table shows how a tribe can initiate construction of these facilities.

| To initiate construction of a . . . | A tribe must . . . |
|---|---|
| (1) Toll highway, bridge, or tunnel. | (i) Meet and follow the requirements set forth in 23 U.S.C. 129; and<br>(ii) If IRR Program funds are used, enter into a self-tunnel governance agreement or self-determination contract with the Secretary of the Interior. |
| (2) Ferry boat or ferry terminal. | Meet and follow the requirements set forth in 23 U.S.C. 129(c). |

(b) A tribe can use IRR Program funds to fund 100 percent of the conversion or construction of a toll facility.

(c) If a tribe obtains non-IRR Program Federal funding for the conversion or construction of a toll facility, these funds will cover a maximum of 80 percent of the project cost. In this case, the tribe may use IRR Program funds for the required 20 percent local match.

### § 170.131 How can a tribe find out more about designing and operating a toll facility?

Information on designing and operating a toll highway, bridge or tunnel is available from the International Bridge, Tunnel and Turnpike Association. The Association publishes a variety of reports, statistics, and analyses. The Web site is located at *http://www.ibtta.org*. Information is also available from FHWA.

### § 170.132 When can a tribe use IRR Program funds for airport facilities?

(a) A tribe can use IRR Program funds for construction of airport and heliport access roads, if the access roads are open to the public.

(b) A tribe cannot use IRR Program funds to construct or improve runways, airports or heliports. Funds for these uses are available under the Airport Improvement Program (AIP) from the Federal Aviation Administration (FAA). (See FAA Advisory Circular No. 150/5370–10A.)

RECREATION, TOURISM AND TRAILS

### § 170.135 Can a tribe use Federal funds for its recreation, tourism, and trails program?

Yes. A tribe, tribal organization, tribal consortium, or BIA may use IRR Program funds for recreation, tourism, and trails programs if the programs are included in the IRRTIP. Additionally, the following Federal programs for recreation, tourism, and trails are possible sources of Federal funding:

(a) IRR Program (23 U.S.C. 204);

(b) Surface Transportation Program—Transportation Enhancement (23 U.S.C. 133);

(c) National Scenic Byway Program (23 U.S.C. 162);

(d) Recreational Trails Program (23 U.S.C. 206);

(e) National Highway System (23 U.S.C. 104);

(f) Public Lands Discretionary Program (23 U.S.C. 204);

(g) Other funding from other Federal departments; and

(h) Other funding that Congress may authorize and appropriate.

### § 170.136 How can a tribe obtain funds?

(a) To receive funding for programs that serve recreation, tourism, and trails' goals, a tribe should:

(1) Identify a program meeting the eligibility guidelines for the funds and have it ready for development; and

(2) Have a viable project ready for improvement or construction, including necessary permits.

(b) FHWA provides Federal funds to the States for recreation, tourism, and trails under 23 U.S.C. 104, 133, 162, 204, and 206. States solicit proposals from tribes and local governments in their transportation planning process. A tribe may ask:

(1) To administer these programs under the State's locally administered project program; or

(2) That for projects that are otherwise contractible under Public Law 93–638 (25 U.S.C. 450 *et seq.*), that the State return the funds to FHWA and have

them transferred to BIA for tribal self-determination contracts or self-governance agreements under ISDEAA.

(c) Congress provides funds under 23 U.S.C. 205 and 214 for activities for Federal agencies. A tribe can contract with all agencies within the Department of the Interior under ISDEAA for this work.

(d) In order to use National Scenic Byway funds, the project must be on a road designated as a State or Federal scenic byway.

(e) In order to expend non-IRR Program Federal funds for its recreation, tourism, and trails programs, a tribe must ensure that the project is on an approved TIP or STIP.

### § 170.137 What types of activities can a recreation, tourism, and trails program include?

(a) The following are examples of activities that tribes and tribal organizations may perform under a recreation, tourism, and trails program:

(1) Transportation planning for tourism and recreation travel;

(2) Adjacent vehicle parking areas;

(3) Development of tourist information and interpretative signs;

(4) Provision for non-motorized trail activities including pedestrians and bicycles;

(5) Provision for motorized trail activities including all terrain vehicles, motorcycles, snowmobiles, etc.;

(6) Construction improvements that enhance and promote safe travel on trails;

(7) Safety and educational activities;

(8) Maintenance and restoration of existing recreational trails;

(9) Development and rehabilitation of trailside and trailhead facilities and trail linkage for recreational trails;

(10) Purchase and lease of recreational trail construction and maintenance equipment;

(11) Safety considerations for trail intersections;

(12) Landscaping and scenic enhancement (see 23 U.S.C. 319);

(13) Bicycle Transportation and pedestrian walkways (see 23 U.S.C. 217); and

(14) Trail access roads.

(b) The items listed in paragraph (a) of this section are not the only activities that are eligible for recreation, tourism, and trails funding. The funding criteria may vary with the specific requirements of the programs.

(c) Tribes may use IRR Program funds for any activity that is eligible for Federal funding under any provision of title 23 U.S.C.

### § 170.138 Can roads be built in roadless and wild areas?

Under 25 CFR part 265 no roads can be built in roadless and wild areas on Indian reservations.

## HIGHWAY SAFETY FUNCTIONS

### § 170.141 What Federal funds are available for a tribe's highway safety activities?

Federal funds available for a tribe's highway safety activities include, but are not limited to, the following which may be amended, repealed, or added to:

(a) The tribes' IRR Program allocations under 23 U.S.C. 204;

(b) Highway Safety Program funds under 23 U.S.C. 402;

(c) Occupant protection program funds under 23 U.S.C. 405;

(d) Alcohol traffic safety program funds under 23 U.S.C. 408;

(e) Alcohol-impaired driver countermeasures under 23 U.S.C. 410;

(f) Funding for highway safety activities from the U.S. Department of Health and Human Services (HHS);

(g) Indian Highway Safety Program 25 CFR 181; and

(h) Other funding that Congress may authorize and appropriate.

### § 170.142 How can tribes obtain funds to perform highway safety projects?

There are two methods to obtain National Highway Traffic Safety Administration (NHTSA) and other FHWA safety funds for highway safety projects:

(a) FHWA provides safety funds to BIA under 23 U.S.C. 402. BIA annually solicits proposals from tribes for use of these funds. Proposals are processed under 25 CFR part 181. Tribes may obtain a contract or agreement under ISDEAA for these projects.

(b) FHWA provides funds to the States under 23 U.S.C. 402, 405, 408, and 410. States annually solicit proposals

from tribes and local governments. Tribes may request:

(1) To administer these programs under the State's locally administered project program; or

(2) That for projects that are otherwise contractible under Public Law 93–638 (25 U.S.C. 450 *et seq.*), that the State return the funds to FHWA and have them transferred to BIA for tribal self-determination contracts or self-governance agreements under ISDEAA.

### § 170.143 How can IRR Program funds be used for highway safety?

A tribe, tribal organization, tribal consortium, or BIA may fund projects to improve highway safety. Those projects that are not fully funded by the BIA-administered Indian Highway Safety Program must be incorporated into the FHWA-approved IRRTIP if IRR Program funds are used to complete funding of the project.

### § 170.144 What are eligible highway safety projects?

The following are examples of activities that can be considered as highway safety projects:

(a) Highway alignment improvement;

(b) Bridge widening;

(c) Pedestrian paths/sidewalks and bus shelters;

(d) Installation and replacement of signs when designated as, or made part of, a highway safety project;

(e) Construction improvements that enhance and promote safe travel on IRRs, such as guardrail construction and traffic markings;

(f) Development of a safety management system;

(g) Education and outreach highway safety programs, such as use of child safety seats, defensive driving, and Mothers Against Drunk Drivers;

(h) Development of a highway safety plan designed to reduce traffic accidents and deaths, injuries, and property damage;

(i) Collecting data on traffic-related deaths, injuries and accidents;

(j) Impaired driver initiatives;

(k) Child safety seat programs; and

(l) Purchasing necessary specific traffic enforcement equipment, such as radar equipment, breathalyser, video cameras.

### § 170.145 Are other funds available for a tribe's highway safety efforts?

Yes. Tribes may seek grant and program funding for highway safety activities from appropriate Federal, state, and local agencies and private grant organizations.

## TRANSIT FACILITIES

### § 170.148 What is a tribal transit program?

A tribal transit program is the planning, administration, acquisition, and operation and maintenance of a system associated with the public movement of people served within a community or network of communities on or near Indian reservations, lands, villages, communities, and pueblos.

### § 170.149 How do tribes identify transit needs?

Tribes identify transit needs during the tribal transportation planning process (see subpart D). Transit projects using IRR Program funds must be included in the FHWA-approved IRRTIP.

### § 170.150 What Federal funds are available for a tribe's transit program?

Title 23 U.S.C. authorizes the use of IRR Program funds for transit facilities as defined in this part. Additionally, there are many sources of Federal funds that may help support tribal transit programs. These include the Federal programs listed in this section. Note that each program has its own terms and conditions of assistance. For further information on these programs and their use for transit, contact the FTA Regional Transit Assistance Program (RTAP) National Transit Resource Center at *http://www.ctaa.org/ntrc*.

(a) U.S. Department of Agriculture (USDA): community facilities loans; rural development loans; business and industrial loans; rural enterprise grants; commerce, public works and economic development grants; and economic adjustment assistance.

(b) U.S. Department of Housing and Urban Development (HUD): community development block grants, supportive

housing, tribal housing loan guarantees, resident opportunity and support services.

(c) U.S. Department of Labor: Native American employment and training, welfare-to-work grants.

(d) DOT: Welfare-to-Work, Indian Reservation Roads Program, transportation and community and systems preservation, Federal transit capital improvement grants, public transportation for non-urbanized areas, capital assistance for elderly and disabilities transportation, education, and Even Start.

(e) HHS: programs for Native American elders, community service block grants, job opportunities for low-income individuals, Head Start (capital or operating), administration for Native Americans programs, Medicaid, HIV Care Grants, Healthy Start, and the Indian Health Service.

### § 170.151 May a tribe or BIA use IRR Program funds as matching funds?

(a) A tribe may use 23 U.S.C. 204 IRR Program funds provided under a self-determination contract or self-governance agreement to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

(b) BIA may use 23 U.S.C. 204 IRR Program funds to pay local matching funds for transit facilities and transit activities funded under 23 U.S.C. 104.

### § 170.152 What transit facilities and activities are eligible for IRR Program funding?

Transit facilities and activities eligible for IRR Program funding include, but are not limited to:

(a) Acquiring, constructing, supervising or inspecting new, used or refurbished equipment, buildings, facilities, buses, vans, water craft, and other vehicles for use in mass transportation;

(b) Transit-related intelligent transportation systems;

(c) Rehabilitating, remanufacturing, and overhauling a transit vehicle;

(d) Preventive maintenance;

(e) Leasing transit vehicles, equipment, buildings, and facilities for use in mass transportation;

(f) Third-party contracts for otherwise eligible transit facilities and activities;

(g) Mass transportation improvements that enhance economic and community development, such as bus shelters in shopping centers, parking lots, pedestrian improvements, and support facilities that incorporate other community services;

(h) Passenger shelters, bus stop signs, and similar passenger amenities;

(i) Introduction of new mass transportation technology;

(j) Provision of fixed route, demand response services, and non-fixed route paratransit transportation services (excluding operating costs) to enhance access for persons with disabilities;

(k) Radio and communication equipment to support tribal transit programs; and

(l) Transit capital project activities authorized by 49 U.S.C. 5302 (a)(1).

## IRR Program Coordinating Committee

### § 170.155 What is the IRR Program Coordinating Committee?

(a) Under this part, the Secretaries will establish an IRR Program Coordinating Committee that:

(1) Provides input and recommendations to BIA and FHWA in developing IRR Program policies and procedures; and

(2) Supplements government-to-government consultation by coordinating with and obtaining input from tribes, BIA, and FHWA.

(b) The Committee consists of 12 tribal regional representatives (one from each BIA Region) and two non-voting Federal representatives (FHWA and BIA). The Secretary of the Interior will select one alternate tribal member from each BIA Region to attend committee meetings in the absence of the regional representative.

(c) The Secretary must select regional tribal representatives and alternates from nominees officially selected by the region's tribes.

(1) To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small tribes.

(2) Each tribal representative must be a tribal governmental official or employee with authority to act for the tribal government.

(d) For purposes of continuity, the Secretary will appoint the initial tribal representative and alternate from each BIA region to either a 1-, 2-, or 3-year term so that only one-third of the tribal representatives and alternates change every year. Thereafter, all appointments must be for a term of 3 years.

(e) The Secretary of the Interior will provide guidance regarding the replacement of representatives should the need arise.

### § 170.156 What are the IRR Program Coordinating Committee's responsibilities?

(a) Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(1) BIA/FHWA IRR Program Stewardship Plan;

(2) IRR Program policy and procedures;

(3) IRR Program eligible activities determination;

(4) IRR Program transit policy;

(5) IRR Program regulations;

(6) IRR Program management systems policy and procedures;

(7) IRR Program fund distribution formula (as outlined in § 170.157); and

(8) National tribal transportation needs.

(b) The Committee may establish work groups to carry out its responsibilities; and

(c) The Committee also reviews and provides recommendations on IRR Program national concerns (including the implementation of this part) brought to its attention.

### § 170.157 What is the IRR Program Coordinating Committee's role in the funding process?

The Committee's role is to provide input and recommendations to BIA and FHWA regarding:

(a) New IRR Inventory Data Format and Form;

(b) Simplified Cost to Construct (CTC) Methodology (including formula calculations, formula program and design, and bid tab methodology);

(c) Cost Elements;

(d) Over-Design Issues;

(e) Inflation Impacts on $1 Million Cap for IRRHPP and Emergency Projects (including the IRRHPP Ranking System and emergency/disaster expenditures report); and

(f) The impact of including funded but non-constructed projects in the CTC calculation.

### § 170.158 How does the IRR Program Coordinating Committee conduct business?

The Committee holds at least two meetings a year. Additional Committee meetings may be called with the consent of one-third of the Committee members or by BIA or FHWA. The Committee conducts business at its meetings as follows:

(a) A quorum consists of eight Committee members of which a majority must be tribal committee members.

(b) The Committee will operate by consensus or majority vote, as determined by the Committee in its protocols.

(c) Any Committee member can submit an agenda item to the Chair.

(d) The Committee will work through a committee-approved annual work plan and budget.

(e) Annually, the Committee must elect from among the Committee membership a Chair, a Vice-Chair, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. These officers will also have other duties that the Committee may prescribe.

(f) The Committee must keep the Secretary and the tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year.

(g) The Committee's budget will be funded through the IRR Program management and oversight funds, not to exceed $150,000 annually.

## INDIAN LOCAL TECHNICAL ASSISTANCE PROGRAM

### § 170.161 What is the Indian Local Technical Assistance Program?

The Indian Local Technical Assistance Program (Indian LTAP) is authorized under 23 U.S.C. 504(b), and §§ 170.161

through 170.176 are provided for information only. The Program assists tribal governments and other IRR Program participants in extending their technical capabilities by providing them greater access to transportation technology, training, and research opportunities.

### § 170.162 How is the Indian LTAP funded?

FHWA uses Highway Trust Funds to fund the Indian LTAP. BIA may use IRR Program management and oversight funds for Indian LTAP centers. These funds may be used to operate Indian LTAP centers and to develop training materials and products for these centers. The Indian LTAP centers should apply for supplemental funding from other sources to accommodate their needs.

### § 170.163 How are Indian LTAP recipients selected?

(a) FHWA announces Indian LTAP grant, cooperative agreement, and contracting opportunities in the FEDERAL REGISTER. The announcements state that tribal governments, a consortium of tribal governments, State transportation departments, or universities are eligible for these awards; indicate the funds available; and provide eligibility criteria.

(b) FHWA sends the information in paragraph (a) of this section to BIA for distribution to tribal governments and consortia. BIA must provide written notice to tribal governments and consortia.

(c) A selection committee of Federal and tribal representatives (see § 170.164) reviews the proposals of eligible applicants and recommends award recipients. FHWA selects and notifies award recipients consistent with applicable law.

### § 170.164 How are tribal representatives nominated and chosen for the selection committee?

In its written notice to tribal governments announcing opportunities under the Indian LTAP, FHWA requests nominations within each Indian LTAP's service area for representatives to serve on the selection committee. Forty-five days after receiving the request for nominations, FHWA will notify tribal governments of the nominees for the service area. Each tribe then has 30 days to notify FHWA of its selection from the nominees.

### § 170.165 May a tribe enter into a contract or agreement for Indian LTAP funds?

Yes. If selected for an award as an Indian LTAP Center, a tribe will enter into a cooperative agreement with the FHWA and be subject to the guidelines of the agreement.

### § 170.166 What services do Indian LTAP centers provide?

(a) Indian LTAP centers provide transportation technology transfer services, including education, training, technical assistance and related support services to tribal governments and IRR Program participants. Indian LTAPs will:

(1) Develop and expand tribal expertise in road and transportation areas;

(2) Improve IRR Program performance;

(3) Enhance tribal transportation planning, project selection, transit and freight programs;

(4) Develop transportation training and technical resource materials and present workshops;

(5) Improve tribal tourism and recreational travel programs;

(6) Help tribes deal more effectively with transportation-related problems by developing and sharing tribal transportation technology and traffic safety systems and information with other transportation agencies;

(7) Operate Indian technical centers in cooperation with State transportation departments and universities;

(8) Provide technical assistance on transportation technology and enhance new technology implementation in cooperation with the private sector;

(9) Develop educational programs to encourage and motivate interest in transportation careers among Native American students; and

(10) Act as information clearinghouses for tribal governments and Indian-owned businesses on transportation-related topics.

(b) Unless otherwise stated in an Indian LTAP agreement, an Indian technical assistance program center must, at a minimum:

(1) Maintain a current mailing list including, at a minimum, each tribe and IRR Program participant within the service area;

(2) Publish a quarterly newsletter and maintain a Web site;

(3) Conduct or coordinate 10 workshops per year;

(4) Maintain a library of technical publications and video tapes;

(5) Provide technical assistance to IRR Program participants;

(6) Hold two advisory committee meetings a year;

(7) Develop a yearly action plan in consultation with the advisory committee;

(8) Coordinate with State LTAPs, other Indian technical centers, Rural Technical Assistance Program (RTAP) centers, tribal governments, and local planning and transportation agencies to share and exchange publications, videotapes, training material, and conduct joint workshops;

(9) Consult with tribes and IRR Program participants concerning technical assistance and training desired; and

(10) Prepare an annual report and distribute this report to service area tribes.

### § 170.167 How does a tribe obtain services from an Indian LTAP center?

A tribe that wants to obtain services should contact the Indian LTAP center serving its service area or its BIA regional road engineer. Information about the centers and the services provided can be found on the World Wide Web at the following address: *http://www.ltap.org*.

### § 170.168 Do Indian LTAP centers offer services similar to those of State LTAPs?

Yes. However, Indian LTAP centers are primarily responsible for increasing the capacity of tribal governments to administer transportation programs. State LTAPs also provide services to local and rural governments, including tribal governments. Indian LTAP centers should coordinate education and training opportunities with State LTAP centers to maximize resources.

### § 170.169 What can a tribe do if Indian LTAP services are unsatisfactory?

A tribal government can address concerns over quality of services to the Indian LTAP Center Director, FHWA, and BIA. If the center does not adequately address these concerns in writing within 30 calendar days, the tribal government may request any or all of the following:

(a) A special meeting with the Center's Director and staff to address the concern;

(b) A review of the Center's performance by FHWA and BIA or;

(c) Services from other Indian LTAP centers.

### § 170.170 How are Indian LTAP centers managed?

(a) Each Indian LTAP center is managed by its Center Director and staff, with the advice of its technical panel under the Indian LTAP agreements. FHWA, BIA, and tribes review the performance of the Indian LTAP centers.

(b) Each Indian LTAP center has a technical panel consisting of one BIA Regional Road Engineer, one FHWA representative, one state DOT representative, and at least five tribal representatives from the service area. The technical panel may, among other activities:

(1) Recommend center policies;

(2) Review and approve the annual action plan for submission to FHWA for approval;

(3) Provide direction on the areas of technical assistance and training;

(4) Review and approve the annual report for submission to FHWA for approval;

(5) Develop recommendations for improving center operation services and budgets; and

(6) Assist in developing goals and plans for obtaining or using supplemental funding.

(c) The technical panel must meet at least twice a year. Tribal representatives may request IRR Program funding to cover the cost of participating in these committee meetings.

### § 170.171 How are tribal advisory technical panel members selected?

(a) The Indian LTAP center requests nominations from tribal governments and consortia within the service area for tribal transportation representatives to serve on the technical panel.

(b) Tribes from the service area select tribal panel members from those nominated.

## INDIAN LTAP-SPONSORED EDUCATION AND TRAINING OPPORTUNITIES

### § 170.175 What Indian LTAP-sponsored transportation training and educational opportunities exist?

There are many programs and sources of funding that provide tribal transportation training and education opportunities. Each program has its own terms and conditions of assistance. For further information on these programs and their use for tribal transportation education and training opportunities, contact the regional Indian LTAP center or BIA regional road engineer. Appendix B to this subpart contains a list of programs and funding sources.

### § 170.176 Where can tribes get scholarships and tuition for Indian LTAP-sponsored education and training?

Tribes can get tuition and scholarship assistance for Indian LTAP-sponsored education and training from the following sources:

(a) Indian LTAP centers;

(b) BIA-appropriated funds (for approved training); and

(c) IRR Program funds (for education and training opportunities and technical assistance programs related to developing skills for performing IRR Program activities).

## APPENDIX A TO SUBPART B—ALLOWABLE USES OF IRR PROGRAM FUNDS

A. IRR Program funds can be used for the following planning and design activities:

1. Planning and design of IRR transit facilities eligible for IRR construction funding.
2. Planning and design of IRR roads and bridges.
3. Planning and design of transit facilities that provide access to or are located within an Indian reservation or community.
4. Transportation planning activities, including planning for tourism and recreational travel.
5. Development, establishment, and implementation of tribal transportation management systems such as safety, bridge, pavement, and congestion management.
6. Tribal transportation plans and transportation improvement programs (TIPS).
7. Coordinated technology implementation program (CTIP) projects.
8. Traffic engineering and studies.
9. Identification and evaluation of accident prone locations.
10. Tribal transportation standards.
11. Preliminary engineering studies.
12. Interagency program/project formulation, coordination and review.
13. Environmental studies and archeological investigations directly related to transportation programs and projects.
14. Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological and natural resources regulations and standards.
15. Development of natural habitat and wetland conservation and mitigation plans, including plans authorized under the Water Resources Development Act of 1990, 104 Stat. 4604 (Water Resources Development Act).
16. Architectural and landscape engineering services related to transportation programs.
17. Engineering design related to transportation programs, including permitting activities.
18. Inspection of bridges and structures.
19. Indian local technical assistance program (LTAP) centers.
20. Highway and transit safety planning, programming, studies and activities.
21. Tribal employment rights ordinance (TERO) fees.
22. Purchase or lease of advanced technological devices used for transportation planning and design activities such as global positioning units, portable weigh-in-motion systems, hand held data collection units, related hardware and software, etc.
23. Planning, design and coordination for Innovative Readiness Training projects.
24. Transportation planning and project development activities associated with border crossings on or affecting tribal lands.
25. Public meetings and public involvement activities.
26. Leasing or rental of equipment used in transportation planning or design programs.
27. Transportation-related technology transfer activities and programs.
28. Educational activities related to bicycle safety.
29. Planning and design of mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project.
30. Evaluation of community impacts such as land use, mobility, access, social, safety,

psychological, displacement, economic, and aesthetic impacts.

31. Acquisition of land and interests in land required for right-of-way, including control of access thereto from adjoining lands, the cost of appraisals, cost of examination and abstract of title, the cost of certificate of title, advertising costs, and any fees incidental to such acquisition.

32. Cost associated with relocation activities including financial assistance for displaced businesses or persons and other activities as authorized by law.

33. On the job education including classroom instruction and pre-apprentice training activities related to transportation planning.

34. Other eligible activities as approved by FHWA.

35. Any additional activities identified by IRR Program Coordinating Committee guidance and approved by the appropriate Secretary (see §170.156).

36. Indirect general and administrative costs; and

37. Other eligible activities described in this part.

B. IRR Program funds can be used for the following construction and improvement activities:

1. Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for IRR roads and highway bridges including bridges and structures under 20 feet in length, including the replacement of low-water crossings, regardless of length, with bridges.

2. Construction or reconstruction of IRR roads and bridges necessary to accommodate other transportation modes.

3. Construction of toll roads, highway bridges and tunnels, and toll and non-toll ferry boats and terminal facilities, and approaches thereto (except when on the Interstate System) to the extent permitted under 23 U.S.C. 129.

4. Construction of projects for the elimination of hazards at railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

5. Installation of protective devices at railway-highway crossings.

6. Transit facilities, whether publicly or privately owned, that serve Indian reservations and other communities or that provide access to or are located within an Indian reservation or community (see §§170.148 through 170.152 for additional information).

7. Engineered pavement overlays that add to the structural value and design life or increase the skid resistance of the pavement.

8. Tribally-owned, post-secondary vocational school roads and bridges.

9. Road sealing.

10. Double bituminous surface and chip seals that are part of a predefined stage of construction or form the final surface of low volume roads.

11. Seismic retrofit, replacement, rehabilitation, and painting of highway bridges.

12. Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on highway bridges, and approaches thereto and other elevated structures.

13. Installation of scour countermeasures for highway bridges and other elevated structures.

14. Special pedestrian facilities built in lieu of streets or roads, where standard street or road construction is not feasible.

15. Interpretive signs, standard traffic regulatory and guide signs that are culturally relevant (native language, symbols, etc.) that are a part of transportation projects.

16. Traffic barriers and bridge rails.

17. Engineered spot safety improvements.

18. Planning and development of rest areas, recreational trails, parking areas, sanitary facilities, water facilities, and other facilities that accommodate the traveling public.

19. Public approach roads and interchange ramps that meet the definition of an Indian reservation road.

20. Construction of roadway lighting and traffic signals.

21. Adjustment or relocation of utilities directly related to roadway work, not required to be paid for by local utility companies.

22. Conduits crossing under the roadway to accommodate utilities that are part of future development plans.

23. Restoration of borrow and gravel pits created by projects funded from the IRR Program.

24. Force account and day labor work, including materials and equipment rental, being performed in accordance with approved plans and specifications.

25. Experimental features where there is a planned monitoring and evaluation schedule.

26. Capital and operating costs for traffic monitoring, management, and control facilities and programs.

27. Safely accommodating the passage of vehicular and pedestrian traffic through construction zones.

28. Construction engineering including contract/project administration, inspection, and testing.

29. Construction of temporary and permanent erosion control, including landscaping and seeding of cuts and embankments.

30. Landscape and roadside development features.

31. Marine terminals as intermodal linkages.

32. Construction of visitor information centers, kiosks, and related items.

33. Other appropriate public road facilities such as visitor centers as determined by the Secretary of Transportation.

34. Facilities adjacent to roadways to separate pedestrians and bicyclists from vehicular traffic for operational safety purposes, or special trails on separate rights-of-way.

35. Construction of pedestrian walkways and bicycle transportation facilities, such as a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

36. Facilities adjacent to roadways to separate modes of traffic for safety purposes.

37. Acquisition of scenic easements and scenic or historic sites provided they are part of an approved project or projects.

38. Debt service on bonds or other debt financing instruments issued to finance IRR construction and project support activities.

39. Any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

40. Fringe and corridor parking facilities including access roads, buildings, structures, equipment improvements, and interests in land.

41. Adjacent vehicular parking areas.

42. Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological, and natural resources regulations and standards on IRR projects.

43. Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads, and trail markings. (See §§ 170.123 through 170.124.)

44. Tribal fees such as employment taxes (TERO), assessments, licensing fees, permits, and other regulatory fees.

45. On the job education including classroom instruction and pre-apprentice training activities related to IRR construction projects such as equipment operations, surveying, construction monitoring, testing, inspection and project management.

46. Installation of advance technological devices on IRR transportation facilities such as permanent weigh-in-motion systems, informational signs, intelligent transportation system hardware, etc.

47. Tribal, cultural, historical, and natural resource monitoring, management and mitigation.

48. Mitigation activities required by tribal, state, or Federal regulatory agencies and 42 U.S.C. 4321, *et seq.*, the National Environmental Policy Act (NEPA).

49. Leasing or rental of construction equipment.

50. Coordination and construction materials for innovative readiness training projects such as the Department of Defense (DOD), the American Red Cross, the Federal Emergency Management Agency (FEMA), etc.

51. Emergency repairs on IRR roads, bridges, trails, and seasonal transportation routes.

52. Public meetings and public involvement activities.

53. Construction of roads on dams and levees.

54. Transportation enhancement activities as defined in 23 U.S.C. 101(a).

55. Modification of public sidewalks adjacent to or within IRR transportation facilities.

56. Highway and transit safety infrastructure improvements and hazard eliminations.

57. Transportation control measures such as employer-based transportation management plans, including incentives, shared-ride services, employer-sponsored programs to permit flexible work schedules and other activities, other than clause (xvi) listed in section 108(f)(1)(A) of the Clean Air Act, (42 U.S.C. 7408(f)(1)(A)).

58. Necessary environmental restoration and pollution abatement.

59. Trail development and related activities as identified in §§ 170.135–170.138.

60. Development of scenic overlooks and information centers.

61. Natural habitat and wetlands mitigation efforts related to IRR road and bridge projects, including:

a. Participation in natural habitat and wetland mitigation banks, including banks authorized under the Water Resources Development Act, and

b. Contributions to tribal, statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, including efforts authorized under the Water Resources Development Act.

62. Mitigation of damage to wildlife, habitat and ecosystems caused as a result of a transportation project.

63. Construction of permanent fixed or moveable structures for snow or sand control.

64. Cultural access roads.

65. Other eligible items as approved by the Federal Highway Administration (FHWA).

66. Any additional activities identified by IRR Program Coordinating Committee and approved by the appropriate Secretary (see § 170.156).

67. Other eligible activities described in this part.

APPENDIX B TO SUBPART B—SOURCES OF TRIBAL TRANSPORTATION TRAINING AND EDUCATION OPPORTUNITIES

The following is a list of some of the many governmental sources for tribal transportation training and education opportunities. There may be other non-governmental, tribal, or private sources not listed here.

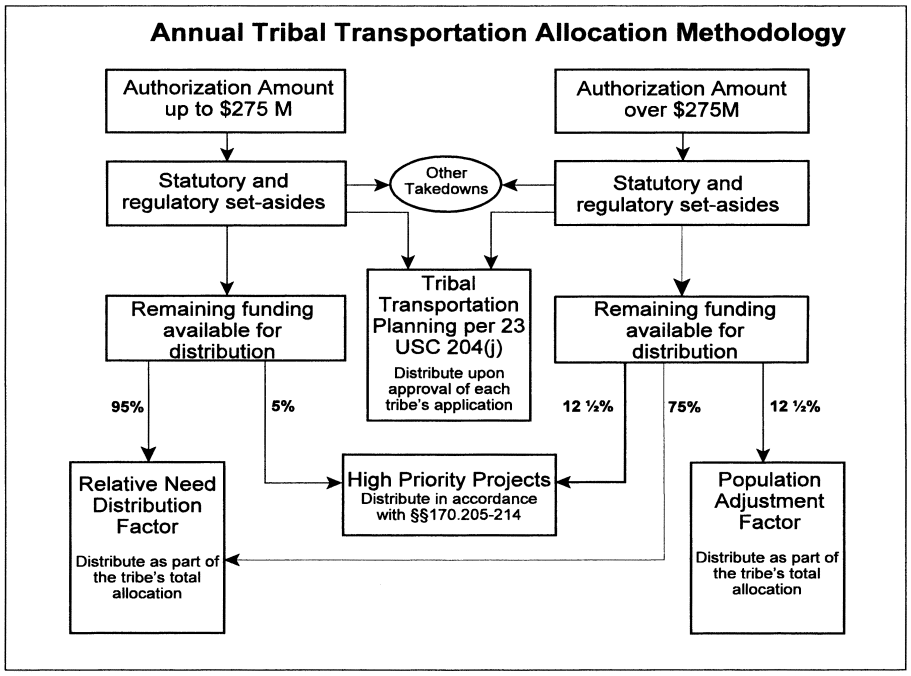
1. National Highway Institute training courses and fellowships
2. State and local technical assistance program workshops
3. Indian local technical assistance program workshops
4. FHWA and FTA Research Fellowships
5. Dwight David Eisenhower Transportation Fellowship (23 U.S.C. 504)
6. Intergovernmental personnel agreement assignments
7. BIA transportation cooperative education program
8. BIA force account operations
9. Federal Transit Administration workshops
10. State Departments of Transportation
11. Federal-aid highway construction and technology training including skill improvement programs under 23 U.S.C. 140 (b)(c)
12. Other funding sources identified in § 170.150 (Transit)
13. Department of Labor work force development
14. Indian Employment, Training, and Related Services Demonstration Act, Public Law 102–477
15. Garrett Morgan Scholarship (FHWA)
16. NTRC—National Transit Resource Center
17. CTER—Council for Tribal Employment Rights
18. BIA Indian Highway Safety Program
19. FHWA/STIPDG and NSTISS Student Internship Programs (Summer Transportation Internship Program for Diverse Groups and National Summer Transportation Institute for Secondary Students)
20. Environmental Protection Agency (EPA)
21. Department of Commerce (DOC)
22. Department of Housing and Urban Development Community Planning and Development

## Subpart C—Indian Reservation Roads Program Funding

TRIBAL TRANSPORTATION ALLOCATION METHODOLOGY (TTAM)

### § 170.200 How does BIA allocate IRR Program funds?

This section sets forth the Tribal Transportation Allocation Methodology (TTAM) that BIA uses to allocate IRR Program funds. After appropriate statutory and regulatory set-asides, as well as other takedowns, the remaining funds are allocated as follows:




(a) A statutorily determined percentage to a tribal transportation planning program (under 23 U.S.C. 204(j)); and

(b) The remainder to a pool of funds designated as ''Remaining funding available for distribution.'' This ''Remaining funding available for distribution'' pool is further allocated as follows:

(1) 5 percent to a discretionary pool for IRR High Priority Projects (IRRHPP); and

(2) 95 percent to pool for distribution by the following Relative Need Distribution Factor (RNDF) as defined in § 170.223:

(50 percent Cost to Construct + 30 percent Vehicle Miles Traveled + 20 percent Population)

(3) If the annual authorization is greater than $275 million, then the amount above $275 million, after appropriate statutory and regulatory set-asides, as well as other takedowns are applied, will be allocated as follows:

(i) 12.5 percent to the IRRHPP (§ 170.205);

(ii) 12.5 percent to the Population Adjustment Factor (PAF) (§ 170.220); and

(iii) 75 percent to the RNDF (§ 170.223).

### § 170.201 How does BIA allocate and distribute tribal transportation planning funds?

Upon request of a tribal government and approval by the BIA Regional Office, BIA allocates tribal transportation planning funds described in § 170.403 pro rata according to the tribes' relative need percentage from the RNDF described in § 170.223. The tribal transportation planning funds will be distributed in accordance with the BIA procedures for self-governance tribes that negotiate tribal transportation planning in their annual funding agreements and to BIA Regional Offices for all other tribes.

### § 170.202 Does the Relative Need Distribution Factor allocate funding among tribes?

Yes. The RNDF determines the amount of funding available to allocate

to the tribes for their approved IRR projects and activities under 23 U.S.C. 202(d)(2). The IRR Program construction funds are allocated pro rata according to the tribes' relative need percentage from the Funding Formula.

(a) The IRR Program construction funds will be distributed in accordance with the BIA procedures for self-governance tribes that negotiate IRR construction projects into their AFA, and distributed to BIA Regional Offices for all other tribes.

(b) In order for a tribe's IRR Program allocation to be expended on a construction project, the project must be included in an FHWA-approved Transportation Improvement Program (TIP).

IRR HIGH PRIORITY PROJECT (IRRHPP)

### § 170.205 What is an IRR High Priority Project (IRRHPP)?

(a) The IRRHPP is a special funding pool that can be used:

(1) By a tribe whose annual allocation is insufficient to complete its highest priority project;

(2) By a governmental subdivision of a tribe that is authorized to administer the tribe's IRR Program funding and whose annual allocation is insufficient to complete its highest priority project; or

(3) By any tribe for an emergency/disaster on any IRR transportation facility.

(b) Eligible applicants may have only one IRRHPP application pending at any time. This includes emergency/disaster applications.

(c) IRRHPP funds cannot be used for transportation planning, research, routine maintenance activities, and items listed in § 170.116.

### § 170.206 How is an emergency/disaster defined?

(a) An emergency/disaster is damage to an IRR transportation facility that:

(1) Renders the facility impassable or unusable; and

(2) Is caused by either a natural disaster over a widespread area or catastrophic failure from an external cause.

(b) Some examples of natural disasters are: floods, droughts, earthquakes, tornadoes, landslides, avalanches, and severe storms.

(c) An example of a catastrophic failure is the collapse of a highway bridge after being struck by a barge, truck, or landslide.

### § 170.207 What is the intent of IRRHPP emergency/disaster funding?

The intent of IRRHPP emergency/disaster funding is to provide funding for a project that contains eligible work and would be approved for FHWA-ERFO Program funding except that the disaster dollar threshold for eligibility in the FHWA-ERFO program has not been met. Applicants are encouraged to apply for FHWA-ERFO Program funding if the project meets the requirements of the program.

### § 170.208 What funding is available for IRRHPP?

The IRRHPP funding level (see chart in § 170.200) for the year is:

(a) Authorization Amount up to $275 million—5 percent of the pool of funds designated as ''Remaining funding available for distribution''; plus

(b) Authorization Amount over $275 million—12.5 percent the amount above $275 million after appropriate statutory and regulatory set-asides, as well as other takedowns.

### § 170.209 How will IRRHPP applications be ranked and funded?

(a) BIADOT and the Federal Lands Highway (FLH) Program office will determine eligibility and fund IRRHPP applications subject to availability of funds and the following criteria:

(1) Existence of safety hazards with documented fatality and injury accidents;

(2) Number of years since the tribe's last IRR Program construction project completed;

(3) Readiness to proceed to construction or IRRBP design need;

(4) Percentage of project cost matched by other non-IRR Program funds (projects with a greater percentage of other matched funds rank ahead of lesser matches);

(5) Amount of funds requested (smaller requests receive greater priority);

(6) Challenges caused by geographic isolation; and

(7) All weather access for: employment, commerce, health, safety, educational resources, and housing.

(b) Funding is limited to the estimated cost of repairing damage to the IRR transportation facility up to a maximum of $1 million per application.

(c) A project submitted as an emergency/disaster must be at least 10 percent of a tribe's relative need distribution.

(d) BIA's regional roads engineer or the tribe, if it has plans, specifications, and estimates (PS&E) approval authority will certify the cost estimate in approving the plans, specifications, and estimates for the IRRHPP.

(e) The Project Scoring Matrix is found in appendix A to subpart C.

### § 170.210 How may a tribe apply for IRRHPP?

A tribe may apply for IRRHPP funds by submitting a complete application to BIADOT. The application must include:

(a) Project scope of work (deliverables, budget breakdown, timeline);

(b) Amount of IRRHPP funds requested;

(c) Project information addressing ranking criteria identified in § 170.209, or the nature of the emergency/disaster;

(d) Documentation that the project meets the definition of an IRR transportation facility and is in the IRR Inventory;

(e) Documentation of official tribal action requesting the IRRHPP project; and

(f) Documentation from the tribe providing authority for BIA to place the project on an IRRHPP TIP if the project is selected and approved.

### § 170.211 What is the IRRHPP Funding Priority List?

The IRRHPP Funding Priority List (FPL) is the ranked IRRHPPs approved for funding under § 170.209.

(a) The number of projects on the FPL is limited by the amount of IRRHPP funds available at the beginning of the fiscal year.

(b) BIA will place all projects on the FPL on an IRRHPP TIP and forward them to FHWA for approval.

### § 170.212 What is the timeline for IRRHPPs?

(a) BIA will accept IRRHPP applications until December 31 each year for projects during the following year. BIA processes IRRHPP applications as shown in the following table:

| By . . . | BIA will . . . |
|---|---|
| (1) January 31 | Notify all applicants and Regions in writing of acceptance of applications. |
| (2) March 31 ... | Coordinate with FLH to rank all accepted applications in accordance with Appendix A to Subpart C, develop the FPL, and return unaccepted applications to the applicant with an explanation of the deficiencies. |
| (3) April 15 ..... | Notify all accepted applicants of the projects included on the FPL. |
| (4) May 15 ..... | Distribute funds to BIA Regions or in accordance with procedures of the Office of Self-Governance for selected IRRHPP. |

(b) If total funding for accepted projects does not equal the total funds available for IRRHPP, the remaining funds will be redistributed by the Relative Need Distribution Factor in accordance with Appendix C to subpart C.

(c) All IRRHPP funds must be obligated on or before August 15. If it is anticipated that these funds cannot be obligated by the end of the fiscal year, IRRHPP funds assigned to an approved project must be returned to FHWA by August 1. BIA will redistribute these funds the following fiscal year to those approved projects. (See § 170.213.)

### § 170.213 How long are IRRHPP funds available for a project?

Any project not under contract for construction within 3 fiscal years of its initial listing on an FPL will forfeit its unexpended funding. Applicants may request, in writing, a one-time, 1-year extension of this deadline from BIA. Upon completion of an IRRHPP, funds that are reserved but not expended are to be recovered and returned to the IRRHPP funding pool.

### § 170.214 How does award of an emergency/disaster project affect projects on the FPL?

(a) A tribe may submit an emergency/disaster project any time during the fiscal year. BIA considers these projects a priority and funds them as follows:

(1) If a tribe submits a project before the issuance of the FPL and it is determined as eligible for IRRHPP funds, BIA will provide funding before providing funding for the other approved projects on the FPL; or

(2) If a tribe submits a project after the issuance of the FPL and the distribution of the IRRHPP funds, BIA will provide funding when funds provided to the FPL projects is returned to BIA due to their inability to be obligated. (See § 170.212(c).)

(b) If BIA uses funding previously designated for a project on the FPL to fund an emergency/disaster project, the FPL project that lost its funding will move to the top of the FPL for the following year.

POPULATION ADJUSTMENT FACTOR

### § 170.220 What is the Population Adjustment Factor?

The Population Adjustment Factor (PAF) is a special portion of the total IRR Program distribution calculated annually that provides for broader participation in the IRR Program by tribes (or a governmental subdivision of a tribe authorized to administer the tribe's IRR Program funding). The PAF is based upon the population ranges and distribution factors in appendix B to subpart C. The population data used is the American Indian and Alaska Native Service Population developed by the Department of Housing and Urban Development, under the Native American Housing Assistance and Self-Determination Act (NAHASDA), (25 U.S.C. 4101 *et seq.*). Appendix B to subpart C explains how the PAF is derived. The funds generated by the PAF can be used for transportation planning or IRR projects.

### § 170.221 What funding is available for distribution using the PAF?

When the annual authorization for the IRR Program is greater than $275 million, 12.5 percent of the amount above $275 million after the appropriate statutory and regulatory set-asides, as well as other takedowns, is available for distribution using the PAF.

RELATIVE NEED DISTRIBUTION FACTOR

### § 170.223 What is the Relative Need Distribution Factor (RNDF)?

The Relative Need Distribution Factor (RNDF) is a mathematical formula used for distributing the IRR Program construction funds. The RNDF is derived from a combination of the cost to construct, vehicle miles traveled, and population. Appendix C to subpart C explains how the RNDF is derived and applied.

IRR INVENTORY AND LONG-RANGE TRANSPORTATION PLANNING (LRTP)

### § 170.225 How does the LRTP process relate to the IRR Inventory?

The LRTP process (see subpart D) is a uniform process that identifies the transportation needs and priorities of the tribes. The IRR Inventory is derived from transportation facilities identified through LRTP. It is also a means for identifying projects for the IRRHPP Program.

### § 170.226 How will this part affect the IRR Inventory?

The IRR Inventory defined in this part will expand the IRR Inventory for funding purposes to include:

(a) All roads, highway bridges, and other eligible transportation facilities that were previously approved in the BIA Road System in 1992 and each following year;

(b) All Indian reservation roads constructed using Highway Trust funds since 1983;

(c) All designated IRR routes (25 CFR 170.442–170.444);

(d) Non-road transportation related facilities; and

(e) Other applicable IRR transportation facilities.

### § 170.227 How does BIA develop and use the IRR Inventory?

The IRR Inventory as defined in § 170.442 identifies the transportation need by providing the data that BIA uses to generate the Cost to Construct (CTC) and Vehicle Miles Traveled (VMT) components of RNDF. The IRR Inventory is developed through the LRTP process, as described in §§ 170.410 through 170.415. BIA Regional offices

maintain, certify, and enter the data for their region's portion of the IRR Inventory database. Only project-specific transportation activities are included in the IRR Inventory.

### § 170.228 Are all facilities included in the IRR Inventory used to calculate CTC?

No. Projects/facilities proposed to receive construction funds on an approved IRRTIP are not eligible for future inclusion in the calculation of the CTC portion of the formula for a period of 5 years thereafter.

## GENERAL DATA APPEALS

### § 170.231 May a tribe challenge the data BIA uses in the RNDF?

(a) A tribe may submit a request to the BIA Regional Director to revise the data for the tribe that BIA uses in the RNDF. The request must include the tribe's data and written support for its contention that the tribal data is more accurate than BIA's.

(b) A tribe may submit a data correction request at any time. In order to impact the distribution in a given fiscal year, a data correction request must be approved, or any subsequent appeals resolved, by June 1 of the prior fiscal year.

(c) The BIA Regional Director must respond within 30 days of receiving a data correction request under this section.

(1) Unless the BIA Regional Director determines that the existing BIA data is more accurate, the BIA Regional Director must approve the tribe's data correction request and accept the tribe's corrected data.

(2) If the BIA Regional Director disapproves the tribe's request, the decision must include a detailed written explanation of the reasons for the disapproval, copies of any supporting documentation (other than the tribe's request) that the BIA Regional Director relied upon in reaching the decision, and notice of the tribe's right to appeal the decision.

(3) If the BIA Regional Director does not approve the tribe's request within 30 days of receiving the request, the request must be deemed disapproved.

### § 170.232 How does a tribe appeal a disapproval from the BIA Regional Director?

(a) Within 30 days of receiving a disapproval, or within 30 days of a disapproval by non-action of the BIA Regional Director, a tribe may file a written notice of appeal to the Director, Bureau of Indian Affairs, with a copy provided to the BIA Regional Director; and

(b) Within 30 days of receiving an appeal, the Director, Bureau of Indian Affairs must issue a written decision upholding or reversing the BIA Regional Director's disapproval. This decision must include a detailed written explanation of the reasons for the disapproval, copies of any supporting documentation that the Director, Bureau of Indian Affairs relied upon in reaching the decision (other than the tribe's request or notice of appeal), and notice of the tribe's right to appeal the decision to the Interior Board of Indian Appeals under 25 CFR part 2.

## FLEXIBLE FINANCING

### § 170.300 May tribes use flexible financing to finance IRR transportation projects?

Yes. Tribes may use flexible financing in the same manner as States to finance IRR transportation projects, unless otherwise prohibited by law.

(a) Tribes may issue bonds or enter into other debt financing instruments under 23 U.S.C. 122 with the expectation of payment of IRR Program funds to satisfy the instruments.

(b) Under 23 U.S.C. 183, the Secretary of Transportation may enter into an agreement for secured loans or lines of credit for IRR projects meeting the requirements contained in 23 U.S.C. 182. Tribes or BIA may service Federal credit instruments. The secured loans or lines of credit must be paid from tolls, user fees, or other dedicated revenue sources.

(c) Tribes may use IRR Program funds as collateral for loans or bonds to finance IRR projects. Upon the request of a tribe, a BIA region will provide necessary documentation to banks and other financial institutions.

### § 170.301 Can a tribe use IRR Program funds to leverage other funds or pay back loans?

(a) A tribe can use IRR Program funds to leverage other funds.

(b) A tribe can use IRR Program funds to pay back loans or other finance instruments for a project that:

(1) The tribe paid for in advance of the current year using non-IRR Program funds; and

(2) Was included in FHWA-approved IRRTIP.

### § 170.302 Can BIA regional offices borrow IRR Program funds from each other?

Yes. A BIA Regional office, in consultation with tribes, may enter into agreements to borrow IRR Program funds to assist another BIA regional office in financing the completion of an IRR project. These funds must be repaid within the next fiscal year. These agreements cannot be executed during the last year of a transportation authorization act unless Congress has authorized IRR Program funds for the next year.

### § 170.303 Can a tribe apply for loans or credit from a State infrastructure bank?

Yes. Upon the request of a tribe, BIA region will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for an IRR project. A state infrastructure bank is a state or multi-state fund that can offer loans and other forms of credit to help project sponsors, such as tribes, pay for transportation projects.

## APPENDIX A TO SUBPART C—IRR HIGH PRIORITY PROJECT SCORING MATRIX

| Score | 10 | 5 | 3 | 1 | 0 |
|---|---|---|---|---|---|
| Accident and fatality rate for candidate route [1]. | Severe | X | Moderate | Minimal | No accidents. |
| Years since last IRR construction project completed. | Never | Last project more than 10 years ago. | Last project 5–9 years ago. | Last project within last 1 to 4 years. | Currently has project. |
| Readiness to Proceed to Construction or IRRBP Design Need. | PS&E Complete and approved. | Bridge Replacement PS&E development Project. | Bridge Rehabilitation PS&E development Project. | Non-bridge PS & E development Project. | X. |
| Percentage of Project matched by other funds. | X | 80 percent or more by other funds. | 20–79 percent by other funds. | 1–19 percent | No other funds. |
| Amount of funds requested [2] | X | 250,000 or less | 250,001–500,000 | 500,001–750,000 | Over 750,000. |
| Geographic isolation | No external access to community. | Substandard Primary access to community. | Substandard Secondary access to community. | Substandard access to tribal facility. | X. |
| All weather access for:<br>—Employment<br>—Commerce<br>—Health<br>—Safety<br>—Educational Resources<br>—Housing | Addresses all 6 elements. | Addresses 4 or 5 elements. | Addresses 3 elements. | Addresses 2 elements. | Addresses 1 element. |

[1] National Highway Traffic Safety Board standards.
[2] Total funds requested, including preliminary engineering, construction, and construction engineering.

## APPENDIX B TO SUBPART C—POPULATION ADJUSTMENT FACTOR

1. The Population Adjustment Factor allows for participation in the IRR Program by all tribes. This component of the funding formula creates a special calculation of funding which is available in accordance with the TTAM each fiscal year for a tribe based on the population range within which the tribe is included. The following table shows how BIA develops the PAF.

| Population range | Distribution factor* | Number of tribes** | Funding amount per tribe |
|---|---|---|---|
| Less than 25 | 1 | $N_1$ | MBA*** × 1 |

| Population range | Distribution factor* | Number of tribes** | Funding amount per tribe |
|---|---|---|---|
| 25–100 | 3.5 | $N_2$ | MBA × 3.5 |
| 101–1000 | 5.0 | $N_3$ | MBA × 5.0 |
| 1001–10,000 | 6.5 | $N_4$ | MBA × 6.5 |
| 10,001+ | 8 | $N_5$ | MBA × 8 |

*Multiplier used to determine the PAF funding for the population ranges. For example, if $1000 is available for the first population range (less than 25), then the second population range (25–100) will receive $3,500 or 3.5 times the amount available to the first population range.

**The number of tribes changes yearly.

***The Minimum Base Allocation (MBA) is the dollar value to be multiplied by the distribution factor for each population range to determine the distribution of the PAF.

2. The following example shows how the PAF applies to a total IRR Program authorization for the allocation year of $375 million. The five steps to calculate the Population Adjustment Factor are applied as follows:

Step 1. For each population range, multiply the Distribution Factor by the total number of tribes identified in the population range to determine the Step Factor;

Step 2. Add the Step Factors determined in Step 1 above to derive a Total Step Factor;

Step 3. Calculate the $A = IRR Program authorization available in the allocation year by taking the Total IRR Program authorization for the allocation year ($375M for this example) minus the appropriate statutory and regulatory set-asides, as well as other takedowns ($25M for this example)

$375M – $25M = $350M;

Step 4. Derive a Minimum Base Allocation by taking 12½ per cent of the difference (from Step 3) and dividing it by the Total Step Factor. The mathematical equation for the Base Allocation is as follows:

$$\mathrm{MBA} = \left( \frac{12\tfrac{1}{2}\% \times (\$A - \$275M)}{\left(N_1 + 3.5N_2 + 5N_3 + 6.5N_4 + 8N_5\right)} \right)$$

MBA = Minimum Base Allocation

Distribution Factors = 1, 3.5, 5, 6.5, and 8

$A = IRR Program Authorization Available in the Allocation Year

$275M = Base Reference Amount

n = The nth Population Range

1 . . . 5 = Population Ranges 1 through 5

$N_n$ = Number of tribes in the nth Population Range

For the example above, the formula yields:

$$\mathrm{MBA} = \frac{12\tfrac{1}{2}\% \times (\$350M - \$275M)}{17 + 3.5(66) + 5(309) + 6.5(137) + 8(29)} = \frac{\$9{,}375{,}000}{2{,}915.50} = \$3{,}215.57$$

Step 5. Calculate Population Adjustment Factor within each Population Range by multiplying the Distribution Factor for the Population Range by the Minimum Base Allocation.

The mathematical equation for the Population Adjustment Factor calculation is as follows:

$PAF_n = DF_n$ X MBA

Where:

PAF = Population Adjustment Factor

DF = Distribution Factor

n = The $n^{th}$ Population Range

MBA = Minimum Base Allocation

For example, for $DF_1$ = 1.00; $PAF_1$ = 1 × $3,215.57 = $3,215.57

For example, for $DF_3$ = 5.00; $PAF_3$ = 5 × $3,215.57 = $16,077.86

The following table illustrates the results of the above calculations for all population ranges:

| Population range (step) | # of tribes | Distribution factor | Step factor | Tribal PAF per population range | Total funding per step |
|---|---|---|---|---|---|
| Less than 25 | 17 | 1 | 17 | $3,215.57 | $54,664.72 |
| 25–100 | 66 | 3.5 | 231 | 11,254.50 | 742,797.12 |
| 101–1000 | 309 | 5 | 1545 | 16,077.36 | 4,968,058.65 |
| 1001–10,000 | 137 | 6.5 | 890.50 | 20,901.22 | 2,863,466.82 |
| 10,001 + | 29 | 8 | 232 | 25,724.58 | 746,012.69 |
| Totals | | Total Step Factor = 2,915.50 | | | 9,375,000 |

## APPENDIX C TO SUBPART C—RELATIVE NEED DISTRIBUTION FACTOR

The Relative Need Distribution Factor (RNDF) is a mathematical formula for distributing the IRR Program construction funds using the following three factors: Cost to Construct (CTC), Vehicle Miles Traveled (VMT), and Population (POP).

1. WHAT IS THE FORMULA FOR THE RNDF?

The Relative Need Distribution Factor is as follows:

$$A = \alpha \times \{CTC \div Total\ C\} + \beta \times \{VMT \div Total\ VMT\} + \delta \times \{POP \div Total\ POP\}$$

Where:

A = percent Relative Need for an individual tribe

CTC = Total Cost to Construct calculated for an individual tribe

Total C = Total Cost to Construct calculated for all tribes shown in the IRR Inventory

VMT = Total vehicle miles traveled for all routes in the IRR Inventory for a given tribe

Total VMT = Total vehicle miles traveled for all routes for all tribes in the IRR Inventory

POP = Population of an individual tribe

Total POP = Total population for all tribes

$\alpha$, $\beta$, $\delta$, = 0.50, 0.30, 0.20 respectively = Coefficients reflecting relative weight given to each formula factor

*Example:* Tribe X has the following data:

CTC = $51,583,000 ..... Total CTC = $10,654,171,742
VMT = 45,680 ..... Total VMT = 10,605,298
POP = 4,637 ..... Total POP = 1,010,236

A = 0.50 [CTC ÷ Total CTC] + 0.30[VMT ÷ Total VMT] + 0.20[ POP ÷ Total POP]

A = 0.50 [51,583,000 ÷ 10,654,171,742] + 0.30 [45,680 ÷ 10,605,298] + 0.20 [4,637 ÷ 1,010,236]
A = 0.00242 + 0.00129 + 0.00092
A = 0.00463 or 0.463 percent

If IRR Program construction funds available for the fiscal year are $226,065,139
Then the allocation amount would be: $226,065,139 × 0.00463 = $1,046,682.

2. How Does BIA Estimate Construction Costs?

The methodology for calculating the Cost to Construct is explained in Appendix D of this subpart.

3. What Is the Cost to Construct for an Individual Tribe?

The Cost to Construct for an individual tribe is the sum of all eligible and approved project costs from the tribe's IRR Inventory.

4. What Is the Cost to Construct Component in the RNDF?

The Cost to Construct component is the total estimated cost of a tribe's transportation projects as a percentage of the total estimated cost nationally of all tribes' transportation facilities. Costs are derived from the IRR inventory of eligible IRR transportation facilities developed and approved by BIA and tribal governments through Long-Range Transportation Planning.

5. May the Cost to Construct Component of the RNDF Be Modified?

Yes, BIA and FHWA, with input and recommendations provided by the IRR Program Coordinating Committee, may consider revisions to the data elements used in calculating the Cost to Construct component.

6. What Is the Source of the Construction Cost Used To Generate the CTC?

(a) The construction cost will be derived from the average of the following three project bid tabulation sources:

(1) Tribal bid tabulations or local BIA bid tabulations;

(2) State bid tabulations for the region of the State in which the tribe's project will be constructed;

(3) National IRR Program bid tabulations.

(b) If one or more of these bid tabulation sources is unavailable, use the average of the available sources.

(c) BIADOT will collect the national IRR Program bid tabulation data and enter it into the Cost to Construct database.

7. What Is the VMT Component and How Is It Calculated?

VMT is a measure of the current IRR transportation system use. BIA calculates VMT using the sum of the length of IRR route segments in miles multiplied by the Average Daily Traffic (ADT) of the route segment.

8. What IRR Route Sections Does BIA Use To Calculate VMT?

All IRR route sections in the IRR Inventory are used to calculate VMT, but percentage factors are applied in accordance with Appendix C to subpart C, question (10).

9. What Is the Population Component and How Is It Determined?

The population component is a factor used to define a portion of transportation need based on the number of American Indian or Alaska Native people served. The population data used will be the American Indian and Alaska Native Service Population developed by the Department of Housing and Urban Development, under the Native American Housing Assistance and Self-Determination Act (NAHASDA), (25 U.S.C. 4101 *et seq.*).

10. Do All IRR Transportation Facilities in the IRR Inventory Count at 100 Percent of Their CTC and VMT?

No. The CTC and VMT must be computed at the non-Federal share requirement for matching funds for any transportation facility that is added to the IRR inventory and is eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway Program funds.

However, if a facility falls into one or more of the following categories, then the CTC and VMT factors must be computed at 100 percent:

(1) The transportation facility was approved, included, and funded at 100 percent of CTC and VMT in the IRR Inventory for funding purposes prior to the issuance of these regulations.

(2) The facility is not eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway Program funds; or

(3) The facility is eligible for funding for construction or reconstruction with Federal funds, however, the public authority responsible for maintenance of the facility provides certification of maintenance responsibility and its inability to provide funding for the project.

## APPENDIX D TO SUBPART C—COST TO CONSTRUCT

### COST TO CONSTRUCT

(Appendix D includes Tables 1–8 which BIA Division of Transportation developed based on internal IRR data and the negotiated rulemaking process.) This method utilizes the concepts of the Bureau of Indian Affairs' "*Simplified Approach to Compute the Cost to Construct*". The concept has been modified to include computing costs for High Capacity Roads (multi-lane roads), non-road projects (snowmobile trails, boardwalks, footpaths, etc.) and other eligible transportation facility projects.

The theory behind this concept is based on the procedure that information gathered during any inventory update can be used to compare the existing conditions to defined Adequate Standard Characteristics. This comparison can then be used to determine the total cost required to bring the transportation facility road up to a necessary Adequate Standard. The IRR Inventory database is used to determine the costs of a new transportation facility or in the case of an existing facility, the costs that will be necessary to improve the facility from it's existing condition to an adequate standard. Therefore, the Cost to Construct for a particular facility is the cost required to improve the facility's existing condition to a condition that would meet the Adequate Standard Characteristics (see Table 1). For roadways, the recommended design of the geometrics and surface type vary based on the road's functional classification and average daily traffic and will use four categories of cost. The four categories are Grade and Drain Costs, Aggregate Costs, Pavement Costs, and Incidental Costs. For bridges, costs are derived from costs in the National Bridge Inventory as well as the National Bridge Construction unit cost data developed by FHWA. For other transportation IRR transportation facilities, an inventory of needs must be developed with associated costs for new and existing IRR transportation facilities based on long range transportation planning. The BIA Regions and tribes must ensure the IRR Inventory is sufficiently updated to provide all the necessary information indicating the need, the condition and the construction cost data to compute the cost to construct of any proposed or existing facility.

### BASIC PROCEDURES

The IRR Inventory, based on transportation planning must be developed for those tribes without data and updated for those tribes that have an existing IRR Inventory. Once the IRR Inventory database is current and all IRR transportation facilities needs

are identified and verified, the Cost to Construct for those IRR transportation facilities can be developed.

The procedure for determining the cost to construct of a proposed transportation facility is computed through the following step-by-step process:

(a) Determine the Future ADT of the transportation facility as applicable, based upon tribal transportation planning or set default future ADT (see Table 2);

(b) Determine the Class of transportation facility *e.g.*, rural local, rural major collector, or other transportation facility, utilizing future ADT and based upon tribal transportation planning (see Table 1);

(c) Identify, if appropriate, transportation facility terrain as flat, rolling, or mountainous;

(d) Set Adequate Standard based on Class, and/or future ADT, and Terrain (see Table 1);

(e) Identify the transportation facility's construction cost per unit (*e.g.*, cost per mile, cost per linear foot) for the applicable components of construction: Aggregate, Paving, Grade/Drain, Incidental, or other costs associated with the transportation facility;

(f) Multiply the construction cost per unit for each component of construction by the length of the proposed road or other appropriate unit of the transportation facility to determine the cost for each component of construction; and

(g) Calculate the cost for the proposed road or transportation facility by adding together the costs for each component of construction.

The procedure for determining the cost to reconstruct or rehabilitate an existing transportation facility is determined in the same manner as a proposed transportation facility, except that the existing condition of the project is evaluated to determine the remaining percentage of cost of each applicable component of construction that will be included in the cost for reconstruction. The steps are:

(1) Evaluate existing condition of road or transportation facility in accordance with applicable management systems, guidelines or other requirements;

(2) Identify the percentage of required cost for each component of applicable construction costs for the transportation facility by determining the Adequate Standards Characteristics (see Table 1) and existing condition of the transportation facility and by applying the applicable percent cost requirement tables for aggregate, paving, grade/drain, incidental, and bridge (see Tables 4–8);

(3) Multiply the construction cost per unit for each component of construction by the corresponding percent of cost required (see Tables 4–8) and by the length of the road or other appropriate unit of the transportation facility to determine the reconstruction cost for each component; and

(4) Calculate the reconstruction cost for the road or transportation facility by adding together the reconstruction costs for each component of construction.

Average daily traffic (ADT) is acquired through actual traffic counts on the roadway sections. Where current ADT is practical to acquire, it should be acquired and future ADT calculated by projecting the current ADT at 2 percent per year for 20 years. If the road is proposed, the ADT impractical to acquire, or a current ADT does not exist, then BIA will assign a default current ADT and calculate future ADT by projecting the default current ADT at 2 percent per year for 20 years to form the basis of the Adequate Standard (see Table 1). Table 2 summarizes the default current and default future ADT by class of road.

Functional Classification: Functional classification means an analysis of a specific transportation facility taking into account current and future traffic generators, and their relationship to connecting or adjacent BIA, state, county, Federal, and/or local roads and other intermodal facilities. Functional classification is used to delineate the difference between the various road and/or intermodal transportation facility standards eligible for funding under the IRR Program. As a part of the IRR Inventory system management, all IRR transportation facilities included on or added to the IRR Inventory must be classified according to the following functional classifications:

(a) *Class 1:* Major arterial roads providing an integrated network with characteristics for serving traffic between large population centers, generally without stub connections and having average daily traffic volumes of 10,000 vehicles per day or more with more than two lanes of traffic.

(b) *Class 2:* Rural minor arterial roads providing an integrated network having the characteristics for serving traffic between large population centers, generally without stub connections. May also link smaller towns and communities to major resort areas that attract travel over long distances and generally provide for relatively high overall travel speeds with minimum interference to through traffic movement. Generally provide for at least inter-county or inter-State service and are spaced at intervals consistent with population density. This class of road will have less than 10,000 vehicles per day.

(c) *Class 3:* Streets that are located within communities serving residential areas.

(d) *Class 4:* Rural Major Collector Road is a collector to rural local roads.

(e) *Class 5:* Rural Local Road that is either a section line and/or stub type roads that collect traffic for arterial type roads, make connections within the grid of the IRR System. This class of road may serve areas around villages, into farming areas, to

schools, tourist attractions, or various small enterprises. Also included are roads and motorized trails for administration of forest, grazing, mining, oil, recreation, or other use purposes.

(f) *Class 6:* City Minor Arterial Streets that are located within communities, and serve as access to major arterials.

(g) *Class 7:* City Collector Streets that are located within communities and serve as collectors to the city local streets.

(h) *Class 8:* This classification encompasses all non-road projects such as paths, trails, walkways, or other designated types of routes for public use by foot traffic, bicycles, trail bikes, snowmobile, all terrain vehicles or other uses to provide for the general access of non-vehicular traffic.

(i) *Class 9:* This classification encompasses other transportation facilities such as public parking facilities adjacent to IRR routes and scenic byways, rest areas, and other scenic pullouts, ferry boat terminals, and transit terminals.

(j) *Class 10:* This classification encompasses airstrips that are within the boundaries of the IRR System grid and are open to the public. These airstrips are included for inventory and maintenance purposes only.

(k) *Class 11:* This classification indicates an overlapping of a previously inventoried section or sections of a route and is used to indicate that it is not to be used for accumulating needs data. This class is used for reporting and identification purposes only.

Construction Need: All existing and proposed transportation facilities in the IRR Inventory must have a Construction Need (CN) which is used in the Cost to Construct calculations. These transportation facilities are assigned a CN by the tribe during the long-range transportation planning and inventory update process using certain guidelines which are: Ownership or responsibility of the facility, whether it is within or provides access to reservations, groups, villages and communities in which the majority of the residents are Indian, and whether it is vital to the economic development of Indian tribes. As part of the IRR Inventory management, all facilities included on or added to the IRR Inventory must be designated a CN which are defined as follows:

(a) *Construction Need 0:* Transportation facilities which have been improved to their acceptable standard or projects/facilities proposed to receive construction funds on an approved IRRTIP are not eligible for future inclusion in the calculation of the CTC portion of the formula for a period of 5 years thereafter.

(b) *Construction Need 1:* Existing BIA roads needing improvement.

(c) *Construction Need 2:* Construction need other than BIA roads needing improvement.

(d) *Construction Need 3:* Substandard or other roads for which no improvements are planned, maintenance only.

(e) *Construction Need 4:* Roads which do not currently exist and need to be constructed, proposed roads.

## TABLE 1 - ADEQUATE STANDARD CHARACTERISTICS

The cost to construct of a particular transportation facility is defined as the cost required to improve the transportation facility from its existing condition to a condition that would meet the Adequate Standard Characteristics. Table 1 presents the Adequate Standard Characteristics.

| ADEQUATE STANDARD NUMBER | 1 2 3 | 4 5 6 | 7 8 9 | 10 11 12 | 13 14 15 | 16 | 17 | 18 | 19 | 20 | 21 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| TERRAIN*** | (1) (2) (3) | (1) (2) (3) | (1) (2) (3) | (1) (2) (3) | (1) (2) (3) | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| FUTURE ADT used in ADS assignment | N/A | FADT>=400 | FADT<400 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| BIA CLASS | 1 MAJOR ARTERIAL | 2 RURAL MINOR ARTERIALS | | 4 RURAL MAJOR COLLECTOR | 5 RURAL LOCAL | 6 CITY MINOR ARTERIAL | 7 CITY COLLECTOR | 3* CITY LOCAL | 8 MOTORIZED/ NON-MOTORIZED TRAILS | 9 OTHER TRANSPOR-TATION FACILITIES | 10 AIRSTRIPS | 11 Overlapping Routes |
| **CALCULATED VALUES** | | | | | | | | | | | | |
| FUTURE SURFACE TYPE (EXISTING) | PAVED | PAVED | PAVED | FADT UNDER 50 -EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED | | FADT UNDER 50 -EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED | | | DEPENDS ON FACILITY | N/A | N/A | N/A |
| FUTURE SURFACE TYPE (PROPOSED) | PAVED | PAVED | PAVED | FADT UNDER 50 -EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED | FADT UNDER 50 - EARTH FADT 50-400 - GRAVEL FADT OVER 400 - PAVED | FADT UNDER 50 -EARTH FADT 50-250 - GRAVEL FADT OVER 250 - PAVED | | | DEPENDS ON FACILITY | N/A | N/A | N/A |
| DEFAULT CURRENT ADT /DEFAULT FUTURE ADT** | must exist | ADT 100 FADT 149 | | ADT 50 FADT 74 | ADT 50 FADT 74 | ADT 50 FADT 74 | ADT 50 FADT 74 | ADT 25 FADT 37 | ADT 20 FADT 30 | N/A | N/A | N/A |
| **RECOMMENDED DESIGN** | | | | | | | | | | | | |
| MINIMUM ROADWAY WIDTH (INCLUDING SHOULDERS) | 66' | 36' | 32' | 32' | 28' | 50' TOTAL PARKING 7' TURNING 12' | 21' TO 38' DEPENDING ON TURNING LANES AND PARKING | | DEPENDS ON FACILITY | N/A | N/A | N/A |
| SHOULDER WIDTH | 6' MINIMUM | 6' | 4' | 4' | 2' | N/A | | | N/A | N/A | N/A | N/A |
| SHOULDER TYPE | PAVED | PAVED | PAVED | PAVED/GRAVEL/EARTH | | N/A | | | N/A | N/A | N/A | N/A |

* Local Class 3 roads may be earth, gravel or paved, depending on tribal customs, economics, or environmental considerations.
** Use default future ADT for proposed roads or where impractical to acquire ADT or ADT does not exist. (See Table 2 Default ADT and Default Future ADT). Where current ADT is practical to acquire, it should be acquired and projected to a future ADT at 2 per cent per year for 20 years.
*** (1)=Flat; (2)=Rolling; (3)=Mountainous

Table 2—Default Current ADT and Default Future ADT

Table 2 summarizes the default current and default future ADT by class of road. Default future ADT is calculated by projecting default current ADT at 2 percent per year for 20 years. 2 percent per year for 20 years yields a factor of 1.485.

TABLE 2—DEFAULT CURRENT ADT AND DEFAULT FUTURE ADT

| IRR Class No. | Default current and default future ADT* |
|---|---|
| 1 | N/A, Must Exist |
| 2 | 100 * 1.485 = 149 |
| 3 | 25 * 1.485 = 37 |
| 4 | 50 * 1.485 = 74 |
| 5 | 50 * 1.485 = 74 |
| 6 | 50 * 1.485 = 74 |
| 7 | 50 * 1.485 = 74 |
| 8 | 20 * 1.485 = 30 |
| 9 | N/A** |
| 10 | N/A** |
| 11 | N/A** |

*Default Future ADT is used for proposed roads or when impractical to acquire current ADT or when current ADT does not exist.

**Class 9, 10, and 11 are point features in the inventory and do not have an ADT. All multiplication is rounded.

*Table 3—Future Surface Type*

Table 3 summarizes all possible scenarios of the future surface type either required or based on the various future ADT thresholds for each type or class of road in the inventory.

TABLE 3—FUTURE SURFACE TYPE

| Const. need | IRR class No. | Future ADT | Future surface type |
|---|---|---|---|
| 0,1,2,3 | 1 | Any | Paved |
| 0,1,2,3 | 2 | Any | Paved |
| 0,1,2,3 | 3,6,7 | < 50 | Earth |
| | | 50 – 250 | Gravel |
| | | > 250 | Paved |
| 0,1,2,3 | 4,5 | < 50 | Earth |
| | | 50 – 250 | Gravel |
| | | > 250 | Paved |
| 0,1,2,3,4 | 8 | N/A | N/A* |

TABLE 3—FUTURE SURFACE TYPE—Continued

| Const. need | IRR class No. | Future ADT | Future surface type |
|---|---|---|---|
| 0,1,2,3,4 | 9 | N/A | N/A** |
| 0,1,2,3,4 | 10 | N/A | N/A*** |
| 4*** | 1 | N/A**** | N/A**** |
| 4 | 2 | ANY | Paved |
| 4 | 3,6,7 | < 50 | Earth |
| | | 50 – 250 | Gravel |
| | | > 250 | Paved |
| 4 | 4 | < 50 | Earth |
| | | 50 – 250 | Gravel |
| | | > 250 | Paved |
| 4 | 5 | < 50 | Earth |
| | | 50 – 250 | Gravel |
| | | > 250 | Paved |

*Class 8 does not have a future surface type. Per mile costs are applied independent of future surface type.

**Class 9 does not have a future surface type. Costs are independent of future surface type.

***Class 10 does not have a future surface type. These are airstrips and is used for identification purposed only.

****Class 1 with Construction Need of 4 does not apply. Class 1 roads must exist.

*Table 4—Percent of Grade and Drain Cost Required*

Grade and Drain costs include the cost for constructing a roadbed to an adequate standard and providing adequate drainage. Specifically it includes the necessary earthwork to build the roadbed to the required horizontal and vertical geometric parameters above the surrounding terrain and provide for proper drainage away from the foundation with adequate cross drains.

Table 4 summarizes the percentage of grade and drain costs required based on the existing roadbed condition observed in an inventory update.

TABLE 4—PERCENT OF GRADE AND DRAIN COST REQUIRED

| Code | Roadbed condition | Percent grade and drain cost required (Percent) |
|---|---|---|
| 0 | Proposed Road | 100 |
| 1 | Primitive Trail | 100 |
| 2 | Bladed Unimproved Earth Road, Poor Drainage, Poor Alignment | 100 |
| 3 | Minimum Built-up Roadbed (Shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground. | 100 |
| 4 | A designed and constructed roadbed with some drainage and alignment improvements required. | 100 |
| 5 | A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage. | 0 |
| 6 | A roadbed constructed to adequate standards with curb and gutter on one side | 0 |
| 7 | A roadbed constructed to adequate standards with curb and gutter on both sides | 0 |

*Table 5—Percent of Aggregate Surface Cost Required*

Table 5 summarizes the percentage of aggregate surface costs required based on all possible scenarios of existing surface type conditions and calculated future surface type.

TABLE 5—PERCENT OF AGGREGATE SURFACE COST REQUIRED

| Existing surface type | Future surface type | | |
|---|---|---|---|
| | Paved (percent) | Gravel (percent) | Earth (percent) |
| Proposed | 100 | 100 | 0. |
| Primitive | 100 | 100 | 0. |
| Earth | 100 | 100 | 0. |
| Gravel | 100 | *100 | 0. |
| Bituminous < 2″ | 100 | 0 | 0. |
| Bituminous > 2″ | 0 or 100 | 0 | 0. |
| Concrete | 0 or 100 | 0 | 0. |

*If the Surface Condition Index (SCI) is 40 or less indicating that reconstruction will be required, then 100 percent of the aggregate cost will be required. If greater than 40, then none of the aggregate cost will be applied.

*Table 6—Percent of Pavement Surface Cost Required*

Table 6 Summarizes the percentage of pavement surface costs for existing conditions required based on all possible scenarios of existing surface type conditions and calculated future surface type. Pavement overlays are calculated at 100 percent of the pavement costs.

TABLE 6—PERCENT OF PAVEMENT SURFACE COST REQUIRED

| Existing surface type | Future surface type | | |
|---|---|---|---|
| | Paved (percent) | Gravel (percent) | Earth (percent) |
| Proposed | 100 | 100 | 0. |
| Primitive | 100 | 100 | 0. |
| Earth | 100 | 100 | 0. |
| Gravel | 100 | 100 | 0. |
| Bituminous < 2″ | 100 | 0 | 0. |
| Bituminous > 2″ | *0 or 100 | 0 | 0. |
| Concrete | *0 or 100 | 0 | 0. |

*If the Surface Condition Index (SCI) is 60 or less indicating that reconstruction will be required, then 100 percent of the aggregate cost will be required. If greater than 60, then none of the aggregate cost will be applied.

*Table 7—Percent of Incidental Construction Cost Required*

Incidental cost items are generally required if a project includes construction or reconstruction of the roadbed. Some incidental items are included in all road improvement projects, while others are only required for specific projects. Table 7 summarizes the incidental construction determination estimating procedure for each of the Roadbed Category Codes. As shown in Table 4, roadbed condition codes 0 through 2 will require 65 percent of the incidental costs for construction because they generally will not require maintenance of traffic during construction. If maintenance of traffic is required as will generally be the case for roadbed condition codes 3 and 4, the minimum percentage of incidental costs for these roadbed condition codes will be 75 percent. It is assumed that improvement roadbed condition codes 5, 6 and 7 will primarily be paving projects with little or no earthwork involved and the minimum percentage of the total incidental construction cost for these projects will be 30 percent.

TABLE 7—PERCENT OF INCIDENTAL CONSTRUCTION COST REQUIRED

| Code | Roadbed condition | New alignment (percent) | Maintenance of traffic required (percent) |
|---|---|---|---|
| 0 | Proposed road | 65 | N/A |
| 1 | Primitive trail | 65 | N/A |
| 2 | Bladed unimproved earth road, poor drainage, poor alignment | 65 | N/A |
| 3 | Minimum built-up roadbed (shallow cuts and fills) with inadequate drainage and alignment that generally follows existing ground. | N/A | 75 |
| 4 | A designed and constructed roadbed with some drainage and alignment improvements required. | N/A | 75 |
| 5 | A roadbed constructed to the adequate standards with good horizontal and vertical alignment and proper drainage. Requiring surfacing. | N/A | 30 |

TABLE 7—PERCENT OF INCIDENTAL CONSTRUCTION COST REQUIRED—Continued

| Code | Roadbed condition | New alignment (percent) | Maintenance of traffic required (percent) |
|---|---|---|---|
| 6 ..... | A roadbed constructed to adequate standards with curb and gutter on one side. Requiring surfacing. | N/A | 30 |
| 7 ..... | A roadbed constructed to adequate standards with curb and gutter on both sides. Requiring surfacing. | N/A | 30 |

Table 7 only accounts for those incidental construction costs normally found on a typical project. The construction items found in Table 8 may or may not be on any particular project and the cost of these items is 25 percent. Add the percentage required (from 0 to 25 percent) based on the Regional recommendation with verification. If there are no additional items required, use the default of zero.

TABLE 8—PERCENT OF ADDITIONAL INCIDENTAL CONSTRUCTION COST

| Additional incidental construction item | Percent of total incidental construction cost |
|---|---|
| Fencing | 1 |
| Landscaping | 9 |
| Structural concrete | 9 |
| Traffic signals | 3 |
| Utilities | 3 |

## Subpart D—Planning, Design, and Construction of Indian Reservation Roads Program Facilities

TRANSPORTATION PLANNING

### § 170.400 What is the purpose of transportation planning?

The purpose of transportation planning is to fulfill goals by developing strategies to meet transportation needs. These strategies address current and future land use, economic development, traffic demand, public safety, health, and social needs.

### § 170.401 What is BIA's role in transportation planning?

Except as provided in § 170.402, the functions and activities that BIA must perform for the IRR Program are:

(a) Preparing the regional IRRTIP;

(b) Updating the IRR Inventory from data updates;

(c) Preparing IRR Inventory data updates as needed;

(d) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant IRR projects;

(e) Providing technical assistance to tribal governments;

(f) Developing IRR Program budgets including transportation planning cost estimates;

(g) Facilitating public involvement;

(h) Participating in transportation planning and other transportation-related meetings;

(i) Performing traffic studies;

(j) Performing preliminary project planning;

(k) Conducting special transportation studies;

(l) Developing short and long-range transportation plans;

(m) Mapping;

(n) Developing and maintaining management systems;

(o) Performing transportation planning for operational and maintenance facilities; and

(p) Researching rights-of-way documents for project planning.

### § 170.402 What is the tribal role in transportation planning?

(a) All tribes must prepare a tribal TIP (TTIP) or tribal priority list.

(b) Tribes with a self-determination contract or self-governance agreement may assume any of the following planning functions:

(1) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant IRR projects;

(2) Preparing IRR Inventory data updates;

(3) Facilitating public involvement;

(4) Performing traffic studies;

(5) Developing short- and long-range transportation plans;

(6) Mapping;

(7) Developing and maintaining tribal management systems;

(8) Participating in transportation planning and other transportation related meetings;

(9) Performing transportation planning for operational and maintenance facilities;

(10) Developing IRR Program budgets including transportation planning cost estimates;

(11) Conducting special transportation studies, as appropriate;

(12) Researching rights-of-way documents for project planning; and

(13) Performing preliminary project planning.

### § 170.403 What IRR Program funds can be used for transportation planning?

Funds as defined in 23 U.S.C. 204(j) are specifically reserved for a tribal government's transportation planning. Tribes may also identify transportation planning as a priority in their tribal priority list or TTIP and request the use of up to 100 percent of their IRR Program construction funds for transportation planning.

### § 170.404 What happens when a tribe uses its IRR Program construction funds for transportation planning?

In order for IRR Program construction funds to be concentrated on the projects within the inventory, a tribe may use up to $35,000 or 5 percent of its IRR Program construction funds, whichever is greater, for transportation planning. If a tribe exceeds this threshold, BIA will subtract the amount over the threshold from the tribe's CTC for the following year.

### § 170.405 Can tribal transportation planning funds be used for road construction and other projects?

Yes, any tribe can request to have its planning funds as defined in 23 U.S.C. 204(j) transferred into construction funds for use on any eligible and approved IRR project. (Also see § 170.407.)

### § 170.406 How must tribes use planning funds?

(a) IRR Program funds as defined in 23 U.S.C. 204(j) are only available upon request of a tribal government and approved by the BIA Regional Office. These funds support development and implementation of tribal transportation planning and associated strategies for identifying transportation needs, including:

(1) Attending transportation planning meetings;

(2) Pursuing other sources of funds; and

(3) Developing the tribal priority list or any of the transportation functions/activities as defined in the FHWA IRR Program Transportation Planning Procedures and Guidelines (TPPG) or listed in § 170.402.

(b) A tribe may ask the BIA regional office to enter into a self-determination contract or self-governance agreement for transportation planning activities and functions under ISDEAA or it may request a travel authorization to attend transportation planning functions and related activities using these funds. (See appendix A of subpart B for use of IRR Program Funds.)

### § 170.407 What happens to unobligated planning funds?

Once all tribal governments' requests for tribal transportation planning funds have been satisfied for a given fiscal year or no later than August 15, the BIA regional office may use the remaining funds for construction after consultation with the affected tribal governments.

## LONG-RANGE TRANSPORTATION PLANNING

### § 170.410 What is the purpose of tribal long-range transportation planning?

(a) The purpose of long-range transportation planning is to clearly demonstrate a tribe's transportation needs and to fulfill tribal goals by developing strategies to meet these needs. These strategies should address future land use, economic development, traffic demand, public safety, and health and social needs.

(b) The time horizon for long-range transportation planning should be 20 years to match state transportation planning horizons. A tribe may develop a long-range transportation plan under ISDEAA or may ask BIA to develop the plan on the tribe's behalf.

### § 170.411 What may a long-range transportation plan include?

A comprehensive long-range transportation plan may include:

(a) An evaluation of a full range of transportation modes and connections between modes such as highway, rail, air, and water, to meet transportation needs;

(b) Trip generation studies, including determination of traffic generators due to land use;

(c) Social and economic development planning to identify transportation improvements or needs to accommodate existing and proposed land use in a safe and economical fashion;

(d) Measures that address health and safety concerns relating to transportation improvements;

(e) A review of the existing and proposed transportation system to identify the relationships between transportation and the environment;

(f) Cultural preservation planning to identify important issues and develop a transportation plan that is sensitive to tribal cultural preservation;

(g) Scenic byway and tourism plans;

(h) Measures that address energy conservation considerations;

(i) A prioritized list of short and long-term transportation needs; and

(j) An analysis of funding alternatives to implement plan recommendations.

### § 170.412 How is the tribal IRR long-range transportation plan developed and approved?

(a) The tribal IRR long-range transportation plan is developed by:

(1) A tribe working through a self-determination contract or self-governance agreement or other funding sources; or

(2) BIA upon request of, and in consultation with, a tribe. The tribe and BIA need to agree on the methodology and elements included in development of the IRR long-range transportation plan along with time frames before work begins.

(b) During the development of the IRR long-range transportation plan, the tribe and BIA should jointly conduct a midpoint review.

(c) The public reviews a draft IRR long-range transportation plan as required by § 170.413. The plan is further refined to address any issues identified during the public review process. The tribe then approves the IRR long-range transportation plan.

### § 170.413 What is the public role in developing the long-range transportation plan?

BIA or the tribe must solicit public involvement. If there are no tribal policies regarding public involvement, a tribe must use the procedures shown below. Public involvement begins at the same time long-range transportation planning begins and covers the range of users, from stakeholders and private citizens to major public and private entities. Public involvement may be handled in either of the following two ways:

(a) *For public meetings,* BIA or a tribe must:

(1) Advertise each public meeting in local public newspapers at least 15 days before the meeting date. In the absence of local public newspapers, BIA or the tribe may post notices under local acceptable practices;

(2) Provide at the meeting copies of the draft long-range transportation plan;

(3) Provide information on funding and the planning process; and

(4) Provide the public the opportunity to comment, either orally or in writing.

(b) *For public notices,* BIA or a tribe must:

(1) Publish a notice in the local and tribal newspapers when the draft long-range transportation plan is complete. In the absence of local public newspapers, BIA or the tribe may post notices under local acceptable practices; and

(2) State in the notice that the long-range transportation plan is available for review, where a copy can be obtained, whom to contact for questions, where comments may be submitted, and the deadline for submitting comments (normally 30 days).

### § 170.414 How is the tribal long-range transportation plan used and updated?

The tribal government uses its IRR long-range transportation plan in its

development of a tribal priority list or TTIP. To be consistent with State and MPO planning practices, the tribe or BIA (for direct service tribes) should:

(a) Review the IRR long-range transportation plan annually; and

(b) Update the plan every 5 years.

### § 170.415 What is pre-project planning?

(a) Pre-project planning is part of overall transportation planning and includes the activities conducted before final project approval on the IRR Transportation Improvement Program (IRRTIP). These activities include;

(1) Preliminary project cost estimates;

(2) Certification of public involvement;

(3) Consultation and coordination with States and/or MPO's for a regionally significant projects;

(4) Preliminary needs assessments; and

(5) Preliminary environmental and archeological reviews.

(b) The BIA regional office must work cooperatively with tribal, state, regional, and metropolitan transportation planning organizations concerning the leveraging of funds from non-IRR Program sources and identification of other funding sources to expedite the planning, design, and construction of projects on the IRRTIP.

## TRANSPORTATION IMPROVEMENT PROGRAM

### § 170.420 What is the tribal priority list?

The tribal priority list is a list of all transportation projects that the tribe wants funded. The list:

(a) May or may not identify projects in order of priority;

(b) Is not financially constrained; and

(c) Is provided to BIA by official tribal action, unless the tribal government submits a Tribal Transportation Improvement Program (TTIP).

### § 170.421 What is the Tribal Transportation Improvement Program (TTIP)?

The TTIP:

(a) Must be consistent with the tribal long-range transportation plan;

(b) Must contain all IRR Program funded projects programmed for construction in the next 3 to 5 years;

(c) Must identify the implementation year of each project scheduled to begin within the next 3 to 5 years;

(d) May include other Federal, State, county, and municipal, transportation projects initiated by or developed in cooperation with the tribal government;

(e) Will be reviewed and updated as necessary by the tribal government;

(f) Can be changed only by the tribal government; and

(g) Must be forwarded to BIA by resolution or by tribally authorized government action for inclusion into the IRRTIP.

### § 170.422 What is the IRR Transportation Improvement Program (IRRTIP)?

The IRRTIP:

(a) Is financially constrained;

(b) Must include eligible projects from tribal TTIPs;

(c) Is selected by tribal governments from TTIPs or other tribal actions;

(d) Is organized by year, State, and tribe; and

(e) May include non-IRR projects for inclusion into the State Transportation Improvement Program (STIP).

### § 170.423 How are projects placed on the IRRTIP?

(a) BIA selects projects from the TTIP or tribal priority list for inclusion on the IRRTIP as follows:

(1) The tribal government develops a list of detailed tasks and information for each project from the tribal priority list or TTIP;

(2) BIA includes this project information in its region-wide control schedule without change, unless the funding required exceeds the amount available to the tribe;

(3) BIA must include projects that are scheduled in the next 3 to 5 years; and

(4) BIA develops the IRRTIP after consulting with the tribes and taking their priorities into account.

(b) A tribe that does not generate enough annual funding under the IRR Program funding formula to complete a project may either:

(1) Submit its tribal priority list to the appropriate BIA Region, which will develop the region-wide control schedule after consulting with the tribe and taking its priorities into account; or

(2) Enter a consortium of tribes and delegate authority to the consortium to develop the TTIP and tribal control schedule;

(3) Enter into agreement with other tribes to permit completion of the project; or

(4) Apply for IRRHPP funding under subpart C.

(c) In order to get a project on the IRRTIP, tribes may seek flexible financing alternatives as described in subpart C.

### § 170.424 How does the public participate in developing the IRRTIP?

Public involvement is required in the development of the IRRTIP.

(a) BIA or the tribe must publish a notice in local and tribal newspapers when the draft tribal or IRRTIP is complete. In the absence of local public newspapers, the tribe or BIA may post notices under local acceptable practices. The notice must indicate where a copy can be obtained, contact person for questions, where comments may be submitted, and the deadline for submitting comments.

(b) BIA or the tribe may hold public meetings at which the public may comment orally or in writing.

(c) BIA, the tribe, the State transportation agency or MPO may conduct public involvement activities.

### § 170.425 How does BIA update the IRRTIP?

The IRRTIP annual update allows incorporation of transportation projects planned for the next 3 to 5 years. Each BIA regional office updates the IRRTIP for each State in its service area to reflect changes in the TTIPs or tribal project listings.

(a) During the first quarter of the fiscal year each BIA Regional Office notifies tribes of the update and provides projected IRR Program funding amounts and a copy of the previous year's regional IRRTIP.

(b) The tribe reviews any new transportation planning information, priority lists, and TTIP and forwards an updated TTIP or project listing to BIA Regional Office on or before July 15.

(c) The BIA regional office reviews all submitted information with the tribes. BIA adds agreed-upon updates, including previously approved amendments (see § 170.427), to the IRRTIP so that the Secretaries can approve the new updated IRRTIP before the start of the next fiscal year.

### § 170.426 What is the approval process for the IRRTIP?

The approval process for the IRRTIP is:

(a) The BIA Regional Office forwards the IRRTIP to the Secretaries for review and approval;

(b) Federal Lands Highway Office will provide copies of the approved IRRTIP to the FHWA division office for transmittal to the State transportation agency for inclusion in the State Transportation Improvement Program (STIP). The approved IRRTIP will be returned to BIA;

(c) BIA sends copies of the approved IRRTIP to BIA Regional Offices and tribal governments; and

(d) Within 10 working days of receiving the approved IRRTIP and IRR Program funds, BIA enters the projects into the Federal finance system.

### § 170.427 How may an IRRTIP be amended?

(a) A tribe may amend the IRRTIP by changing its TTIP on or before July 15 and submitting the changed TTIP to BIA for inclusion in the IRRTIP. BIA's regional office will review all submitted information with the tribe and provide a written response (approving, denying, or requesting additional information) within 45 days. If the proposed IRRTIP amendment contains a project not listed on the current approved IRRTIP, BIA must submit the proposed amendment to FHWA for final approval.

(b) BIA may amend the IRRTIP:

(1) To add or delete projects or reflect significant changes in scope at any time if requested by the tribe; and

(2) To reduce funding or reschedule a project after consulting with the affected tribe and obtaining its consent, if practical.

(c) The Secretary may not reduce funding for or reschedule a project that is the subject of a negotiated agreement, except under the terms of the agreement.

(d) BIA amends the IRRTIP using the same public involvement process used to develop the original IRRTIP.

### § 170.428 How is the State Transportation Improvement Program related to the IRRTIP?

The annual update of the IRRTIP for each State in a BIA regional office's service area should be coordinated with the State transportation agencies. This will ensure that approved IRRTIP updates and amendments are included with the STIP.

PUBLIC HEARINGS

### § 170.435 How does BIA or the tribe determine the need for a public hearing?

The tribe, or BIA after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for an IRRTIP, long-range transportation plan or project. A public hearing must be held if a project:

(a) Is a new route or facility;

(b) Would significantly change the layout or function of connecting or related roads or streets;

(c) Would cause a substantial adverse effect on adjacent property; or

(d) Is controversial or expected to be controversial in nature.

### § 170.436 How are public hearings for IRR planning and projects funded?

(a) Public hearings for IRR planning are funded as follows:

(1) Public hearings for TTIPS and long-range transportation plans conducted by tribes are funded using the funds defined in title 23 U.S.C. 204(j) or IRR Program construction funds; and

(2) Public hearings for a tribe's long-range transportation plan conducted by BIA at the tribe's request are funded using the tribes' funds as defined in title 23 U.S.C. 204(j) or IRR Program construction funds.

(b) Public hearings for IRR projects conducted by either tribes or BIA are funded using IRR Program construction funds.

### § 170.437 How must BIA or a tribe inform the public when no hearing is held?

(a) When no public hearing for an IRR project is scheduled, either the tribe or BIA must give adequate notice to the public before project activities are scheduled to begin. The notice should include:

(1) Project location;

(2) Type of improvement planned;

(3) Dates and schedule for work;

(4) Name and address where more information is available; and

(5) Provisions for requesting a hearing.

(b) If the work is not to be performed by the tribe, BIA must send a copy of the notice to the affected tribe.

### § 170.438 How must BIA or a tribe inform the public when a hearing is held?

When BIA or a tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice.

(a) The public hearing notice is a document containing:

(1) Date, time, and place of the hearing;

(2) Planning activities or project location;

(3) Proposed work to be done, activities to be conducted, etc.;

(4) Where preliminary plans, designs or specifications may be reviewed; and

(5) How and where to get more information.

(b) BIA or the tribe must publish the notice:

(1) By posting and/or publishing the notice at least 30 days before the public hearing. A second notice for a hearing is optional; and,

(2) By sending a courtesy copy of the notice to the affected tribe(s) and BIA Regional Office.

### § 170.439 How is a public hearing conducted?

(a) *Who conducts the hearing*. A tribal or Federal official is appointed to preside over the public hearing. The official presiding over the hearing must maintain a free and open discussion of the issues.

(b) *Record of hearing*. The presiding official is responsible for compiling the

official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments made or provided at the hearing, or within 5 working days of the hearing, will be made a part of the record.

(c) *Hearing process.* (1) The presiding official explains the purpose of the hearing and provides an agenda;

(2) The presiding official solicits public comments from the audience on the merits of IRR projects and activities; and

(3) The presiding official informs the hearing audience of the appropriate procedures for a proposed IRR project or activity, that may include, but are not limited to:

(i) Project development activities;

(ii) Rights-of-way acquisition;

(iii) Environmental and archeological clearance;

(iv) Relocation of utilities and relocation services;

(v) Authorized payments allowed by the Uniform Relocation and Real Property Acquisition Policies Act, 42 U.S.C. 4601 *et seq.*, as amended;

(vi) Draft transportation plan; and

(vii) The scope of the project and its effect on traffic during and after construction.

(d) *Availability of information.* Appropriate maps, plats, project plans and specifications will be available at the hearing for public review. Appropriate officials are present to answer questions.

(e) *Opportunity for comment.* Comments are received as follows:

(1) Oral statement at the hearing;

(2) Written statement submitted at the hearing;

(3) Written statement sent to the address noted in the hearing notice within 5 working days following the public hearing.

### § 170.440 How can the public learn the results of a public hearing?

Results of a public hearing are available as follows:

(a) Within 20 working days of the completion of the public hearing, the presiding official issues a hearing statement summarizing the results of the public hearing and the determination of needed further action.

(b) The presiding official posts the hearing statement at the hearing site. The public may request a copy. The hearing statement outlines appeal procedures.

### § 170.441 Can a decision resulting from a hearing be appealed?

Yes. A decision resulting from the public hearing may be appealed pursuant to 25 CFR part 2.

## IRR INVENTORY

### § 170.442 What is the IRR Inventory?

(a) The IRR Inventory is a comprehensive database of all transportation facilities eligible for IRR Program funding by tribe, reservation, BIA agency and region, Congressional district, State, and county. Other specific information collected and maintained under the IRR Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, and ownership.

(b) Elements of the inventory are used in the Relative Need Distribution Factor. BIA or tribes can also use the inventory to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing IRR transportation facilities, and develop management systems.

### § 170.443 How can a tribe list a proposed transportation facility in the IRR Inventory?

A proposed IRR transportation facility is any transportation facility, including a highway bridge, that will serve public transportation needs, is eligible for construction under the IRR Program and does not currently exist. To be included in the IRR inventory, a proposed transportation facility must:

(a) Be supported by a tribal resolution or other official tribal authorization;

(b) Address documented transportation needs as developed by and identified in tribal transportation planning efforts, such as the long-range transportation plan;

(c) Be eligible for IRR Program funding; and

(d) Be open to the public when built.

### § 170.444 How is the IRR Inventory updated?

The IRR Inventory data for a tribe is updated on an annual basis as follows:

(a) Each BIA Regional Office provides the tribes in its region copies of the IRR Inventory by November 1st of each year;

(b) The tribe reviews the data and submits changes (together with a strip map of each change) to the BIA Regional Office along with authorizing resolutions or similar official authorization by March 15;

(c) The BIA Regional Office reviews each tribe's submission for errors or omissions and provides the tribe with its revised inventory by May 15;

(d) The tribe must correct any errors or omissions by June 15;

(e) Each BIA Regional Office certifies its data and enters the data into the IRR Inventory by July 15;

(f) BIA provides each tribe with copies of the Relative Need Distribution Factor distribution percentages by August 15; and

(g) BIADOT approves submissions from BIA Regional Offices before they are included in the National IRR Inventory.

### § 170.445 What is a strip map?

A strip map is a graphic representation of a section of road or other transportation facility being added to or modified in the IRR Inventory. Each strip map submitted with an IRR Inventory change must:

(a) Define the facility's location with respect to State, county, tribal, and congressional boundaries;

(b) Define the overall dimensions of the facility and the accompanying inventory data;

(c) Include a table that provides the IRR Inventory information about the transportation facility.

## ENVIRONMENTAL AND ARCHEOLOGICAL REQUIREMENTS

### § 170.450 What archeological and environmental requirements must the IRR Program meet?

(a) The archeological and environmental requirements with which BIA must comply on the IRR Program are contained in Appendix A to this subpart.

(b) The archeological and environmental requirements for tribes that enter into self-determination contracts or self-governance agreements for the IRR Program are in 25 CFR 900.125 and 1000.243.

### § 170.451 Can IRR Program funds be used for archeological and environmental compliance?

Yes. For approved IRR projects, IRR Program funds can be used for environmental and archeological work consistent with 25 CFR 900.125(c)(6) and (c)(8) and 25 CFR 1000.243(b) and applicable tribal laws for:

(a) Road and bridge rights-of-way;

(b) Borrow pits and aggregate pits associated with IRR activities staging areas;

(c) Limited mitigation outside of the construction limits as necessary to address the direct impacts of the construction activity as determined in the environmental analysis and after consultation with the affected tribe(s) and the appropriate Secretary(s); and

(d) Construction easements.

## DESIGN

### § 170.454 What design standards are used in the IRR Program?

(a) Appendix B to this subpart lists design standards that BIA may use for the IRR program.

(b) BIA may also use FHWA-approved State or tribal design standards.

(c) Tribes may propose road and bridge design standards to be used in the IRR Program that are consistent with or exceed applicable Federal standards. The standards may be negotiated between BIA and the tribe and included in a self-determination contract or self-governance agreement.

### § 170.455 How are design standards used in IRR projects?

The standards in this section must be applied to each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of IRR projects must take into consideration:

(a) The existing and planned future use of the IRR transportation facility in a manner that is conducive to safety, durability, and economy of maintenance;

(b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost-effective manner; and

(c) Access and accommodation for other modes of transportation.

### § 170.456 When can a tribe request an exception from the design standards?

A tribe can request an exception from the design standards in Appendix B of this subpart under the conditions in this section. The tribe must submit its request for a design exception to the BIA Regional Office for approval. If the BIA Regional Office has design exception approval authority within their IRR Stewardship Plan with FHWA, they may approve or decline the request; otherwise BIA forwards the request to FHWA. The engineer of record must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(a) FHWA or BIA may grant exceptions for:

(1) Experimental features on projects; and

(2) Projects where conditions warrant that exceptions be made.

(b) FHWA or BIA can approve a project design that does not conform to the minimum criteria only after giving due consideration to all project conditions, such as:

(1) Maximum service and safety benefits for the dollar invested;

(2) Compatibility with adjacent features; and

(3) Probable time before reconstruction of the project due to changed conditions or transportation demands.

(c) FHWA or BIA have 30 days from receiving the request to approve or decline the exception.

### § 170.457 Can a tribe appeal a denial?

Yes. If BIA denies a design exception request made by a tribe, the decision may be appealed to FHWA. Tribes may appeal the denial of a design exception to: FHWA, 400 7th St., SW., HFL–1, Washington, DC 20590. If FHWA denies a design exception, the tribe may appeal the decision to the next higher level of review within the Department of Transportation at the Office of the FHWA Administrator, 400 7th Street, SW., HOA–1, Washington, DC 20590.

## REVIEW AND APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES

### § 170.460 What must a project package include?

(a) The minimum requirements for a project package are:

(1) Plans;

(2) Specifications; and

(3) Estimates.

(b) In order to receive project approval the following additional items are required:

(1) A tribal resolution or other authorized document supporting the project;

(2) Right-of-way clearances;

(3) Required environmental, archeological, and cultural clearances; and

(4) Identification of design exceptions if used in the plans.

(c) A tribe may include additional items at its option.

### § 170.461 May a tribe approve plans, specifications, and estimates?

A tribe may review and approve plan, specification, and estimate (PS&E) project packages for IRR Program funded projects when:

(a) This function is included in the tribe's self-determination contract or self-governance agreement; or

(b) The tribe is the owner of the IRR transportation facility or is responsible for maintaining the facility. In this case, the tribe must have at least 30 days to review and approve the proposed PS&E package.

### § 170.462 When may a self-determination contract or self-governance agreement include PS&E review and approval?

(a) For a BIA or tribally-owned facility, the tribe may assume responsibility to review and approve PS&E packages under a self-determination contract or self-governance agreement if the tribe specifies in the contract or agreement that:

(1) A licensed professional engineer will supervise design and approval of the PS&E package;

(2) A licensed professional engineer will certify that the PS&E meets or exceeds the design, health, and safety standards in appendix B to subpart D for an IRR transportation facility;

(3) An additional licensed professional engineer (either a BIA engineer or, if the tribe chooses, a non-BIA engineer) will review the PS&E package when it is at least 95 percent complete; and

(4) If the project is to be performed by the tribe, the tribe will provide a copy of the certification and approved PS&E package to BIA before the solicitation of the project or notice to proceed.

(b) For a facility maintained by a public authority other than BIA or a tribe, in addition to satisfying the requirements of paragraph (a) of this section:

(1) The public authority must have a chance to review and approve the PS&E when it is between 75 percent and 95 percent complete, unless an agreement between the tribe and the public authority states otherwise;

(2) If a licensed professional engineer performs the review and approval when the PS&E provided is at least 95 percent complete, the second level review requirement in paragraph (a)(2) of this section is satisfied; and

(3) The tribe must allow the public authority at least 30 days for review and approval. If the public authority does not meet this deadline or an extension granted by the tribe, the tribe may proceed with the review in accordance with paragraph (a)(2) of this section.

(c) If a BIA engineer does not complete a review within 30 days under paragraph (a)(2) of this section, the tribe may contract its own engineer to perform the review.

### § 170.463 What should the Secretary do if a design deficiency is identified?

If a review under § 170.462 identifies a design deficiency that may jeopardize public health and safety if the facility is completed, the Secretary must:

(a) For a tribally-approved PS&E package, immediately notify the tribe of the design deficiency and request that the tribe promptly resolve the deficiency in accordance with the standards in appendix B to subpart D; and

(b) For a BIA-approved PS&E package, promptly resolve the deficiency in accordance with the standards in appendix B to subpart D and notify the tribe of the required design changes.

## CONSTRUCTION AND CONSTRUCTION MONITORING

### § 170.470 What are the IRR construction standards?

(a) Appendix B to this subpart lists design standards that may be used for roads and bridges.

(1) Tribes may propose road and highway bridge construction standards that are consistent with or exceed these standards.

(2) BIA may also use FHWA-approved, State or tribal road and highway bridge construction standards.

(b) For designing and building eligible intermodal projects funded by the IRR Program, tribes must use either:

(1) Nationally recognized standards for comparable projects; or

(2) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

### § 170.471 How are projects administered?

(a) When a tribe carries out an IRR project under ISDEAA, BIA will monitor performance under the requirements of 25 CFR 900.130 and 900.131(b)(9) or 25 CFR 1000.243 and 1000.249(c) and (e), as appropriate. If BIA discovers a problem during an on-site monitoring visit, BIA must promptly notify the tribe and, if asked, provide technical assistance.

(b) BIA or the tribal government, as provided for under the contract or agreement, is responsible for day-to-

day project inspections except for BIA monitoring under paragraph (a) of this section.

(c) BIA must process substantial changes in the scope of a construction project in coordination with the affected tribe.

(d) The tribe, other contractors, and BIA may perform quality control.

(e) Only the licensed professional engineer may change an IRR project's plans, specifications, and estimates (PS&E) during construction.

(1) For substantial changes, the original approving agency must review the change. The approving agency is the Federal, tribal, State, or local entity with PS&E approval authority over the project.

(2) In making any substantial change, the approving agency must consult with the affected tribe and the entity having maintenance responsibility.

(3) A change that exceeds the limits of available funding may be made only with the approving agency's consent.

### § 170.472 What construction records must tribes and BIA keep?

The following table shows which IRR construction records BIA and tribes must keep and the requirements for access.

| Record keeper | Records that must be kept | Access |
|---|---|---|
| (a) Tribe | All records required by ISDEAA and 25 CFR 900.130–131 or 25 CFR 1000.243 and 1000.249, as appropriate. | BIA is allowed access to tribal IRR construction records as required under 25 CFR 900.130, 900.131 or 25 CFR 1000.243 and 1000.249, as appropriate. |
| (b) BIA | Completed daily reports of construction activities appropriate to the type of construction it is performing. | Upon reasonable advance request by a tribe, BIA must provide reasonable access to records. |

### § 170.473 What happens when a construction project ends?

(a) At the end of a construction project, the agency or organization responsible for the project must make a final inspection. The inspection determines whether the project has been completed in reasonable conformity with the PS&E.

(1) Appropriate officials from the tribe, BIA, and FHWA should participate in the inspection, as well as contractors and maintenance personnel.

(2) All project information must be made available during final inspection and used to develop the IRR construction project closeout report. Some examples of project information are: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, as-built drawings, etc.

(b) An IRR construction project closeout is the final accounting of all IRR construction project expenditures. It is the closing of the financial books of the Federal Government for that construction project. Closeout occurs after:

(1) The final project inspection concludes; and

(2) The facility owner makes final acceptance of the project.

### § 170.474 Who conducts the project closeout?

The following table shows who must conduct the IRR construction project closeout and develop the report.

| If the project was completed by . . . | then . . . | and the closeout report must . . . |
|---|---|---|
| (a) BIA | The regional engineer or designee is responsible for closing out the project and preparing the report. | (1) Summarize the construction project records to ensure compliance requirements have been met;<br>(2) Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and modifications;<br>(3) Be completed within 120 calendar days of the date of acceptance of the IRR. construction project; and<br>(4) Be provided to the affected tribes and the Secretaries. |
| (b) A tribe | Agreements negotiated under ISDEAA specify who is responsible for closeout and preparing the report. | (1) Meet the requirements of ISDEAA;<br>(2) Comply with 25 CFR 900.130(d) and 131(b) (10) and 25 CFR 1000.249, as applicable;<br>(3) Be completed within 120 calendar days of the date of acceptance of the project; and<br>(4) Be provided to all parties specified in the agreements negotiated under ISDEAA. |

PROGRAM REVIEWS AND MANAGEMENT SYSTEMS

### § 170.500 What program reviews do the Secretaries conduct?

(a) BIADOT and FHWA annually conduct informal program reviews to examine program procedures and identify improvements. BIA must notify tribes of these informal program reviews. Tribes may send representatives to these meetings at their own expense. These reviews may be held in conjunction with either a national BIA transportation meeting or an IRR Program Coordinating Committee meeting.

(b) FHWA, BIA, and affected tribes periodically conduct an IRR Program process review of each BIA regional office's processes, controls, and stewardship. The review provides recommendations to improve the processes and controls of the following activities that a BIA Regional Office performs:

(1) Program Management and Oversight;

(2) Transportation planning;

(3) Design;

(4) Contract administration;

(5) Construction;

(6) Financial management; and

(7) Systems management and existing stewardship agreements.

(c) After the IRR process review, the review team must:

(1) Conduct an exit interview during which it makes a brief oral report of findings and recommendations to the BIA Regional Director and staff; and

(2) Provide a written report of its findings and recommendations to the reviewed office, BIA, all participants, and affected tribal governments and organizations.

### § 170.501 What happens when the review process identifies areas for improvement?

When the review process identifies areas for improvement:

(a) The regional office must develop a corrective action plan;

(b) BIADOT and FHWA review and approve the plan;

(c) FHWA may provide technical assistance during the development and implementation of the plan; and

(d) The reviewed BIA regional office implements the plan and reports either annually or biennially to BIADOT and FHWA on implementation accomplishments.

### § 170.502 Are management systems required for the IRR Program?

(a) To the extent appropriate, the Secretaries must, in consultation with tribes, develop and maintain the following systems for the IRR Program:

(1) Pavement management;

(2) Safety management;

(3) Bridge management; and

(4) Congestion management.

(b) Other management systems may include the following:

(1) Public transportation facilities;

(2) Public transportation equipment; and

(3) Intermodal transportation facilities and systems.

(c) All management systems for the IRR Program must meet the requirements of 23 CFR part 973.

(d) A tribe may enter into an ISDEAA contract or agreement to develop, implement, and maintain an alternative tribal management system for that tribe, provided that such systems are consistent with Federal management systems.

### § 170.503 How are IRR Program management systems funded?

BIA uses IRR Program management funds to develop the nationwide IRR Program management systems. If a tribe elects to develop its own tribal management system based on the nationwide management system requirements in 23 CFR part 973, it may use for this purpose either:

(a) The funds defined in 23 U.S.C. 204(j) for IRR Program tribal transportation planning; or

(b) IRR Program construction funds.

BRIDGE INSPECTION

### § 170.504 When and how are bridge inspections performed?

IRR bridge inspections must be performed at least every 2 years to update the NBI using criteria that meets or exceeds applicable Federal standards (23 CFR 650.305).

(a) Federal standards for bridge inspections are found in 23 CFR part 650, subpart C.

(b) Tribes may develop alternative bridge inspection standards, provided that these standards meet or exceed applicable Federal standards.

### § 170.505 How must bridge inspections be coordinated?

This section applies to bridge inspectors working for BIA; for tribes under an ISDEAA contract or self-governance agreement; or for State, county, or local governments. Before performing an inspection, inspectors must:

(a) Notify affected tribes and State and local governments that an inspection will occur;

(b) Offer tribal and State and local governments the opportunity to accompany the inspectors; and

(c) Otherwise coordinate with tribal and State and local governments.

### § 170.506 What are the minimum qualifications for certified bridge inspectors?

The person responsible for the bridge inspection team must meet the qualifications for bridge inspectors as defined in 23 CFR part 650, subpart C.

### § 170.507 Who reviews bridge inspection reports?

The person responsible for the bridge inspection team must send a copy of the inspection report to the BIA regional office. The regional office:

(a) Reviews the report and furnishes a copy to the affected tribe for review, comment, and use in programming transportation projects; and

(b) Sends the report to BIADOT for quality assurance and inclusion in the National Bridge Inventory (NBI).

## APPENDIX A TO SUBPART D—CULTURAL RESOURCE AND ENVIRONMENTAL REQUIREMENTS FOR THE IRR PROGRAM

All BIA work for the IRR Program must comply with cultural resource and environmental requirements under applicable Federal laws and regulations, including, but not limited to:

1. 16 U.S.C. 1531, Endangered Species Act.
2. 16 U.S.C. 4601, Land and Water Conservation Fund Act (Section 6(f)).
3. 16 U.S.C. 661–667d, Fish and Wildlife Coordination Act.
4. 23 U.S.C. 138, Preservation of Parklands.
5. 25 U.S.C. 3001–3013, Native American Graves Protection and Repatriation Act.
6. 33 U.S.C. 1251, Federal Water Pollution Control Act and Clean Water Act.
7. 42 U.S.C. 7401, Clean Air Act.
8. 42 U.S.C. 4321, National Environmental Policy Act.
9. 49 U.S.C. 303, Preservation of Parklands.
10. 7 U.S.C. 4201, Farmland Protection Policy Act.
11. 50 CFR part 402, Endangered Species Act regulations.
12. 7 CFR part 658, Farmland Protection Policy Act regulations.
13. 40 CFR part 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally-Funded Transit Programs.
14. 23 CFR part 771, Environmental Impact and Related Procedures.
15. 23 CFR part 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises.
16. 23 CFR part 777, Mitigation of Impacts To Wetlands and Natural Habitat.

17. 36 CFR part 800, Protection of Historic Properties.

18. 40 CFR parts 260–271, Resource Conservation and Recovery Act.

19. Applicable tribal/State laws.

20. Other applicable Federal laws and regulations.

### APPENDIX B TO SUBPART D—DESIGN STANDARDS FOR THE IRR PROGRAM

Depending on the nature of the project, tribes may use the following design standards. Additional standards may also apply. To the extent that any provisions of these standards are inconsistent with ISDEAA, these provisions do not apply.

1. AASHTO Policy on Geometric Design of Highways and Streets.

2. AASHTO A Guide for Transportation Landscape and Environmental Design.

3. AASHTO Roadside Design Guide, latest edition.

4. AASHTO Guide for Selecting, Locating and Designing Traffic Barriers, latest edition.

5. AASHTO Standard Specifications for Highway Bridges, latest edition.

6. AASHTO Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400).

7. FHWA Federal Lands Highway, Project Development and Design Manual.

8. FHWA Flexibility in Highway Design.

9. FHWA Roadside Improvements for Local Road and Streets.

10. FHWA Improving Guardrail Installations and Local Roads and Streets.

11. 23 CFR part 625, Design Standards for Highways.

12. 23 CFR part 630, Preconstruction Procedures.

13. 23 CFR part 633, Required Contract Provisions.

14. 23 CFR part 635, Construction and Maintenance.

15. 23 CFR part 645, Utilities.

16. 23 CFR part 646, Railroads.

17. 23 U.S.C. 106, PS&E.

18. 23 U.S.C. 109, Standards.

19. DOT Metric Conversion Plan, October 31, 1991.

20. MUTCD Manual of Uniform Traffic Safety Devices, latest edition.

21. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, latest edition.

## Subpart E—Service Delivery for Indian Reservation Roads

### FUNDING PROCESS

#### § 170.600 What must BIA include in the notice of availability of funds?

(a) Upon receiving the total fiscal year of IRR Program funding from FHWA, BIA will publish a notice of availability of funds in the FEDERAL REGISTER that includes the following:

(1) The total funding available to each region for IRR transportation planning, design, and construction projects based on each region's Relative Need Distribution Factor (RNDF) defined in subpart C;

(2) The total funding available to each tribe based on its RNDF, along with prior year information on IRR Program funding by tribe that identifies over-funded or advance-funded tribes; and

(3) A listing of FHWA-approved IRRTIP projects for each State within each BIA region.

(b) Upon publication of the notice under this section, each BIA Regional Office must provide to each tribe within its region:

(1) A proposed project listing used to develop the region's control schedule;

(2) An offer to provide the tribe with technical assistance in preparing contract proposals;

(3) The various options available to the tribe for IRR construction projects (force account methods, direct service, self-determination contract, and self-governance agreement); and

(4) A request for a response from the tribe within 30 days.

#### § 170.601 What happens to the unused portion of IRR Program management and oversight funds reserved by the Secretary?

BIA distributes any unused IRR Program management and oversight funds to its Regional Offices using the RNDF (see subpart C). The Regional Offices use the funds for additional construction activities.

#### § 170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

Yes. To the extent feasible, the Secretary must pay for all costs incurred

resulting from unforeseen circumstances of the construction process (*i.e.*, cost overruns). If the Secretary is unable to fund the unforeseen costs in a cost reimbursable contract, the tribe may suspend performance of the contract until sufficient additional funds are awarded. (See 25 CFR 900.130(e).)

MISCELLANEOUS PROVISIONS

### § 170.605 When may BIA use force account methods in the IRR Program?

BIA may use force account methods in the IRR Program unless the tribe elects otherwise to enter into a self-determination contract or a self-governance agreement for the IRR Program. However, BIA must continue to consult with the tribe before using a force account under this situation. The applicable FAR and Federal law apply to BIA force account project activities.

### § 170.606 How do legislation and procurement requirements affect the IRR Program?

Other legislation and procurement requirements apply to the IRR Program as shown in the following table.

| Legislation, regulation or other requirement | Applies to tribes under self-determination contracts | Applies to tribes under self-governance agreements | Applies to activities performed by the Secretary |
|---|---|---|---|
| Buy Indian Act | No | No | Yes. |
| Buy American Act | No | No | Yes. |
| Federal Acquisition Regulation (FAR). | No [1] | No | Yes. |
| Federal Tort Claims Act | Yes | Yes | Yes. |
| Davis-Bacon Act | Yes [2] | Yes [2] | Yes. |

[1] Unless agreed to by the tribe or tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR part 900.115.
[2] Does not apply when tribe performs work with its own employees.

### § 170.607 Can a tribe use its allocation of IRR Program funds for contract support costs?

Yes. Contract support costs are an eligible item out of a tribe's IRR Program allocation and need to be included in a tribe's project construction budget.

### § 170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?

No. Contract support costs for IRR construction projects cannot be paid out of Department of the Interior or BIA appropriations.

CONTRACTS AND AGREEMENTS UNDER ISDEAA

### § 170.610 What IRR Program functions may a tribe assume under ISDEAA?

A tribe may assume all IRR Program functions and activities that are otherwise contractible under a self-determination contract or self-governance agreement following the requirements in 25 CFR parts 900 or 1000.

(a) Tribes may use IRR Program project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions.

(b) Appendix A to this subpart contains a list of non-contractible functions and activities that cannot be included in contracts or agreements.

### § 170.611 What special provisions apply to ISDEAA contracts and agreements?

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year IRR Program self-determination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of such contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under Title I and Title IV of ISDEAA, tribes and multi-tribal organizations are eligible to assume

IRR Programs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to Title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see Title IV, 25 U.S.C. 450b(l) and 458b(b)(2).

(c) *Advance payments.* The Secretary and the tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract in accordance with 25 CFR 900.132.

(d) *Design and construction contracts.* The Secretary can enter into a design/construct IRR Program self-determination contract that includes both the design and construction of one or more IRR projects. The Secretary may make advance payments to a tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semiannual installments as indicated in the agreement.

### § 170.612 How are non-contractible functions funded?

(a) All non-contractible IRR program functions are funded by IRR Program management and oversight funds.

(b) All non-contractible IRR project functions are funded by IRR Program construction funds.

### § 170.613 When does BIA determine the amount of funds needed for non-contractible non-project related functions?

Each fiscal year the Secretary will develop national and regional BIA IRR Program budgets. Within the first quarter of each fiscal year BIA will publish a copy of the national and regional IRR budgets.

### § 170.614 Can a tribe receive funds before BIA publishes the notice of funding availability?

A tribe can receive funds before BIA publishes the notice of funding availability required by § 170.600(a)(1) only if the tribe has a negotiated self-determination contract or self-governance agreement.

### § 170.615 Can a tribe receive advance payments for non-construction activities?

Yes. BIA must make advance payments to a tribe for non-construction activities under 25 U.S.C. 450*l* for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a tribe and authorized by law.

### § 170.616 How are advance payments made when additional IRR Program funds are made available after execution of the self-governance agreement?

When additional IRR Program funds are available, following the procedures in 25 CFR 1000.104, tribes can request to use the additional funds for IRR Program activities or projects and have an addendum to the agreement executed.

### § 170.617 May a tribe include a contingency in its proposal budget?

(a) A tribe with a self-determination contract may include a contingency amount in its proposed budget in accordance with 25 CFR 900.127(e)(8).

(b) A tribe with a self-governance agreement may include a project-specific line item for contingencies if the tribe does not include its full IRR Program funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within the RNDF allocation or within the negotiated ISDEAA contract or agreement.

### § 170.618 Can a tribe keep savings resulting from project administration?

When actual costs of the projects under contracts or agreements for construction projects are less than the estimated costs, the Secretary will determine the use of the excess funds after consultation with the tribe. (See 25 U.S.C. 450e–2.)

### § 170.619 Do tribal preference and Indian preference apply to IRR Program funding?

Tribal preference and Indian preference apply to IRR Program funding as shown in the following table:

| If . . . | Then . . . |
|---|---|
| (a) A contract serves a single tribe. | Section 7(c) under Title I of ISDEAA allows tribal employment or contract preference laws, including tribe local preference laws, to govern. |
| (b) A contract serves more than one tribe. | Section 7(b) under Title I of ISDEAA applies. |
| (c) A self-governance agreement exists under Title IV of ISDEAA. | 25 CFR 1000.406 applies. |

### § 170.620 How do ISDEAA's Indian preference provisions apply?

This section applies when the Secretary or a tribe enters into a cooperative agreement with a State or local government for an IRR construction project. The tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in a cooperative agreement.

### § 170.621 What if a tribe fails to substantially perform work under a contract or agreement?

If a tribe fails to substantially perform work under a contract or agreement:

(a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a)–(b) and ISDEAA, part 900 subpart L (appeals); and

(b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000 subpart K.

### § 170.622 What IRR programs, functions, services, and activities are subject to the self-governance construction regulations?

All IRR Program design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR 1000 subpart K, including applicable exceptions.

### § 170.623 How are IRR Program projects and activities included in a self-governance agreement?

To include an IRR Program project or activity in a self-governance agreement, the following information is required:

(a) A line item for each project or activity;

(b) Sufficient detail to describe the work as included in the FHWA-approved IRRTIP and Control Schedule; and

(c) All other information required under 25 CFR 1000 subpart K.

### § 170.624 Is technical assistance available?

Yes. Technical assistance is available from BIA for tribes with questions about contracting the IRR Program or IRR projects. For tribes with questions about self-governance agreements for the IRR Program or IRR project(s), technical assistance is available from the Office of Self-Governance and BIA. Technical assistance can include, but is not limited to, assistance in the preparation of self-determination contract proposal(s) and self-governance agreements.

### § 170.625 What regulations apply to waivers?

The following regulations apply to waivers:

(a) For self-determination contracts, 25 CFR 900.140–148;

(b) For self-governance agreements, 25 CFR 1000.220–232; and

(c) For direct service, 25 CFR 1.2.

### § 170.626 How does a tribe request a waiver of a Department of Transportation regulation?

A tribe must follow the procedures in ISDEAA, Title I, and 25 CFR 900.140–148 for self-determination contracts and Title IV, 25 CFR 1000.220–232 for tribal self-governance agreements. A courtesy copy of the request should be sent to the Secretary of Transportation at: 400 7th St., SW., HFL–1, Washington, DC 20590. When a waiver request is outside the Secretary's authority, the Secretary should forward the request to the Secretary of Transportation.

## APPENDIX A TO SUBPART E—IRR PROGRAM FUNCTIONS THAT ARE NOT OTHERWISE CONTRACTIBLE

The program functions listed in this appendix cannot be included in a self-determination contract or self-governance agreement. (23 U.S.C. 202(d)(3)(B))

A. IRR project-related pre-contracting activities:

1. Notifying tribes of available funding including the right of first refusal; and

2. Providing technical assistance.

B. IRR project-related contracting activities:

1. Providing technical assistance;

2. Reviewing all scopes of work under 25 CFR 900.122;

3. Evaluating proposals and making declination decisions, if warranted;

4. Performing declination activities;

5. Negotiating and entering into contracts or agreements with State, tribal, and local governments and other Federal agencies;

6. Processing progress payments or contract payments;

7. Approving contract modifications;

8. Processing claims and disputes with tribal governments; and

9. Closing out contracts or agreements.

C. Planning activities:

1. Reviewing IRR transportation improvement programs developed by tribes or other contractors;

2. Reviewing IRR long-range transportation plans developed by tribes or other contractors; and

3. Performing other Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.

D. Environmental and historical preservation activities:

1. Reviewing and approving all items required for environmental compliance; and

2. Reviewing and approving all items required for archaeological compliance.

E. Processing rights-of-way:

1. Reviewing rights-of-way applications and certifications;

2. Approving rights-of-way documents;

3. Processing grants and acquisition of rights-of-way requests for tribal trust and allotted lands under 25 CFR part 169;

4. Responding to information requests;

5. Filing Affidavit of Completion Forms; and

6. Performing custodial functions related to storing rights-of-way documents.

F. Conducting project development and design under 25 CFR 900.131:

1. Participating in the plan-in-hand reviews on behalf of BIA as facility owner;

2. Reviewing and/or approving plans, specifications, and cost estimates (PS&E's) for health and safety assurance on behalf of BIA as facility owner;

3. Reviewing PS&E's to assure compliance with NEPA as well as all other applicable Federal laws; and

4. Reviewing PS&E's to assure compliance with or exceeding Federal standards for IRR design and construction.

G. Construction:

1. Making application for clean air/clean water permits as facility owner;

2. Ensuring that all required State/tribal/Federal permits are obtained;

3. Performing quality assurance activities;

4. Conducting value engineering activities as facility owner;

5. Negotiating with contractors on behalf of Federal Government;

6. Approving contract modifications/change orders;

7. Conducting periodic site visits;

8. Performing all Federal Government required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;

9. Conducting activities to assure compliance with safety plans as a jurisdictional responsibility hazardous materials, traffic control, OSHA, etc.;

10. Participating in final inspection and acceptance of project documents as-built drawings on behalf of BIA as facility owner; and

11. Reviewing project closeout activities and reports.

H. Other activities:

1. Performing other non-contractible required IRR project activities contained in this part, ISDEAA and part 1000; and

2. Other Title 23 non-project-related management activities.

I. BIADOT program management:

1. Developing budget on needs for the IRR Program;

2. Developing legislative proposals;

3. Coordinating legislative activities;

4. Developing and issuing regulations;

5. Developing and issuing IRR planning, design, and construction standards;

6. Developing/revising interagency agreements;

7. Developing and approving IRR Program stewardship agreements in conjunction with FHWA;

8. Developing annual IRR Program obligation and IRR Program accomplishments reports;

9. Developing reports on IRR Program project expenditures and performance measures for the Government Performance and Results Act (GPRA);

10. Responding to/maintaining data for congressional inquiries;

11. Developing and maintaining funding formula and its database;

12. Allocating IRR Program and other transportation funding;

13. Providing technical assistance to tribe/tribal organizations/agencies/regions;

14. Providing national program leadership for: National Scenic Byways Program, Public Lands Highways Discretionary Program, Transportation Enhancement Program, Indian Local Technical Assistance Program, Recreational Travel and Tourism, Transit Program, ERFO Program, Presidential initiatives (Millennium Trails, Lewis & Clark, Western Tourism Policy Group);

15. Participating in and supporting tribal transportation association meetings;

16. Coordinating with and monitoring Indian Local Technical Assistance Program centers;
17. Planning, coordinating, and conducting BIA/tribal training;
18. Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the IRR Program;
19. Participating in special transportation related workgroups, special projects, task forces and meetings as requested by tribes;
20. Participating in national, regional, and local transportation organizations;
21. Participating in and supporting FHWA Coordinated Technology Implementation program;
22. Participating in national and regional IRR Program meetings;
23. Consulting with tribes on non-project related IRR Program issues;
24. Participating in IRR Program, process, and product reviews;
25. Developing and approving national indefinite quantity service contracts;
26. Assisting and supporting the IRR Coordinating Committee;
27. Processing IRR Bridge program projects and other discretionary funding applications or proposals from tribes;
28. Coordinating with FHWA;
29. Performing stewardship of the IRR Program;
30. Performing oversight of the IRR Program and its funded activities;
31. Performing any other non-contractible IRR Program activity included in this part; and
32. Determining eligibility of new uses of IRR Program funds.

J. BIADOT Planning:
1. Maintaining the official IRR inventory;
2. Reviewing long-range transportation plans;
3. Reviewing and approving IRR transportation improvement programs;
4. Maintaining nationwide inventory of IRR strip and atlas maps;
5. Coordinating with tribal/State/regional/local governments;
6. Developing and issuing procedures for management systems;
7. Distributing approved IRR transportation improvement programs to BIA regions;
8. Coordinating with other Federal agencies as applicable;
9. Coordinating and processing the funding and repair of damaged Indian Reservation Roads with FHWA;
10. Calculating and distributing IRR transportation planning funds to BIA regions;
11. Reprogramming unused IRR transportation planning funds at the end of the fiscal year;
12. Monitoring the nationwide obligation of IRR transportation planning funds;
13. Providing technical assistance and training to BIA regions and tribes;
14. Approving Atlas maps;
15. Reviewing IRR inventory information for quality assurance; and
16. Advising BIA regions and tribes of transportation funding opportunities.

K. BIADOT engineering:
1. Participating in the development of design/construction standards with FHWA;
2. Developing and approving design/construction/maintenance standards;
3. Conducting IRR Program/product reviews; and
4. Developing and issuing technical criteria for management systems.

L. BIADOT responsibilities for bridges:
1. Maintaining BIA National Bridge Inventory information/database;
2. Conducting quality assurance of the bridge inspection program;
3. Reviewing and processing IRR Bridge program applications;
4. Participating in second level review of IRR bridge PS-E's; and
5. Developing criteria for bridge management systems.

M. BIADOT responsibilities to perform other non-contractible required IRR Program activities contained in this part.

N. BIA regional offices program management:
1. Designating IRR System roads;
2. Notifying tribes of available funding;
3. Developing state IRR transportation improvement programs;
4. Providing FHWA-approved IRR transportation improvement programs to tribes;
5. Providing technical assistance to tribes/tribal organizations/agencies;
6. Funding common services as provided as part of the region/agency/BIA Division of Transportation IRR Program costs;
7. Processing and investigating non-project related tort claims;
8. Preparing budgets for BIA regional and agency IRR Program activities;
9. Developing/revising interagency agreements;
10. Developing control schedules/transportation improvement programs;
11. Developing regional IRR Program stewardship agreements;
12. Developing quarterly/annual IRR Program obligation and program accomplishments reports;
13. Developing reports on IRR project expenditures and performance measures for Government Performance and Results Act (GPRA);
14. Responding to/maintaining data for congressional inquiries;
15. Participating in Indian transportation association meetings;
16. Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;

17. Participating in BIA/tribal training development highway safety, work zone safety, etc.;

18. Participating in special workgroups, task forces, and meetings as requested by tribes and BIA region/agency personnel;

19. Participating in national, regional, or local transportation organizations meetings and workshops;

20. Reviewing Coordinated Technology Implementation Program project proposals;

21. Consulting with tribal governments on non-project related program issues;

22. Funding costs for common services as provided as part of BIA IRR region/agency/contracting support costs;

23. Reviewing IRR Atlas maps;

24. Processing Freedom of Information Act (FOIA) requests;

25. Monitoring the obligation and expenditure of all IRR Program funds allocated to BIA region;

26. Performing activities related to the application for ERFO funds, administration, and oversight of such funds; and

27. Participating in IRR Program, process, and product reviews.

O. BIA regional offices' planning:

1. Coordinating with tribal/State/regional/local government;

2. Coordinating and processing the funding and repair of damaged Indian Reservation Roads with tribes;

3. Reviewing and approving IRR Inventory data;

4. Maintaining, reviewing, and approving the management systems databases;

5. Reviewing and approving IRR State transportation improvement programs; and

6. Performing Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.

P. BIA regional offices' engineering:

1. Approving tribal standards for the IRR Program use;

2. Developing and implementing new engineering techniques in the IRR Program; and

3. Providing technical assistance.

Q. BIA regional offices' responsibilities for bridges:

1. Reviewing and processing IRR bridge program applications;

2. Reviewing and processing IRR bridge inspection reports and information; and

3. Ensuring the safe use of roads and bridges.

R. BIA regional offices' other responsibilities for performing other non-contractible required IRR Program activities contained in this part.

## Subpart F—Program Oversight and Accountability

### § 170.700 What is the IRR Program stewardship plan?

The IRR Program stewardship plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the IRR Program and the process used for fulfilling those roles and responsibilities.

### § 170.701 May a direct service tribe and BIA Region sign a Memorandum of Understanding?

Yes. An IRR Program tribal/BIA region MOU is a document that a direct service tribe and BIA may enter into to help define the roles, responsibilities and consultation process between the regional BIA office and the Indian tribal government. It describes how the IRR Program will be carried out by BIA on the tribe's behalf.

### § 170.702 What activities may the Secretary review and monitor?

The Secretary reviews and monitors the performance of construction activities under 25 CFR 900 subpart J and 25 CFR 1000 subpart K.

## Subpart G—BIA Road Maintenance

### § 170.800 Who owns IRR transportation facilities?

Public authorities such as tribes, States, counties, local governments, and the Federal Government own IRR transportation facilities.

### § 170.801 What is the BIA Road Maintenance Program?

The BIA Road Maintenance Program covers the distribution and use of the funds provided by Congress in the annual Department of the Interior appropriations acts for maintaining transportation facilities. Appendix A to this subpart contains a list of activities that are eligible for funding under the BIA road maintenance program.

### § 170.802 How is road maintenance funded?

(a) The U.S. Congress funds a BIA program for the maintenance of IRR transportation facilities as defined in

this part through annual appropriations for the Department of the Interior.

(b) The States, counties, and local governments fund the maintenance of IRR transportation facilities that they own or have agreed to maintain.

(c) Tribal governments, at their discretion, may also provide for the maintenance of IRR transportation facilities.

### § 170.803 What facilities are eligible under the BIA Road Maintenance Program?

(a) The following public transportation facilities are eligible for maintenance under the BIA Road Maintenance Program:

(1) BIA transportation facilities listed in paragraph (b) of this section;

(2) Non-BIA transportation facilities, if the tribe served by the facility feels that maintenance is required to ensure public health, safety, and economy, and if the tribe executes an agreement with the owning public authority within available funding;

(3) Tribal transportation facilities such as public roads, highway bridges, trails, and bus stations; and

(4) Other transportation facilities as approved by the Secretary.

(b) The following BIA transportation facilities are eligible for maintenance under paragraph (a)(1) of this section:

(1) BIA road systems and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc.;

(2) Highway bridges and drainage structures;

(3) Airport runways and heliport pads, including runway lighting;

(4) Boardwalks;

(5) Adjacent parking areas;

(6) Maintenance yards;

(7) Bus stations;

(8) System public pedestrian walkways, paths, bike and other trails;

(9) Motorized vehicle trails;

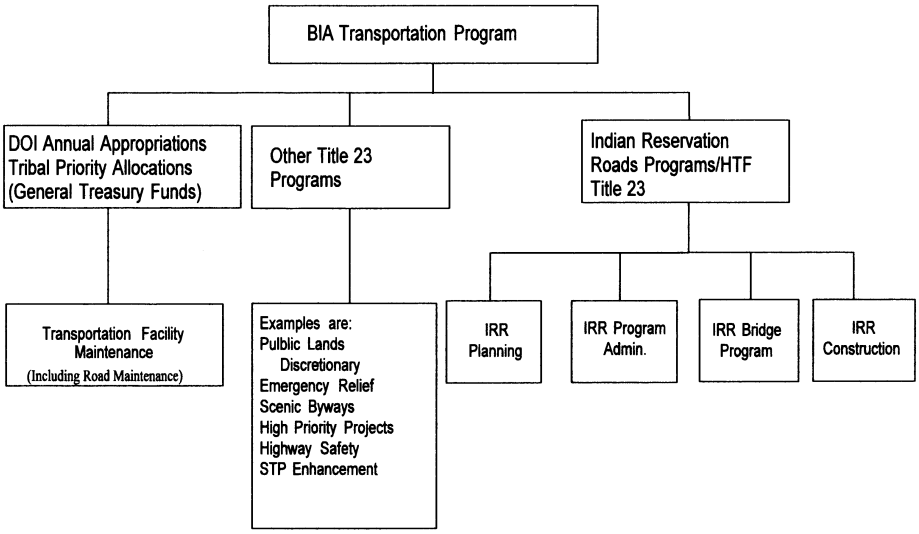
(10) Public access roads to heliports and airports;

(11) BIA and tribal post-secondary school roads and parking lots built with IRR Program funds; and

(12) Public ferry boats and boat ramps.

### § 170.804 How is BIA's Road Maintenance Program related to the IRR Program?

The following chart illustrates how BIA's Road Maintenance Program is related to other Title 23 U.S.C. programs:



### § 170.805 What are the local, tribal, and BIA roles in transportation facility maintenance?

(a) State, county, and local governments normally perform the maintenance of their IRR transportation facilities.

(b) Tribes may perform or provide for their maintenance responsibilities by formal agreement or other contracts with any other, State, county, or local government.

(c) BIA's responsibility includes preparing annual budget requests under 23 U.S.C. 204(c) that include a report of the shortfalls in each BIA Region in appropriations of BIA Road Maintenance dollars.

### § 170.806 What is an IRR Transportation Facilities Maintenance Management System?

An IRR Transportation Facilities Maintenance Management System (TFMMS) is a tool BIA and tribes will use to budget, prioritize, and schedule transportation facility maintenance activities. It will be used to extend the service life of an IRR transportation facility, ensure safety, and report future funding needs to the Secretary. BIA will develop the IRR TFMMS.

### § 170.807 What must BIA include when it develops an IRR Transportation Facilities Maintenance Management System?

(a) At a minimum, an IRR TFMMS system must include components for:

(1) Uniformly collecting, processing, and updating data;

(2) Predicting facility deterioration;

(3) Identifying alternative actions;

(4) Projecting maintenance costs;

(5) Tracking and reporting of actual maintenance costs and activities accomplished;

(6) Forecasting short- and long-term budget needs;

(7) Recommended programs and schedules for implementation within policy and budget constraints;

(8) Tracking and reporting unmet needs; and

(9) Ability to produce various reports, including customized reports.

(b) The minimum data requirements include:

(1) Cost of maintenance activity per mile broken down by surface type and frequency of activity;

(2) Cost of bridge maintenance by surface area of deck and frequency of activity;

(3) Cost of maintenance of other inter-modal facilities;

(4) Information from other IRR Program management systems;

(5) Future needs; and

(6) Basic facility data including but not limited to route, bridge number, maintenance activity code, facility inspection dates.

### § 170.808 Can BIA Road Maintenance Program funds be used to improve IRR transportation facilities?

No. BIA Road Maintenance Program funds cannot be used to improve roads or other IRR transportation facilities to a higher road classification, standard, or capacity.

### § 170.809 Can a tribe perform road maintenance under a self-determination contract or self-governance agreement?

Yes. Any tribe may enter into a self-determination contract or self-governance agreement to conduct BIA or tribal transportation facility maintenance under ISDEAA and 25 CFR part 900 or 1000. The self-determination contract or self-governance agreement does not relieve BIA of its responsibility for maintenance.

### § 170.810 To what standards must an IRR transportation facility be maintained?

IRR transportation facilities must be maintained, subject to availability of funding, in accordance with the IRR TFMMS. The Secretary will develop these standards with the input of the IRR Program Coordinating Committee. The Secretary must accept as interim standards any tribal maintenance standards that meet or exceed applicable Federal standards. Interim standards must include any of the following:

(a) Appropriate National Association of County Engineers maintenance standards;

(b) AASHTO road and bridge maintenance manuals, latest edition; or

(c) Other applicable Federal, State, tribal, or local government maintenance standards as may be negotiated in an ISDEAA road maintenance self-determination contract or self-governance agreement.

### § 170.811 What happens if lack of funds results in inadequate maintenance?

If BIA determines that an IRR transportation facility is not being maintained under IRR TFMMS standards due to insufficient funding, the Secretary will notify the facility owner, and if tribal or BIA owned, continue to request annual maintenance funding for that facility. In addition, the Secretary will report these findings to Secretary of Transportation under 23 U.S.C. 204. The Secretary will provide a draft copy of the report to the affected tribe for comment before forwarding it to Secretary of Transportation.

### § 170.812 What is emergency maintenance?

Emergency maintenance is work that must be accomplished immediately because of life threatening circumstances due to a catastrophic failure or natural disaster. Examples of emergency maintenance include: ice and snow control, traffic control, work in slide areas, repairs to drainage washouts, retrieving hazardous materials, suppressing wild fires, and repairing the ravages of other disasters.

### § 170.813 When can access to IRR transportation facilities be restricted?

IRR transportation facilities must be open and available for public use, as are IRRs (§ 170.120).

(a) The Secretary may, in consultation with a tribe and applicable private landowners, restrict or temporarily close an IRR transportation facility to public use for the following reasons:

(1) Because of unsafe conditions;

(2) Because of natural disasters;

(3) For fish or game protection;

(4) To prevent traffic from causing damage to the facility; and

(5) For reasons deemed to be in the public interest such as fire prevention or suppression as approved by the Secretary.

(b) Consultation is not required whenever the above conditions involve immediate safety or life-threatening situations.

(c) Certain IRR transportation facilities owned by the tribes or BIA may be permanently closed when the tribal government and the Secretary agree. Once this agreement is reached, BIA must remove the facility from the IRR System.

## APPENDIX A TO SUBPART G—LIST OF ACTIVITIES ELIGIBLE FOR FUNDING UNDER BIA TRANSPORTATION FACILITY MAINTENANCE PROGRAM

The following activities are eligible for BIA Transportation Facility Maintenance Program. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administering the BIA Transportation Facility Maintenance Program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
14. Purchasing maintenance materials.
15. Developing, implementing, and maintaining an IRR Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
19. Re-graveling roads.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
21. Making bridge repairs.

22. Paying the cost of closing of transportation facilities due to safety or other concerns.
23. Maintaining airport runways, heliport pads, and their public access roads.
24. Maintaining and operating BIA public ferry boats.
25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.
26. Making temporary highway alignment or relocation changes for emergency reasons.
27. Maintaining other IRR intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

## Subpart H—Miscellaneous Provisions

HAZARDOUS AND NUCLEAR WASTE TRANSPORTATION

### § 170.900 What is the purpose of the provisions relating to transportation of hazardous and nuclear waste?

Sections 170.900 through 170.907 on transportation of nuclear and hazardous waste are provided for information only, they do not create any legal responsibilities or duties for any person or entity, and are not intended to create any basis for a cause of action under the Federal Tort Claims Act.

### § 170.901 What standards govern transportation of radioactive and hazardous materials?

DOT, the International Atomic Energy Agency, the U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency have established standards and regulations for the shipment of radioactive and hazardous materials. Legal authority includes, but is not limited to, 23 U.S.C. 141; 23 U.S.C. 127; 49 CFR parts 107, 171–180; 10 CFR part 71.

### § 170.902 What is the role of State, tribal, and local governments?

State, tribal, and local governments typically provide for the safety of their residents and other persons and protection of resources within their jurisdictions. With respect to radioactive and hazardous materials, some State, tribal, and local governments enact legislation, execute cooperative agreements, designate alternate transportation routes, develop emergency response plans, perform emergency response, issue permits, conduct vehicle inspections, enforce traffic laws, and perform highway construction and maintenance. These activities must not conflict with Federal laws and regulations.

### § 170.903 Who notifies tribes of the transport of radioactive waste?

The Department of Energy (DOE) has elected, by policy, to notify tribes of DOE shipments through their jurisdiction.

### § 170.904 Who responds to an accident involving a radioactive or hazardous materials shipment?

Tribal, Federal, local, and State police, fire departments, and rescue squads are often the first to respond to transportation accidents involving radioactive or hazardous materials. If radioactive materials are involved, DOE typically:

(a) Ensures that appropriate State and tribal agencies are contacted and coordinate any necessary Radiological Assistance Program team activities; and

(b) Dispatches a Radiological Assistance Program team that may include nuclear engineers, health physicists, industrial hygienists, public affairs specialists, and other personnel who provide related services.

### § 170.905 How can tribes obtain training in handling hazardous material?

(a) Tribes cannot use IRR Program funds to train personnel to handle radioactive and hazardous material.

(b) Tribes can seek training from DOE, EPA, NRC, OSHA, States, and other sources. Funding is available from DOT under the Hazardous Materials Uniform Safety Act, EPA for monitoring and FEMA for general preparedness.

### § 170.906 Who cleans up radioactive and hazardous material spills?

The carrier is typically responsible for cleanup of a radioactive or hazardous material spill with assistance from the shipper using established

standards and guidelines. The carrier should work with the appropriate tribal, local, State and Federal agencies to address all cleanup issues, such as arranging or repackaging of the cargo, if necessary, and disposing of contaminated materials.

REPORTING REQUIREMENTS AND INDIAN PREFERENCE

**§ 170.910 What information on the IRR Program or projects must BIA provide to tribes?**

At the written request of a tribe, BIA must provide available information on the IRR Program or projects to a tribe within a reasonable time.

**§ 170.911 Are Indians entitled to employment and training preferences?**

(a) Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program.

(b) Under 25 U.S.C. 450e(b) and 23 U.S.C. 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the IRR Program.

**§ 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?**

(a) Tribal, State, and local governments may provide an Indian employment preference for Indians living on or near a reservation on projects and contracts that meet the definition of an Indian Reservation Road. (See 23 U.S.C. 101(a)(12) and 140(d), and 23 CFR 635.117(d).)

(b) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Indian lands, Alaska Native villages, pueblos, and Indian communities.

(c) Tribes and tribal employment rights offices should work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians on eligible federally funded transportation projects. Tribal, State, and local representatives should confer to establish Indian employment goals for these projects.

**§ 170.913 Do tribal-specific employment rights and contract preference laws apply?**

Yes. When a tribe or consortium administers an IRR Program or project intended to benefit that tribe or a tribe within the consortium, the benefitting tribe's employment rights and contracting preference laws apply. (See § 170.619 and 25 U.S.C. 450e(c).)

**§ 170.914 What is the difference between tribal preference and Indian preference?**

Indian preference is a hiring preference for Indians in general. Tribal preference is a preference adopted by a tribal government that may or may not include a preference for Indians in general, Indians of a particular tribe, Indians in a particular region, or any combination thereof.

**§ 170.915 May tribal employment taxes or fees be included in an IRR project budget?**

Yes. The cost of tribal employment taxes or fees may be included in the budget for an IRR program or project, except for BIA force account.

**§ 170.916 May tribes impose taxes or fees on those performing IRR Program services?**

Yes. Tribes, as sovereign nations, may impose taxes and fees for IRR Program activities. When a tribe administers IRR programs or projects under ISDEAA, its tribal employment and contracting preference laws, including taxes and fees, apply.

**§ 170.917 Can tribes receive direct payment of tribal employment taxes or fees?**

This section applies to non-tribally administered IRR projects. Tribes can request that BIA pay tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

EMERGENCY RELIEF

### § 170.920 What is the purpose of the provisions relating to emergency relief?

Sections 170.920 through 170.927 relating to emergency relief are provided for information only and do not change the provisions of 23 CFR part 668 or existing guidance on emergency relief.

### § 170.921 What emergency or disaster assistance programs are available?

(a) FHWA operates two emergency relief programs:

(1) The Emergency Relief (ER) Program, which provides disaster assistance for Federal-aid highways owned by State, county and local governments; and

(2) The Emergency Relief for Federally Owned Roads (ERFO) Program, which provides disaster assistance for Federal roads, including Indian Reservation Roads, that have been damaged due to natural disasters (floods, hurricanes, tornadoes, etc.).

(b) The Federal Emergency Management Agency (FEMA) may be considered as an alternate funding source to repair damage that is ineligible under the ER or ERFO Programs.

### § 170.922 How can States get Emergency Relief Program funds to repair IRR System damage?

States can request emergency relief program funds to repair damage to Federal-aid highways caused by natural disasters or catastrophic failures. It is the responsibility of individual States to request these funds.

### § 170.923 What qualifies for ERFO funding?

(a) Tribes can use ERFO funding to repair damage to IRR transportation facilities (including roads, bridges, and related structures) caused by natural disaster over a widespread area or by a catastrophic failure from any external cause. The Secretary of Transportation determines eligible repairs under 23 CFR 668, subpart B.

(1) Examples of natural disasters include, but are not limited to, floods, earthquakes, tornadoes, landslides, avalanches or severe storms, such as saturated surface conditions and high-water table caused by precipitation over an extended period of time.

(2) An example of a catastrophic failure includes, but is not limited to, a bridge collapse after being struck by a barge, truck or a landslide.

(b) Structural deficiencies, normal physical deterioration, and routine heavy maintenance do not qualify for ERFO funding.

### § 170.924 What happens if DOT denies an ERFO claim?

The appealing tribe or the facility owner (if the tribe is not the owner) may appeal the finding or determination to the Secretary of Transportation at: FHWA, 400 7th St., SW., HFL–1, Washington, DC 20590. If the tribe is appealing it must provide a courtesy copy of its appeal to BIA.

### § 170.925 Is ERFO funding supplemental to IRR Program funding?

Yes. If ERFO funds are approved and available, they can be used to supplement IRR construction and maintenance funds for FHWA-approved repairs. If IRR construction or maintenance funds are used to address an approved claim when ERFO funds are unavailable, the next authorized ERFO funds may be used to reimburse the construction or maintenance funds expended.

### § 170.926 Can a tribe administer approved ERFO repairs under a self-determination contract or a self-governance agreement?

Yes.

### § 170.927 How can FEMA Program funds be used to repair damage?

(a) A tribe can request FEMA Program funds for emergency repairs to damaged roads not on the IRR System if the President has declared a major disaster or emergency. The tribe makes the request by submitting an SF 424, Application for Federal Assistance, directly to FEMA, as described in FEMA Response and Recovery Directorate 9512.4 (Dec. 28, 1999).

(b) Tribes can ask States to seek FEMA Program funds to repair damage to roads not on the IRR System.

TRIBAL TRANSPORTATION DEPARTMENTS

**§ 170.930 What is a tribal transportation department?**

A tribal transportation department is a department, commission, board, or official of any tribal government charged by its laws with the responsibility for highway construction. Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own tribal laws. Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from Indian LTAP centers, BIA regional road engineers, or AASHTO to establish a tribal transportation department.

**§ 170.931 Can tribes use IRR Program funds to pay tribal transportation department operating costs?**

Yes. Tribes can use IRR Program funds to pay the cost of planning, administration, and performance of approved IRR Program activities (see appendix A, subpart B). Tribes can also use BIA road maintenance funds to pay the cost of planning, administration, and performance of maintenance activities under this part.

**§ 170.932 Are there other funding sources for tribal transportation departments?**

There are many sources of funds that may help support a tribal transportation department. The following are some examples of additional funding sources:

(a) Tribal general funds;

(b) Tribal Priority Allocation;

(c) Tribal permits and license fees;

(d) Tribal fuel tax;

(e) Federal, State, private, and local transportation grants assistance;

(f) Tribal Employment Rights Ordinance fees (TERO); and

(g) Capacity building grants from Administration for Native Americans and other organizations.

**§ 170.933 Can tribes regulate oversize or overweight vehicles?**

Yes. Tribal governments can regulate travel on roads under their jurisdiction and establish a permitting process to regulate the travel of oversize or overweight vehicles, in accordance with applicable Federal law. BIA may, with the consent of the affected tribe, establish a permitting process to regulate the travel of oversize or overweight vehicles on BIA-system roads.

RESOLVING DISPUTES

**§ 170.934 Are alternative dispute resolution procedures available?**

(a) Federal agencies should use mediation, conciliation, arbitration, and other techniques to resolve disputes brought by IRR Program beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies should resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

(b) Except as required in 25 CFR part 900 and part 1000, tribes operating under a self-determination contract or self-governance agreement are entitled to use dispute resolution techniques prescribed in:

(1) The ADR Act, 5 U.S.C. 571–583;

(2) The Contract Disputes Act, 41 U.S.C. 601–613; and

(3) The Indian Self-Determination and Education Assistance Act and the implementing regulations (including for non-construction the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)).

**§ 170.935 How does a direct service tribe begin the alternative dispute resolution process?**

(a) To begin the ADR process, a direct service tribe must write to the BIA Regional Director or the Chief of BIA Division of Transportation. The letter must:

(1) Ask to begin one of the alternative dispute resolution (ADR) procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583 (ADR Act); and

(2) Explain the factual and legal basis for the dispute.

(b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.

OTHER MISCELLANEOUS PROVISIONS

**§ 170.941 May tribes become involved in transportation research?**

Yes. Tribes may:

(a) Participate in Transportation Research Board meetings, committees, and workshops sponsored by the National Science Foundation;

(b) Participate in and coordinate the development of tribal and IRR transportation research needs;

(c) Submit transportation research proposals to States, FHWA, AASHTO, and FTA;

(d) Prepare and include transportation research proposals in their IRRTIPS;

(e) Access Transportation Research Information System Network (TRISNET) database; and

(f) Participate in transportation research activities under Intergovernmental Personnel Act agreements.

**§ 170.942 Can a tribe use Federal funds for transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality-of-life improvement programs?**

(a) A tribe can use IRR Program funds:

(1) To coordinate transportation-related activities to help provide access to jobs and make education, training, childcare, healthcare, and other services more accessible to tribal members; and

(2) As the matching share for other Federal, State, and local mobility programs

(b) To the extent authorized by law additional grants and program funds are available for the purposes in paragraph (a)(1) of this section from other programs administered by the Departments of Transportation, Health and Human Services, and Labor.

(c) Tribes should also apply for Federal and State public transportation and personal mobility program grants and funds.

# PART 171—IRRIGATION OPERATION AND MAINTENANCE

## Subpart A—General Provisions

Sec.
171.100 What are some of the terms I should know for this part?
171.105 Does this part apply to me?
171.110 How does BIA administer its irrigation facilities?
171.115 Can I and other irrigators establish representative organizations?
171.120 What are the authorities and responsibilities of a representative organization?
171.125 Can I appeal BIA decisions?
171.130 Who can I contact if I have any questions about these regulations or my irrigation service?
171.135 Where do I submit written information or requests?
171.140 Information collection.

## Subpart B—Irrigation Service

171.200 How do I request irrigation service from the BIA?
171.205 How much water will I receive?
171.210 Where will BIA provide my irrigation service?
171.215 What if the elevation of my farm unit is too high to receive irrigation water?
171.220 What must I do to my farm unit to receive irrigation service?
171.225 What must I do to receive irrigation service to my subdivided farm unit?
171.230 What are my responsibilities for wastewater?

## Subpart C—Water Use

171.300 Does BIA restrict my water use?
171.305 Will BIA provide leaching service to me?
171.310 Can I use water delivered by BIA for livestock purposes?

## Subpart D—Irrigation Facilities

171.400 Who is responsible for structures on a BIA irrigation project?
171.405 Can I build my own structure or take over responsibility of a BIA structure?
171.410 Can I install a fence on a BIA irrigation project?
171.415 Can I place an obstruction on a BIA irrigation project?
171.420 Can I dispose of sewage, trash, or other refuse on a BIA irrigation project?

### Subpart E—Financial Matters: Assessments, Billing, and Collections

171.500 How does BIA determine the annual operation and maintenance assessment rate for the irrigation facility servicing my farm unit?
171.505 How does BIA calculate my annual operation and maintenance assessment?
171.510 How does BIA calculate my annual operation and maintenance assessment if supplemental water is available on the irrigation facility servicing my farm unit?
171.515 Who will BIA bill?
171.520 How will I receive my bill and when do I pay it?
171.525 How do I pay my bill?
171.530 What information must I provide BIA for billing purposes?
171.535 Why is BIA collecting this information from me?
171.540 What can happen if I do not provide this information?
171.545 What can happen if I don't pay my bill on time?
171.550 Can I arrange a Payment Plan if I cannot pay the full amount due?
171.555 What additional costs will I incur if I am granted a Payment Plan?
171.560 What if I fail to make payments as specified in my Payment Plan?
171.565 How will I know if BIA plans to adjust my annual operation and maintenance assessment rate?
171.570 What is the FEDERAL REGISTER and where can I get it?
171.575 Can BIA charge me a special assessment?

### Subpart F—Records, Agreements, and Other Matters

171.600 What information is collected and retained on the irrigation service I receive?
171.605 Can I establish a Carriage Agreement with BIA?
171.610 Can I arrange an Incentive Agreement if I want to farm idle lands?
171.615 Can I request improvements to BIA facilities as part of my Incentive Agreement?

### Subpart G—Non-Assessment Status

171.700 When do I not have to pay my annual operation and maintenance assessment?
171.705 What criteria must be met for my land to be granted an Annual Assessment Waiver?
171.710 Can I receive irrigation water if I am granted an Annual Assessment Waiver?
171.715 How do I obtain an Annual Assessment Waiver?
171.720 For what period does an Annual Assessment Waiver apply?

AUTHORITY: 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 13; 25 U.S.C. 381; Act of April 4, 1910, 36 Stat. 270, as amended (codified at 25 U.S.C. 385); 25 U.S.C. 386a; Act of June 22, 1936, 49 Stat. 1803 (codified at 25 U.S.C. 389 *et seq.*).

SOURCE: 73 FR 11036, Feb. 29, 2008, unless otherwise noted.

## Subpart A—General Provisions

### § 171.100 What are some of the terms I should know for this part?

*Annual Assessment Waiver* means a mechanism for us to waive your annual operation and maintenance assessment under certain specified circumstances.

*Annual operation and maintenance assessment* means the charges you must pay us for our costs of administration, operation, maintenance, and rehabilitation of the irrigation facility servicing your farm unit.

*Annual operation and maintenance assessment rate* means the per acre charge we establish for the irrigation facility servicing your farm unit.

*Assessable acres* (see *Total assessable acres*).

*Authorized use* means your use of water delivered by us that supports irrigated agriculture, livestock, Carriage Agreements or other uses defined by laws, regulations, treaty, compact, judicial decree, river regulatory plan, or other authority.

*BIA* means the Bureau of Indian Affairs within the United States Department of the Interior.

*Bill* means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, rehabilitation, and/or construction of the irrigation facility servicing your farm unit.

*Carriage Agreement* means a legally binding contract we enter into:

(1) To convey third-party water through our irrigation facilities; or

(2) To convey our water through third-party facilities.

*Construction assessment* means the periodic charge we assess you to repay us the funds we used to construct our irrigation facilities serving your farm unit that are determined to be reimbursable under applicable statutes.

*Customer* means any person or entity to whom we provide irrigation service.

*Ditch* (see *Farm ditch* or *Service ditch*).

*Due date* means the date printed on your bill, 30 days after which your bill becomes past due.

*Facility* (see *Irrigation facility*).

*Farm ditch* means a ditch or canal that you own, operate, maintain, and rehabilitate.

*Farm unit* means the smallest parcel of land for which we will establish a delivery point. Farm unit size is defined in the authorizing legislation for each irrigation facility, or in the absence of such legislation, we will define the farm unit size.

*I, me, my, you*, and *your* means all interested parties, especially persons or entities to which we provide irrigation service and receive use of our irrigation facilities, such as irrigators, landowners, leasees, irrigator organizations, irrigation districts, or other entities affected by this part and our supporting policies, manuals, and handbooks.

*Idle lands* means lands that are not currently farmed because they have characteristics that limit crop production.

*Incentive Agreement* means a written agreement between you and us that allows us to waive your annual operation and maintenance assessment, when you agree to improve idle lands and we determine that it is in the best interest of our irrigation facility.

*Irrigation bill* (see *Bill*).

*Irrigation district* (see *Representative organization*).

*Irrigation facility* means all structures and appurtenant works for the delivery, diversion, and storage of irrigation water. These facilities may be referred to as projects, systems, or irrigation areas.

*Irrigation service* means the full range of services we provide customers, including but not limited to administration, operation, maintenance, and rehabilitation of our irrigation facilities.

*Irrigation water* or *water* means water we deliver through our facilities for the general purpose of irrigation and other authorized purposes.

*Irrigator* (see *Customer*).

*Landowner* means a person or entity that owns fee, tribal trust, and/or individual allotted trust lands.

*Leaching Service* means our delivery of water to you at your request for the purpose of transporting salts below the root zone of a farm unit.

*Lessee* means any person or entity that holds a lease approved by us on lands to which we provide irrigation service.

*Must* means an imperative or mandatory act or requirement.

*My land* and *your land* mean all or part of your farm unit.

*Obstruction* means anything permanent or temporary that blocks, hinders, impedes, stops or cuts off our facilities or our ability to perform the services we determine necessary to provide service to our customers.

*Organization* (see *Representative organization*).

*Past due bill* means a bill that has not been paid within 30 days of the due date stated on your bill.

*Permanently non-assessable acres (PNA)* means lands that the Secretary of the Interior has determined to be permanently non-irrigable pursuant to the standards set out in 25 U.S.C. 389b.

*Representative organization* or *organization* means a legally established organization representing your interests that confers with us on how we provide irrigation service at a particular irrigation facility.

*Service(s)* (see *Irrigation service*).

*Service area* means lands designated by us to be served by one of our irrigation facilities.

*Service ditch* means a ditch or canal which we own, administer, operate, maintain, and rehabilitate that we use to provide irrigation service to your farm unit.

*Soil salinity* means soils containing high salt content that limit crop production.

*Special assessment* means a charge to cover the uncontrolled cost arising from an urgency on an irrigation facility.

*Structures* (see *Irrigation facility*).

*Subdivision* means a farm unit that has been subdivided into smaller parcels.

*Supplemental water* means water available for delivery by our irrigation

facilities beyond the quantity necessary to provide all project customers requesting water with the per-acre water duty established for that project.

*Taxpayer identifying number* means either your Social Security Number or your Employer Identification Number.

*Temporarily non-assessable acres (TNA)* means lands that the Secretary of the Interior has determined to be temporarily non-irrigable pursuant to the standards set out in 25 U.S.C. 389a.

*Total assessable acres* means the total acres of land served by one of our irrigation facilities to which we assess operation and maintenance charges. The *Total assessable acres* within the service area of an irrigation facility do not include those acres of land that are designated PNA or TNA, nor those acres of land granted an Annual Assessment Waiver.

*Trust* or *restricted land* or *land in trust* or restricted status (see definitions in 25 CFR 151.2).

*Urgency* means a situation that we have determined may adversely impact our irrigation facilities, operation, or other irrigation activities; affect public safety; or damage property or equipment.

*Wastewater* means surface runoff and subsurface drainage from your farm unit from water delivered by us that exceeds irrigation requirements.

*Water* (see *Irrigation water*).

*Water delivery* is an activity that is part of the irrigation service we provide to our customers when water is available.

*Water duty* means the amount of water, in acre-feet per acre, necessary for full-service irrigation. This value is established by decree, compact, or other legal document, or by specialized engineering studies.

*Water user* (see *Customer*).

*We*, *us*, and *our* means the United States Government, the Secretary of the Interior, BIA, and all who are authorized to represent us in matters covered under this part.

### § 171.105 Does this part apply to me?

This part applies to you if you own or lease land within an irrigation project where we assess fees and collect monies to administer, operate, maintain, and rehabilitate project facilities.

### § 171.110 How does BIA administer its irrigation facilities?

(a) We administer our irrigation facilities by enforcing the applicable statutes, regulations, Executive Orders, directives, Indian Affairs Manual, the Irrigation Handbook, and other written policies, procedures, directives, and practices to ensure the safe, reliable, and efficient administration, operation, maintenance, and rehabilitation of our facilities. Such enforcement can include refusal or termination of irrigation services to you. Copies of the above listed items may be obtained from the irrigation project serving you.

(b) We will cooperate and consult with you, as appropriate, on irrigation activities and policies of the particular irrigation facility serving you.

### § 171.115 Can I and other irrigators establish representative organizations?

Yes. You and other irrigators may establish a representative organization under applicable law to represent your interests for the particular irrigation facilities serving you.

### § 171.120 What are the authorities and responsibilities of a representative organization?

(a) A legally established organization representing you may make rules, policies, and procedures it may find necessary to administer the activities it is authorized to perform.

(b) An organization must not make rules, policies, or procedures that conflict with our regulations or any of our other written policies, procedures, directives, and manuals.

(c) If this organization collects operation and maintenance assessments and construction assessments on your behalf to be paid to us, it must pay us all your past and current operation and maintenance and construction assessment charges before we will provide irrigation service to you.

### § 171.125 Can I appeal BIA decisions?

(a) You may appeal our decisions in accordance with procedures set out in 25 CFR part 2, unless otherwise prohibited by law.

(b) If you appeal an irrigation bill, you must pay the bill in accordance

with subpart E before we will provide irrigation service to you. If you prevail on appeal, any overpayment will be refunded to you.

### § 171.130 Who can I contact if I have any questions about these regulations or my irrigation service?

Contact the local irrigation project where you receive service or want to apply for service. If your questions are not addressed to your satisfaction at the local project level, you may contact the appropriate BIA Regional Office.

### § 171.135 Where do I submit written information or requests?

Submit written information to us or make request of us in writing at the irrigation project servicing your farm unit.

### § 171.140 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0141. This information collection is specifically found in 25 CFR sections 171.200, 171.225, 171.305, 171.310, 171.405, 171.410, 171.530, 171.550, 171.600, 171.605, 171.610, 171.615, 171.710, 171.715. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Subpart B—Irrigation Service

### § 171.200 How do I request irrigation service from the BIA?

(a) You must request service from the irrigation facility servicing your farm unit.

(b) Your request must contain at least the following information:

(1) Your full legal name;

(2) Where you want service;

(3) The time and date you want service to start;

(4) How long you want service;

(5) The rate of water flow you want, if available;

(6) How many acres you want to irrigate; and

(7) Any additional information required by the project office responsible for providing your irrigation service.

(c) You must request supplemental water in accordance with the project guidelines established by the specific project providing your irrigation service.

### § 171.205 How much water will I receive?

The amount of water you receive will be based on your request, your legal entitlement to water, and the available water supply.

### § 171.210 Where will BIA provide my irrigation service?

(a) We will provide service to your farm unit at a single delivery point that we designate.

(b) At our discretion, we may establish additional delivery points when:

(1) We determine it is impractical to deliver water to your farm unit from a single delivery point;

(2) You agree in writing to be responsible for all costs to establish an additional delivery point;

(3) You pay us our costs prior to our establishing an additional delivery point; and

(4) Any work accomplished under this section does not disrupt our service to other customers without their written agreement.

(c) We may establish your delivery point(s) at a well head.

### § 171.215 What if the elevation of my farm unit is too high to receive irrigation water?

(a) We will not change our service ditch level to provide service to you.

(b) You may install, operate, and maintain your own facilities, at your cost, to provide service to your land:

(1) From a delivery point we designate; and

(2) In accordance with specifications we approve.

### § 171.220 What must I do to my farm unit to receive irrigation service?

You must meet the following requirements for us to provide service:

(a) Put water we deliver to authorized uses;

(b) Make sure your farm ditch has sufficient capacity to carry the water we deliver; and

(c) Properly operate, maintain, and rehabilitate your farm ditch.

### § 171.225 What must I do to receive irrigation service to my subdivided farm unit?

In order to receive irrigation service, you must:

(a) Provide us a copy of the recorded plat or map of the subdivision which shows us how the irrigation water will be delivered to the irrigable acres;

(b) Pay for any extensions or alterations to our facilities that we approve to serve the subdivided units;

(c) Construct, at your cost, any facilities within your subdivided farm unit; and

(d) Operate and maintain, at your cost, any facilities within your subdivided farm unit.

### § 171.230 What are my responsibilities for wastewater?

(a) You are responsible for your wastewater.

(b) Wastewater may be returned to our facilities, but only at locations we designate, in a manner we approve, and at your cost.

(c) You must not allow your wastewater to flow or collect on our facilities or roads, except at locations we designate and in a manner we approve.

(d) If you fail to comply with this section, we may withhold services to you.

## Subpart C—Water Use

### § 171.300 Does BIA restrict my water use?

(a) You must not interfere with or alter our service to you without our prior written authorization; and

(b) You must only use water we deliver for authorized uses. We may withhold services if you use water for any other purpose.

### § 171.305 Will BIA provide leaching service to me?

(a) We may provide you leaching service if:

(1) You submit a written plan that documents how soil salinity limits your crop production and how leaching service will correct the problem;

(2) We approve your plan in writing; and

(3) Your irrigation bills are not past due.

(b) Leaching service will only be available during the timeframe established by your irrigation facility.

(c) We reserve the right to terminate this service if we determine you are not complying with paragraph (a) of this section.

### § 171.310 Can I use water delivered by BIA for livestock purposes?

Yes, if we determine it will not:

(a) Interfere with the operation, maintenance, or rehabilitation of our facilities;

(b) Be detrimental to or jeopardize our facilities;

(c) Adversely affect the water rights or water supply; or

(d) Cause additional costs to us that we do not agree to in writing.

## Subpart D—Irrigation Facilities

### § 171.400 Who is responsible for structures on a BIA irrigation project?

(a) We may build, operate, maintain, rehabilitate or remove structures, including bridges and other crossings, on our irrigation projects.

(b) We may build other structures for your private use during the construction or extension of an irrigation project. We may charge you for structures built for your private use under this section, and we may require you to maintain them.

(c) If we require you to maintain a structure and you do not do so to our satisfaction, we may remove it or perform the necessary maintenance, and we will bill you for our costs.

### § 171.405 Can I build my own structure or take over responsibility of a BIA structure?

You may build a structure on our irrigation facility for your private use or take responsibility of one of our structures, but only under a written agreement between you and us which:

(a) Relieves us from any future liability or responsibility for the structure;

(b) Relieves us from any future costs incurred for maintaining the structure;

(c) Describes what is granted by us and accepted by you; and

(d) Provides that if you do not regularly use a structure for a period of time that we have determined, or you do not properly maintain and rehabilitate the structure, we will notify you in writing that:

(1) You must either remove it or correct any unsafe condition;

(2) If you do not comply with our notice, we may remove the structure and you must reimburse us our costs; and

(3) We may modify, close, or remove your structure without notice due to an urgency we have identified.

### § 171.410 Can I install a fence on a BIA irrigation project?

Yes. Fences are considered structures and may be installed in compliance with § 171.405.

### § 171.415 Can I place an obstruction on a BIA irrigation project?

No. You may not place obstructions on BIA irrigation projects.

(a) If you do so, we will notify you in writing that you must remove it.

(b) If you do not remove your obstruction in compliance with our notice, we will remove it and we will bill you for our costs.

(c) We can remove your obstruction without notice because of an urgency we have identified.

### § 171.420 Can I dispose of sewage, trash, or other refuse on a BIA irrigation project?

No. Sewage, trash, or other refuse are considered obstructions and must be removed in accordance with § 171.415.

## Subpart E—Financial Matters: Assessments, Billing, and Collections

### § 171.500 How does BIA determine the annual operation and maintenance assessment rate for the irrigation facility servicing my farm unit?

(a) We calculate the annual operation and maintenance assessment rate by estimating the following annual costs and then dividing by the total assessable acres for your irrigation facility:

(1) Personnel salary and benefits for the facility engineer/manager and employees under their management or control;

(2) Materials and supplies;

(3) Vehicle and equipment repairs;

(4) Equipment costs, including lease fees;

(5) Depreciation;

(6) Acquisition costs;

(7) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(8) Maintenance of a vehicle and heavy equipment replacement fund;

(9) Systematic rehabilitation and replacement of project facilities;

(10) Contingencies for unknown costs and omitted budget items; and

(11) Other costs we determine necessary to properly perform the activities and functions characteristic of an irrigation facility.

(b) Annual operation and maintenance assessment rates may be lowered through the exercise of our discretion when items listed in (a) of this section are adjusted pursuant to our authority under 25 U.S.C. 385, 386a and 389.

(c) If you subdivide your farm unit, you may be subject to a higher annual operation and maintenance assessment rate, which we publish annually in the FEDERAL REGISTER.

(d) At projects where supplemental water is available, the calculation of your annual operation and maintenance assessment rate may take into consideration the total estimated annual amount to be collected for supplemental water deliveries.

### § 171.505 How does BIA calculate my annual operation and maintenance assessment?

(a) We calculate your annual operation and maintenance assessment by multiplying the total assessable acres of your land within the service area of our irrigation facility by the annual operation and maintenance assessment rate we establish for that facility.

(b) We will not assess lands that have been re-classified as either permanently non-assessable (PNA) or temporarily non-assessable (TNA) or lands

that have been granted an Annual Assessment Waiver.

(c) If your lands are under an approved Incentive Agreement, we may waive your assessment as described in the Incentive Agreement (See § 171.610).

(d) Some irrigation facilities may charge a minimum operation and maintenance assessment. If the irrigation facility serving your farm unit charges a minimum operation and maintenance assessment that is more than your assessment calculated by the method described in subpart (a) of this section, you will be charged the minimum operation and maintenance assessment. We provide public notice of any minimum operation and maintenance assessments annually in the FEDERAL REGISTER (See § 171.565).

### § 171.510 How does BIA calculate my annual operation and maintenance assessment if supplemental water is available on the irrigation facility servicing my farm unit?

(a) For projects where supplemental water is available, and you request and receive supplemental water, your assessment will include two components: a base rate, which is for your per-acre water duty delivered to your farm unit; and a supplemental water rate, which is for water delivered to your farm unit in addition to your per-acre water duty.

(b) We publish base and supplemental water rates annually in the FEDERAL REGISTER. The base and supplemental water rates are established to recover the costs identified in section 171.500(a) of this subpart.

(c) If your project has established a supplemental water rate, and you request and receive supplemental water, we will calculate your total annual operation and maintenance assessment by adding the following two totals:

(1) The total assessable acres of your land within the service area of our irrigation facility multiplied by the annual operation and maintenance assessment rate we establish for that facility; and

(2) The actual quantity of supplemental water you request and we agree to deliver (in acre-feet) times the supplemental water rate established for that facility.

### § 171.515 Who will BIA bill?

(a) We will bill the landowner, unless:

(1) The land is leased under a lease approved by us, in which case we will bill the lessee, or

(2) The landowner(s) is represented by a representative organization that collects annual operation and maintenance assessments on behalf of its members and the representative organization makes a direct payment to us on your behalf.

(b) If you own or lease assessable lands within a BIA irrigation facility, you will be billed for annual operation and maintenance assessments, whether you request water or not, unless otherwise specified in § 171.505(b).

### § 171.520 How will I receive my bill and when do I pay it?

(a) You will receive your bill in the mail at the address of record you provide us.

(b) You should pay your bill no later than the due date stated on your bill.

(c) You will not receive a bill for supplemental water. You must pay us in advance at the supplemental water rate established for you project published annually in the FEDERAL REGISTER.

### § 171.525 How do I pay my bill?

(a) You can pay your bill by:

(1) Personally going to the local office of the irrigation facility authorized to receive your payment during normal business hours;

(2) Depositing your payment in an authorized drop box, if available, at the local office of the irrigation facility; or

(3) Mailing your payment to the address indicated on your bill.

(b) Your payment must be in the form of:

(1) Check or money order in the mail or authorized drop box; or

(2) Cash, check, or money order if you pay in person.

### § 171.530 What information must I provide BIA for billing purposes?

We must obtain certain information from you to ensure we can properly bill, collect, deposit, and account for money you owe the United States. At a minimum, this information is:

(a) Your full legal name;

(b) Your correct mailing address; and

(c) Your taxpayer identifying number.

### § 171.535 Why is BIA collecting this information from me?

(a) As part of doing business with you, we must collect enough information from you to properly bill and service your account.

(b) We are required to collect your taxpayer identifying number under the authority of, and as prescribed in, the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–364).

### § 171.540 What can happen if I do not provide this information?

We will not provide you irrigation service.

### § 171.545 What can happen if I don't pay my bill on time?

(a) We will not provide you irrigation service until:

(1) Your bill is paid; or

(2) You make arrangement for payment pursuant to § 171.550 of this part.

(b) If you do not pay your bill prior to the close of business on the 30th day after the due date, we consider your bill past due, send you a notice, and assess you the following:

(1) Interest, as required by 31 U.S.C. 3717. Interest will accrue from the original due date stated on your bill.

(2) An administrative fee, as required by 31 CFR 901.9.

(c) If you do not pay your bill prior to the close of business of the 90th day after the due date, we will assess you a penalty, as required by 31 CFR 901.9(d). Penalties will accrue from the original due date stated on your bill.

(d) We will forward your past due bill to the United States Treasury no later than 180 days after the original due date, as required by 31 CFR 901.1, ''Aggressive agency collection activity.''

### § 171.550 Can I arrange a Payment Plan if I cannot pay the full amount due?

We may approve a Payment Plan if:

(a) You are a landowner and your land is not leased;

(b) You certify that you are financially unable to make a lump sum payment;

(c) You provide additional information we request, which may include information identified in 31 CFR 901.8, ''Collection in installments''; and

(d) You sign our Payment Plan containing terms and conditions we specify.

### § 171.555 What additional costs will I incur if I am granted a Payment Plan?

You will incur the following costs:

(a) An administrative fee to process your Payment Plan, as required by 31 CFR 901.9.

(b) Interest, accrued on your unpaid balance, in accordance with § 171.545.

### § 171.560 What if I fail to make payments as specified in my Payment Plan?

(a) We will discontinue irrigation service until your bill is paid in full;

(b) You will be in default, you will be assessed an administrative fee, and your debt will be immediately forwarded to the United States Treasury in accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

(c) You will be ineligible for Payment Plans for the next 6 years.

### § 171.565 How will I know if BIA plans to adjust my annual operation and maintenance assessment rate?

(a) We provide public notice of our proposed rates annually in the FEDERAL REGISTER.

(b) You may contact the irrigation facility servicing your farm unit.

### § 171.570 What is the Federal Register and where can I get it?

(a) The FEDERAL REGISTER is the official daily publication for Rules, Proposed Rules, and Notices of official actions by Federal agencies and organizations, as well as Executive Orders and other Presidential Documents, and is produced by the United States Government Printing Office (GPO).

(b) You can get publications of the FEDERAL REGISTER:

(1) By going on the World Wide Web at *http://www.gpo.gov*;

(2) By writing to the GPO, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954; or

(3) By calling GPO at (202) 512–1530.

### § 171.575 Can BIA charge me a special assessment?

Yes. We will make every reasonable effort to avoid charging special assessments. However, if we determine that we have a significant uncontrolled cost due to an urgency, we may charge you a special assessment. We will only charge special assessments when there are inadequate project funds available, including any emergency reserve funds held by the project.The special assessment rate will be calculated by dividing the total uncontrolled cost, or some portion of that cost, by the total number of assessable acres. Your individual special assessment will be equal to the special assessment rate multiplied by the number of assessable acres in your farm unit.

## Subpart F—Records, Agreements, and Other Matters

### § 171.600 What information is collected and retained on the irrigation service I receive?

We will collect and retain at least the following information as part of our record of the irrigation service we have provided you:

(a) Your name;

(b) Delivery point(s) where service was provided;

(c) Beginning date and time of your irrigation service;

(d) Ending date and time of your irrigation service; and

(e) Amount of water we delivered to your farm unit.

### § 171.605 Can I establish a Carriage Agreement with BIA?

(a) We may agree in writing to carry third-party water through our facilities to your lands not served by our facilities if we have determined that our facilities have adequate capacity to do so.

(b) If we determine that carrying water in accordance with paragraph (a) of this section is jeopardizing our ability to provide irrigation service to the lands we are required to serve, we will terminate the Agreement.

(c) We may enter into an agreement with a third party to provide service through their facilities to your isolated assessable lands.

(d) You must pay us all administrative, operating, maintenance, and rehabilitation costs associated with any agreement established under this section before we will convey water.

(e) We will notify you in writing no less than five days before terminating a Carriage Agreement established under this section.

(f) We may terminate a Carriage Agreement without notice due to an urgency we have identified.

### § 171.610 Can I arrange an Incentive Agreement if I want to farm idle lands?

We may approve an Incentive Agreement if:

(a) You request one in writing at least 90 days prior to the beginning of the irrigation season that includes a detailed plan to improve the idle lands, which contains at least the following:

(1) A description of specific improvements you will make, such as clearing, leveling, or other activities that will improve idle lands to a condition that supports authorized use of delivered water;

(2) The estimated cost of the improvements you will make;

(3) The time schedule for your proposed improvements;

(4) Your proposed schedule for water delivery, if necessary; and

(5) Justification for use of irrigation water during the improvement period.

(b) You sign our Incentive Agreement containing terms and conditions we specify.

### § 171.615 Can I request improvements to BIA facilities as part of my Incentive Agreement?

Yes. You may request and we may agree to make improvements as part of your Incentive Agreement that we determine are in the best interest of the irrigation facility servicing your farm unit.

## Subpart G—Non-Assessment Status

### § 171.700 When do I not have to pay my annual operation and maintenance assessment?

You do not have to pay your annual operation and maintenance assessment for your land(s) within the service area of your irrigation facility when:

(a) We grant you an Annual Assessment Waiver; or

(b) We grant you an Incentive Agreement which may include waiving your annual operation and maintenance assessment; or

(c) Your land is re-designated as permanently non-assessable or temporarily non-assessable.

### § 171.705 What criteria must be met for my land to be granted an Annual Assessment Waiver?

For your land to be granted an Annual Assessment Waiver, we must determine that our irrigation facilities are not capable of delivering adequate irrigation water to your farm unit. Inadequate water supply due to natural conditions or climate is not justification for us to grant an Annual Assessment Waiver.

### § 171.710 Can I receive irrigation water if I am granted an Annual Assessment Waiver?

No. Water will not be delivered in any quantity to your farm unit if you have been granted an Annual Assessment Waiver.

### § 171.715 How do I obtain an Annual Assessment Waiver?

For your land to be granted an Annual Assessment Waiver, you must:

(a) Send us a request in writing to have your land granted an Annual Assessment Waiver;

(b) Submit your request prior to the bill due date for the year for which you are requesting the Annual Assessment Waiver; and

(c) Receive our approval in writing.

### § 171.720 For what period does an Annual Assessment Waiver apply?

Annual Assessment Waivers are only valid for the year in which they are granted. To obtain an Annual Assessment Waiver for a subsequent year, you must reapply.

# PART 172—PUEBLO INDIAN LANDS BENEFITED BY IRRIGATION AND DRAINAGE WORKS OF MIDDLE RIO GRANDE CONSERVANCY DISTRICT, NEW MEXICO

AUTHORITY: 45 Stat. 312.

### § 172.1 Acreage designated.

Pursuant to the provisions of the act of March 13, 1928 (45 Stat. 312) the contract executed between the Middle Rio Grande Conservancy District of New Mexico and the United States under date of December 14, 1928, the official plan approved pursuant thereto, as modified, and the terms of section 24 of a contract between said parties dated September 4, 1936, dealing among other things with the payment of operation and maintenance and betterment assessments by the United States to the District, and section 24 of a similar contract dated April 8, 1938 executed by the representative of the United States, on this date, it is found that a total of 20,242.05 acres of Pueblo Indian lands of the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta is susceptible of economic irrigation and cultivation and is materially benefited by the works constructed by said District. This acreage is designated as follows:

Lands with recognized water rights not subject to operation and maintenance or betterment charges by the District and designated as ''now irrigated''—8,847

Lands classified as ''newly reclaimed'' lands (exclusive of the purchased area)—11,074.4

Lands classified as newly reclaimed lands (the area recently purchased)—320.65

Total irrigable area materially benefited—20,242.05

[22 FR 10641, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

# PART 173—CONCESSIONS, PERMITS AND LEASES ON LANDS WITHDRAWN OR ACQUIRED IN CONNECTION WITH INDIAN IRRIGATION PROJECTS

Sec.

173.0 Scope.

173.1 Terms used.
173.2 Project engineer's authority.
173.3 Enforcement.
173.4 Permits subject to existing and future rights-of-way.
173.5 Plans, approval thereof.
173.6 Stock grazing.
173.7 Permits, transferable.
173.8 Applications.
173.9 Bonds.
173.10 Payments.
173.11 Supervision of permittees' rates.
173.12 Services from project.
173.13 Permit not a lease.
173.14 Further requirements authorized.
173.15 Permittee subject to State law.
173.16 Reserved area, Coolidge Dam.
173.17 Agricultural and grazing permits and leases.
173.18 Term and renewal of permits.
173.19 Improvements.
173.20 Revocation of permits.
173.21 Notice to vacate.
173.22 Disposition of revenue.
173.23 Organized tribes.

AUTHORITY: 52 Stat. 193; 25 U.S.C. 390.

SOURCE: 22 FR 10642, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 173.0 Scope.

The regulations in this part are promulgated governing the granting of concessions, business, agricultural and grazing leases or permits on reservoir sites, reserves for canals or flowage areas, and other lands withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead and Duck Valley or Western Shoshone irrigation projects.

### § 173.1 Terms used.

When used in this part ''Secretary'' refers to the Secretary of the Interior; ''project'' to the Federal Indian irrigation project on which concession, lease or permit is granted, and ''project engineer'' to the engineer in charge of said project.

### § 173.2 Project engineer's authority.

The project engineer is the official charged with the responsibility for the enforcement of this part. He is vested with the authority to issue temporary concession permits to applicants for periods not to exceed 30 days. All except temporary permits shall become effective when approved by the Secretary.

### § 173.3 Enforcement.

The project engineer shall enforce these and all project regulations now or hereafter promulgated by the Secretary. Willful violation or failure to comply with the provisions of this part and all proper orders of the project engineer shall be cause for revocation of the permit by the Secretary who shall be the judge of what constitutes such violation. The project engineer may suspend any permit for cause. The project engineer shall, immediately after suspending a permit, submit to the Secretary through the Commissioner of Indian Affairs a detailed report of the case, accompanied by his reasons for the action and his recommendations, for final action by the Secretary.

### § 173.4 Permits subject to existing and future rights-of-way.

Use by the permittee of any land authorized under this part shall be subject to the right of the Secretary to establish trails, roads and other rights-of-way including improvements thereupon or through the premises, and the right to use same by the public. No interference shall be permitted with the continued use of all existing roads, trails and other rights-of-way and improvements thereon.

### § 173.5 Plans, approval thereof.

No building or other structure shall be erected by permittee except in accordance with plans, specifications and locations approved by the project engineer. All premises and appurtenances shall be kept in a sanitary, safe and sightly condition.

### § 173.6 Stock grazing.

Permittees may graze upon lands covered by such permits, such stock as may be required in connection with the purposes for which the permit is issued subject to such restrictions and limitations as may be prescribed by the project engineer.

### § 173.7 Permits, transferable.

Permits may be transferred only with the approval of the Secretary.

**§ 173.8 Applications.**

All applications for permits must be made on the approved form. The project engineer will furnish copies of this form upon request. All applications must be executed in triplicate.

**§ 173.9 Bonds.**

Except in cases of temporary concession permits, leases, permits, and traders' licenses granted under parts 166, 162, and 140 of this chapter, which are governed by the requirements of those parts, the applicant shall within 60 days after approval of the application furnish a surety bond for the faithful performance of the terms of the permit in an amount equal to the total sum accruing during the period of the permit. Such bond shall be executed by an approved surety company, or by at least three individual sureties, whose individual unencumbered assets are equal to double the amount of the bond. In the case of temporary concession permits, the permittee shall deposit at the time of receiving the permit, a sum equal to twice the rental, which sum shall, upon the expiration of the permit, be refunded to the permittee, if all the terms and conditions of the permit have been met; otherwise, such sum shall be retained as liquidated damages.

**§ 173.10 Payments.**

Each permittee shall pay at the time of receiving the permit the first year's charge as fixed therein. When a permit extends over a period of years, the next and succeeding payments shall be due and payable annually in advance. The full amount accruing under a temporary permit shall be paid at the time the application is filed.

**§ 173.11 Supervision of permittees' rates.**

All rates or charges collected by a permittee for services rendered by the permittee in the operation of the concession granted under a permit, must be submitted through the project engineer to the Secretary for approval. Copies of the approved rate schedule shall be posted in at least two conspicuous places on the premises. Approved rates may not be changed without first obtaining in the same manner a change in the rate schedule. The Secretary shall have the right to readjust rates charged from time to time and to amend or change any permit issued. Failure to comply with the approved rates automatically makes the permit subject to cancellation.

**§ 173.12 Services from project.**

When the facilities of the project make it possible to supply water for domestic purposes, electricity or any other type of service to the permittee, the cost of connecting the project facilities shall be borne by the permittee and the work must be in accordance with standard practices and accepted by the project engineer, and as provided for in project regulations. All services rendered by the project to the permittee shall be paid for at the existing or modified schedule of rates; or if no schedule has been approved, at a rate to be approved by the Secretary which will reasonably reimburse the project for the cost of such services.

**§ 173.13 Permit not a lease.**

Any permit issued under this part does not grant any leasehold interest nor cover the sale, barter, merchandising, or renting of any supplies or equipment except as therein specified. Any permittee who engages in trade with the Indians must also apply for and receive a trader's license as provided by part 140 of this chapter.

**§ 173.14 Further requirements authorized.**

The project engineer is authorized to incorporate into any proposed permit to meet the needs of any particular case, subject to the approval of the Secretary, such further special requirements as may be agreed upon by him and the applicant, such requirements to be consistent with the general purposes of this part.

**§ 173.15 Permittee subject to State law.**

The holder of any permit issued under this part shall be subject to and abide by the laws and regulations of the United States and State laws if applicable to the conduct of the particular business or activity conducted by the permittee. Violations of this section shall render the permit void

but shall not release the permittee from any obligations arising thereunder.

### § 173.16 Reserved area, Coolidge Dam.

No permit for any commercial business or other activity (except boating concessions confined to the Soda Spring Canyon) shall be issued to any applicant to operate within a radius of three-fourths of a mile from the center of the Coolidge Dam, Arizona.

### § 173.17 Agricultural and grazing permits and leases.

(a) Permits or leases may be granted after the lands set forth in § 173.0 have been classified as to use and then only for the purpose for which the land is classified. Permits for grazing lands suitable for division into range units shall be granted in accordance with part 166 of this chapter; and agricultural lands and all other grazing lands shall be leased in accordance with part 166 of this chapter.

(b) Lands for which leases or permits are granted pursuant to the terms and conditions of this part shall not be eligible for benefit payments under the provisions and conditions of the Crop Control and Soil Conservation Act of April 27, 1935 (49 Stat. 163; 16 U.S.C. 590a), as amended by the act of February 29, 1936 (49 Stat. 1148; 16 U.S.C. 590g), and subsequent amendatory acts.

### § 173.18 Term and renewal of permits.

No concession granted under the provisions of this part shall extend for a period in excess of 10 years. An application for the renewal of a lease, permit, or concession permit shall be treated in the same manner as an original application under this part. Should there be an application or applications other than the renewal application for a permit covering the same area, the renewal application may, if the applicant has met all the requirements of the expiring permit and has been a satisfactory permittee, be given preferential consideration for the renewal of the permit should the applicant meet the highest and most satisfactory offer contained in the several applications.

### § 173.19 Improvements.

Title to improvements constructed on the premises by the permittee shall be fixed and determined by the terms of the permit.

### § 173.20 Revocation of permits.

Any permit issued pursuant to this part may be revoked at any time within the discretion of the Secretary. Agricultural and grazing leases dealt with in § 173.17 shall be subject to cancellation as provided for in the respective parts 162 and 166 of this chapter, and the conditions of the instruments executed pursuant thereto.

### § 173.21 Notice to vacate.

A permittee shall within 10 days after notification in writing of the cancellation of his permit by the Secretary, vacate the premises covered by the said permit. Any person occupying lands dealt with in the act of April 4, 1938 (52 Stat. 193) without an approved permit or lease shall be notified in writing by the project engineer of the requirements of this part and that for the failure of such person to comply with these requirements and receive a permit or lease within 60 days after receipt of the written notice shall constitute a willful violation of this part, and the project engineer shall submit promptly to the Commissioner of Indian Affairs a detailed report concerning the case, together with recommendations looking to the taking of appropriate legal action to remove such person from the area and to the collection of such funds to compensate for any use made of the property or damages suffered thereto.

### § 173.22 Disposition of revenue.

Funds derived from concessions or leases under this part except those so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure under existing law in the operation and maintenance of the irrigation project on which collected and as provided for in part 161 of this chapter. Funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not

been compensated, shall be deposited to the credit of the proper tribe.

### § 173.23 Organized tribes.

Concessions and leases on tribal lands withdrawn or reserved for the purposes specified in the act of April 4, 1938 (52 Stat. 193) and dealt with in this part, of any Indian tribe organized under section 16 of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476) for which the tribe has not been compensated shall be made by the organized tribe pursuant to its constitution or charter: *Provided*, No lease or concession so made shall be inconsistent with the primary purpose for which the lands were reserved or withdrawn.

# PART 175—INDIAN ELECTRIC POWER UTILITIES

## Subpart A—General Provisions

Sec.
175.1 Definitions.
175.2 Purpose.
175.3 Compliance.
175.4 Authority of area director.
175.5 Operations manual.
175.6 Information collection.

## Subpart B—Service Fees, Electric Power Rates and Revenues

175.10 Revenues collected from power operations.
175.11 Procedures for setting service fees.
175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.
175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

## Subpart C—Utility Service Administration

175.20 Gratuities.
175.21 Discontinuance of service.
175.22 Requirements for receiving electrical service.
175.23 Customer responsibilities.
175.24 Utility responsibilities.

## Subpart D—Billing, Payments, and Collections

175.30 Billing.
175.31 Methods and terms of payment.
175.32 Collections.

## Subpart E—System Extensions and Upgrades

175.40 Financing of extensions and upgrades.

## Subpart F—Rights-of-Way

175.50 Obtaining rights-of-way.
175.51 Ownership.

## Subpart G—Appeals

175.60 Appeals to the area director.
175.61 Appeals to the Interior Board of Indian Appeals.
175.62 Utility actions pending the appeal process.

AUTHORITY: 5 U.S.C. 301; sec. 2, 49 Stat. 1039–1040; 54 Stat. 422; sec. 5, 43 Stat. 475–476; 45 Stat. 210–211; and sec. 7, 62 Stat. 273.

SOURCE: 56 FR 15136, Apr. 15, 1991, unless otherwise noted.

## Subpart A—General Provisions

### § 175.1 Definitions.

*Appellant* means any person who files an appeal under this part.

*Area Director* means the Bureau of Indian Affairs official in charge of a designated Bureau of Indian Affairs Area, or an authorized delegate.

*Customer* means any individual, business, or government entity which is provided, or which seeks to have provided, services of the utility.

*Customer service* means the assistance or service provided to customers, other than the actual delivery of electric power or energy, including but not limited to such items as: Line extension, system upgrade, meter testing, connections or disconnection, special meter-reading, or other assistance or service as provided in the operations manual.

*Electric power utility or Utility* means that program administered by the Bureau of Indian Affairs which provides for the marketing of electric power or energy.

*Electric service* means the delivery of electric energy or power by the utility to the point of delivery pursuant to a service agreement or special contract. The requirements for such delivery are set forth in the operations manual.

*Officer-in-Charge* means the individual designated by the Area Director

as the official having day-to-day authority and responsibility for administering the utility, consistent with this part.

*Operations manual* means the utility's written compilation of its procedures and practices which govern service provided by the utility.

*Power rates* means the charges established in a rate schedule(s) for electric service provided to a customer.

*Service* means electric service and customer service provided by the utility.

*Service agreement* means the written form provided by the utility which constitutes a binding agreement between the customer and the utility for service except for service provided under a special contract.

*Service fees* means the charge for providing administrative or customer service to customers, prospective customers, and other entities having business relationships with the utility.

*Special contract* means a written agreement between the utility and a customer for special conditions of service. A special contract may include, but is not limited to, such items as: Street or area lights, traffic lights, telephone booths, irrigation pumping, unmetered services, system extensions and extended payment agreements.

*Utility office(s)* means the current or future facility or facilities of the utility which are used for conducting general business with customers.

### § 175.2 Purpose.

The purpose of this part is to regulate the electric power utilities administered by the Bureau of Indian Affairs.

### § 175.3 Compliance.

All utility customers and the utilities are bound by the rule in this part.

### § 175.4 Authority of area director.

The Area Director may delegate authority under this part to the Officer-in-Charge except for the authority to set rates as described in §§175.10 through 175.13.

### § 175.5 Operations manual.

(a) The Area Director shall establish an operations manual for the administration of the utility, consistent with this part and all applicable laws and regulations. The Area Director shall amend the operations manual as needed.

(b) The public shall be notified by the Area Director of a proposed action to establish or amend the operations manual. Notices of the proposed action shall be published in local newspaper(s) of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall contain: A brief description of the proposed action; the effective date; the name, address, and telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 30 days before the scheduled effective date of the operations manual, or amendments thereto.

(c) After giving consideration to all comments received, the Area Director shall establish or amend the operations manual, as appropriate. A notice of the Area Director's decision and the basis for the decision shall be published and posted in the same manner as the previous notices.

### § 175.6 Information collection.

The information collection requirements contained in §175.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. This information is being collected to provide electric power service to customers. Response to this request is ''required to obtain a benefit.'' Public reporting for this information collection is estimated to average .5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 337–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Project 1076–0021, Office of Management and Budget, Washington, DC 20502.

## Subpart B—Service Fees, Electric Power Rates and Revenues

### § 175.10 Revenues collected from power operations.

The Area Director shall set service fees and electric power rates in accordance with the procedures in §§175.11 and 175.12 to generate power revenue.

(a) *Revenues*. Revenues collected from power operations shall be administered for the following purposes, as provided in the Act of August 7, 1946 (60 Stat. 895), as amended by the Act of August 31, 1951 (65 Stat. 254):

(1) Payment of the expenses of operating and maintaining the utility;

(2) Creation and maintenance of reserve Funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the utility;

(3) Amortization, in accordance with repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and

(4) Payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(b) *Rate and fee reviews*. Rates and fees shall be reviewed at least annually to determine if project revenues are sufficient to meet the requirements set forth in paragraph (a) of this section. The review process shall be as prescribed by the Area Director.

### § 175.11 Procedures for setting service fees.

The Area Director shall establish, and amend as needed, service fees to cover the expense of customer service. Service fees shall be set by unilateral action of the Area Director and remain in effect until amended by the Area Director pursuant to this section. At least 30 days prior to the effective date, a schedule of the service fees, together with the effective date, shall be published in local newspaper(s) of general circulation and posted in the utility office(s). The Area Director's decision shall be final for the Department of the Interior.

### § 175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.

Except for adjustments to rates due to changes in the cost of purchased power or energy, the Area Director shall adjust electric power rates according to the following procedures:

(a) Whenever the review described in §175.10(b) of this part indicates that an adjustment in rates may be necessary for reasons other than a change in cost of purchased power or energy, the Area Director shall direct further studies to determine whether a rate adjustment is necessary and, if indicated, prepare rate schedules.

(b) Upon completion of the rate studies, and where a rate adjustment has been determined necessary, the Area Director shall conduct public information meetings as follows:

(1) Notices of public meetings shall be published in local newspapers of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall provide: The date, time, and place of the scheduled meeting; a brief description of the action; the name, the address, and the telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 15 days before the scheduled date of the meeting.

(2) Written and oral statements shall be received at the public meetings. The record of the public meeting shall remain open for the filing of written statements for five days following the meeting.

(c) After giving consideration to all written and oral statements, the Area Director shall make a decision about a rate adjustment. A notice of the Area Director's decision, the basis for the decision, and the adjusted rate schedule(s), if any, shall be published and posted in the same manner as the previous notices of public meetings.

(d) Rates shall remain in effect until further adjustments are approved by the Area Director pursuant to this part.

**§ 175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.**

Whenever the cost of purchased power or energy changes, the effect of the change on the cost of service shall be determined and the Area Director shall adjust the power rates accordingly. Rate adjustments due to the change in cost of purchased power or energy shall become effective upon the unilateral action of the Area Director and shall remain in effect until amended by the Area Director pursuant to this section. A notice of the rate adjustment, the basis for the adjustment, the rate schedule(s) shall be published and posted in the same manner as described in § 175.12(c) of this part. The Area Director's decision shall be final for the Department of the Interior.

## Subpart C—Utility Service Administration

**§ 175.20 Gratuities.**

All employees of the utility are forbidden to accept from a customer any personal compensation or gratuity rendered related to employment by the utility.

**§ 175.21 Discontinuance of service.**

Failure of customer(s) to comply with utility requirements as set forth in this part and the operations manual may result in discontinuance of service. The procedure(s) for discontinuance of service shall be set forth in the operations manual.

**§ 175.22 Requirements for receiving electrical service.**

In addition to the other requirements of this part, the customer, in order to receive electrical service, shall enter into a written service agreement or special contract for electrical power services.

**§ 175.23 Customer responsibilities.**

The customer(s) of a utility subject to this part shall:

(a) Comply with the National Electrical Manufacturers Association Standards and/or the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus as they apply to the installation and operation of customer-owned equipment;

(b) Be responsible for payment of all financial obligations resulting from receiving utility service;

(c) Comply with additional requirements as further defined in the operations manual;

(d) Not operate or handle the utility's facilities without the express permission of the utility;

(e) Not allow the unauthorized-use of electricity; and

(f) Not install or utilize equipment which will adversely affect the utility system or other customers of the utility.

**§ 175.24 Utility responsibilities.**

A utility subject to this part shall:

(a) Endeavor to provide safe and reliable energy to its customers. The specific types of service and limitations shall be further defined in the operations manual;

(b) Construct and operate facilities in accordance with accepted industry practice;

(c) Exercise reasonable care in protecting customer-owned equipment and property;

(d) Comply with additional requirements as further defined in the operations manual;

(e) Read meters or authorize the customer(s) to read meters at intervals prescribed in the operations manual, service agreement, or special contract, except in those situations where the meter cannot be read due to conditions described in the operations manual;

(f) Not operate or handle customer-owned equipment without the express permission of the customer, except to eliminate what, in the judgment of the utility, is an unsafe condition; and

(g) Not allow the unauthorized use of electricity.

## Subpart D—Billing, Payments, and Collections

**§ 175.30 Billing.**

(a) *Metered customers.* The utility shall render bills at monthly intervals unless otherwise provided in special contracts. Bills shall be based on the

applicable rate schedule(s). Unless otherwise determined, the amount of energy and/or power demand used by the customer shall be as determined from the register on the utility's meter at the customer's point of delivery. A reasonable estimate of the amount of energy and/or power demand may be made by the utility in the event a meter is found with the seal broken, the utility's meter fails, utility personnel are unable to obtain actual meter registrations, or as otherwise agreed by the customer and the utility. Estimates shall be based on the pattern of the customer's prior consumption, or on an estimate of the customer's electric load where no billing history exists.

(b) *Unmetered customers*. Bills shall be determined and rendered as provided in the customer's special contract.

(c) *Service fee billing*. The utility shall render service fee bills to the customer(s) as a special billing.

### § 175.31 Methods and terms of payment.

Payments shall be made in person or by mail to the utility's office designated in the operations manual. The utility may refuse, for cause, to accept personal checks for payment of bills.

### § 175.32 Collections.

The utility shall attempt collection on checks returned by the customer's bank due to insufficient funds or other cause. An administrative fee shall be charged for each collection action taken by the utility other than court proceedings. An unredeemed check shall cause the customer's account to become delinquent, which may be cause for discontinuance of service. Only legal tender, a cashier's check, or a money order shall be accepted by the utility to cover an unredeemed check and associated charges.

## Subpart E—System Extensions and Upgrades

### § 175.40 Financing of extensions and upgrades.

(a) The utility may extend or upgrade its electric system to serve additional loads (new or increased loads).

(b) If funds are not available, but the construction would not be adverse to the interests of the utility, a customer may contract with the utility to finance all necessary construction.

(1) A customer may be allowed to furnish required material or equipment for an extension or upgrade or to install such items or to pay the utility for such installation. Any items furnished or construction performed by the customer shall comply with the applicable plans and specifications approved by the utility.

(2) The utility may arrange to refund all or part of a customer's payment of construction costs if additional customers are later served by the same extension or if the Area Director determines that the service will provide substantial economic benefits to the utility. All arrangements for refunds shall be stipulated in a special contract.

## Subpart F—Rights-of-Way

### § 175.50 Obtaining rights-of-way.

Where there is no existing right(s)-of-way for the utility's facilities, the customer shall be responsible for obtaining all rights-of-way necessary to the furnishing of service.

### § 175.51 Ownership.

All rights-of-way, material, or equipment furnished and/or installed by a customer pursuant to this part shall be and remain the property of the United States.

## Subpart G—Appeals

### § 175.60 Appeals to the area director.

(a) Any person adversely affected by a decision made under this part by a person under the authority of an Area Director may file a notice of appeal with the Area Director within 30 days of the personal delivery or mailing of the decision. The notice of appeal shall be in writing and shall clearly identify the decision being appealed. No extension of time shall be granted for filing a notice of appeal.

(b) Within 30 days after a notice of appeal has been filed, the appellant shall file a statement of reason(s) with the Area Director. The statement of

reason(s) shall explain why the appellant believes the decision being appealed is in error, and shall include any argument(s) that the appellant wishes to make and any supporting document(s). The statement of reason(s) may be filed at the same time as the notice of appeal. If no statement of reason(s) is filed, the Area Director may summarily dismiss the appeal.

(c) Documents are properly filed with the Area Director when they are received in the facility officially designated for receipt of mail addressed to the Area Director, or in the immediate office of the Area Director.

(d) Within 30 days of filing of the statement of reason(s), the Area Director shall:

(1) Render a written decision on the appeal, or

(2) Refer the appeal to the Office of Hearings and Appeals Board of Indian Appeals for decision.

(e) Where the Area Director has not rendered a decision with 30 days of filing of the statement of reasons, the appellant may file an appeal with the Office of Hearings and Appeals Board of Indian Appeals pursuant to § 175.61.

### § 175.61 Appeals to the Interior Board of Indian Appeals.

(a) An Area Director's decision under this part, except a decision under § 175.11 or 175.13, may be appealed to the Office of Hearings and Appeals Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D, except that a notice of appeal from a decision under § 175.12 shall be filed within 30 days of publication of the decision. The address for the Interior Board of Indian Appeals shall be included in the operations manual.

(b) Where the Area Director determines to refer an appeal to the Office of Hearings and Appeals Board of Indian Appeals, in lieu of deciding the appeal, he/she shall be responsible for making the referral.

(c) If no appeal is timely filed with the Office of Hearings and Appeals Board of Indian Appeals, the Area Director's decision shall be final for the Department of the Interior.

### § 175.62 Utility actions pending the appeal process.

Pending an appeal, utility actions relating to the subject of the appeal shall be as follows:

(a) If the appeal involves discontinuance of service, the utility is not required to resume such service during the appeal process unless the customer meets the utility's requirements.

(b) If the appeal involves the amount of a bill and:

(1) The customer has paid the bill, the customer shall be deemed to have paid the bill under protest until the final decision has been rendered on the appeal; or

(2) The customer has not paid the bill and the final decision rendered in the appeal requires payment of the bill, the bill shall be handled as a delinquent account and the amount of the bill shall be subject to interest, penalties, and administrative costs pursuant to section 3 of the Federal Claims Collection Act of 1966, As amended, 31 U.S.C. 3717.

(c) If the appeal involves an electric power rate, the rate shall be implemented and remain in effect subject to the final decision on the appeal.

## PART 179—LIFE ESTATES AND FUTURE INTERESTS

### Subpart A—General

Sec.
179.1 What is the purpose of this part?
179.2 What definitions do I need to know?
179.3 What law applies to life estates?
179.4 When does a life estate terminate?
179.5 What documents will the BIA use to record termination of a life estate?

### Subpart B—Life Estates Not Created Under AIPRA

179.101 How does the Secretary distribute principal and income to the holder of a life estate?
179.102 How does the Secretary calculate the value of a remainder and a life estate?

### Subpart C—Life Estates Created Under AIPRA

179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?

179.202 Can the holder of a life tenancy without regard to waste deplete the resources?

AUTHORITY: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201 *et seq.*

SOURCE: 73 FR 67286, Nov. 13, 2008, unless otherwise noted.

## Subpart A—General

### § 179.1 What is the purpose of this part?

This part contains the authorities, policies, and procedures governing the administration of life estates and future interests in trust and restricted property by the Secretary of Interior. This part does not apply to any use rights assigned to tribal members by tribes in the exercise of their jurisdiction over tribal lands.

(a) Subpart A contains general provisions.

(b) Subpart B describes life estates not created under the American Indian Probate Reform Act of 2004 (AIPRA), as described in § 179.3(b).

(c) Subpart C describes life estates created under AIPRA, as described in § 179.3(a).

### § 179.2 What definitions do I need to know?

*Agency* means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property. This term also means any office of a tribe that has entered into a contract or compact to fulfill applicable BIA functions.

*AIPRA* means the American Indian Probate Reform Act of 2004, Pub. L. 108–374, as codified at 25 U.S.C. 2201 *et seq.*

*BIA* means the Bureau of Indian Affairs within the Department of Interior.

*Contract bonus* means cash consideration paid or agreed to be paid as incentive for execution of a contract.

*Income* means the rents and profits of real property and the interest on invested principal.

*Life estate* means an interest in property held for only the duration of a designated person's life. A life estate may be created by a conveyance document or by operation of law.

*Life estate without regard to waste* means that the holder of the life estate interest in land is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

*Principal* means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

*Rents and profits* means the income or profit arising from the ownership or possession of property.

*Restricted property* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property.

Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or authorized representative.

*Trust property* means real property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

### § 179.3 What law applies to life estates?

(a) AIPRA applies to life estates created by operation of law under AIPRA for an individual who died on or after June 20, 2006, owning trust or restricted property.

(b) In the absence of Federal law or federally approved tribal law to the contrary, State law applies to all other life estates.

### § 179.4 When does a life estate terminate?

A life estate terminates upon relinquishment or upon the death of the measuring life.

### § 179.5 What documents will BIA use to record termination of a life estate?

The Agency will file a copy of the relinquishment of the interest or death

certificate with the BIA Land Title and Records Office for recording upon receipt of one of the following:

(a) The life estate holder's relinquishment of an interest in trust or restricted property; or

(b) Notice of death of a person who is the measuring life for the life estate in trust or restricted property.

## Subpart B—Life Estates Not Created Under AIPRA

### § 179.101 How does the Secretary distribute principal and income to the holder of a life estate?

(a) This section applies to the following cases:

(1) Where the document creating the life estate does not specify a distribution of proceeds;

(2) Where the vested holders of remainder interests and the life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or

(3) Where, by the document or agreement or by the application of State law, the open mine doctrine does not apply.

(b) In all cases listed in paragraph (a) of this section, the Secretary must do the following:

(1) Distribute all rents and profits, as income, to the life tenant;

(2) Distribute any contract bonus one-half each to the life tenant and the remainderman;

(3) In the case of mineral contracts:

(i) Invest the principal, with interest income to be paid to the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case paragraph (b)(4) of this section applies; and

(ii) Distribute the principal to the remainderman upon termination of the life estate; and

(4) In all other instances:

(i) Distribute the principal immediately according to § 179.102; and

(ii) Invest all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

### § 179.102 How does the Secretary calculate the value of a remainder and a life estate?

(a) If income is subject to division, the Secretary will use Actuarial Table S, Valuation of Annuities, found at 26 CFR 20.2031, to determine the value of the interests of the holders of remainder interests and the life tenant.

(b) Actuarial Table S, Valuation of Annuities, specifies the share attributable to the life estate and remainder interests, given the age of the life tenant and an established rate of return published by the Secretary in the FEDERAL REGISTER. We may periodically review and revise the percent rate of return to be used to determine the share attributable to the interests of the life tenant and the holders of remainder interests. The life tenant will receive the balance of the distribution after the shares of the holders of remainder interests have been calculated.

## Subpart C—Life Estates Created Under AIPRA

### § 179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?

The Secretary must distribute all income, including bonuses and royalties, to the life estate holder to the exclusion of any holders of remainder interests.

### § 179.202 May the holder of a life estate without regard to waste deplete the resources?

Yes. The holder of a life estate without regard to waste may cause lawful depletion or benefit from the lawful depletion of the resources. However, a holder of a life estate without regard to waste may not cause or allow damage to the trust property through culpable negligence or an affirmative act of malicious destruction that causes damage to the prejudice of the holders of remainder interests.

# PART 181—INDIAN HIGHWAY SAFETY PROGRAM

Sec.

181.1 Purpose.

181.2 Definitions.
181.3 Am I eligible to receive a program grant?
181.4 How do I obtain an application?
181.5 How are applications ranked?
181.6 How are applicants informed of the results?
181.7 Appeals.

AUTHORITY: 23 U.S.C. 402; 25 U.S.C. 13.

SOURCE: 62 FR 55331, Oct. 24, 1997, unless otherwise noted.

### § 181.1 Purpose.

This part will assist the BIA Indian Highway Safety Program Administrator to disperse funds DOT/NHTSA has made available. The funds assist selected tribes with their proposed Highway Safety Projects. These projects are designed to reduce traffic crashes, reduce impaired driving crashes, increase occupant protection education, provide Emergency Medical Service training, and increase police traffic services.

### § 181.2 Definitions.

*Appeal* means a written request for review of an action or the inaction of an official of the BIA that is claimed to adversely affect the interested party making the request.

*Applicant* means an individual or persons on whose behalf an application for assistance and/or services has been made under this part.

*Application* means the process through which a request is made for assistance or services.

*Grant* means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct, or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

*Grantee* means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

*Recipient* means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

### § 181.3 Am I eligible to receive a program grant?

The Indian Highway Safety Program grant is available to any federally recognized tribe. Because of the limited financial resources available for the program, the Bureau of Indian Affairs (BIA) is unable to award grants to all applicants. Furthermore, some grant recipients may only be awarded a grant to fund certain aspects of their proposed tribal projects.

### § 181.4 How do I obtain an application?

BIA mails grant application packages for a given fiscal year to all federally recognized tribes by the end of February of the preceding fiscal year. Additional application packages are available from the Program Administrator, Indian Highway Safety Program, P.O. Box 2003, Albuquerque, New Mexico 87103. Each application package contains the necessary information concerning the application process, including format, content, and filing requirements.

### § 181.5 How are applications ranked?

BIA ranks each timely filed application by assigning points based upon four factors.

(a) *Factor No. 1—Magnitude of the problem* (Up to 50 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether a highway safety problem exists.

(2) Whether the problem is significant.

(3) Whether the proposed tribal project will contribute to resolution of the identified highway safety problem.

(4) The number of traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(5) The number of alcohol-related traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(6) The number of reported traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(7) The number of reported alcohol-related traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(b) *Factor No. 2—Countermeasure selection* (Up to 40 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the countermeasures selected are the most effective for the identified highway safety problem.

(2) Whether the countermeasures selected are cost effective.

(3) Whether the applicant's objectives are realistic and attainable.

(4) Whether the applicant's objectives are time framed and, if so, whether the time frames are realistic and attainable.

(c) *Factor No. 3—Tribal Leadership and Community Support* (Up to 10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the applicant proposes using tribal resources in the project.

(2) Whether the appropriate tribal governing body supports the proposal plan, as evidenced by a tribal resolution or otherwise.

(3) Whether the community supports the proposal plan, as evidenced by letters or otherwise.

(d) *Factor No. 4—Past Performance* (+ or −10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Financial and programmatic reporting requirements.

(2) Project accomplishments.

### § 181.6 How are applicants informed of the results?

BIA will send a letter to all applicants notifying them of their selection or non-selection for participation in the Indian Highway Safety Program for the upcoming fiscal year. BIA will explain to each applicant not selected for participation the reason(s) for non-selection.

### § 181.7 Appeals.

You may appeal actions taken by BIA officials under this part by following the procedures in 25 CFR part 2.

# PART 183—USE AND DISTRIBUTION OF THE SAN CARLOS APACHE TRIBE DEVELOPMENT TRUST FUND AND SAN CARLOS APACHE TRIBE LEASE FUND

## Subpart A—Introduction

Sec.
183.1 What is the purpose of this part?
183.2 What terms do I need to know?
183.3 Does the American Indian Trust Fund Management Reform Act of 1994 apply to this part?

## Subpart B—Trust Fund Disposition

USE OF PRINCIPAL AND INCOME

183.4 How can the Tribe use the principal and income from the Trust Fund?

CLEARANCE REQUIREMENTS

183.5 What documents must the Tribe submit to request money from the Trust Fund?
183.6 How long will it take to get a decision?
183.7 What would cause the Secretary to disapprove a request?

LIMITATIONS

183.8 How can the Tribe spend funds?

## Subpart C—Lease Fund Disposition

USE OF PRINCIPAL AND INCOME

183.9 Can the Tribe request the principal of the Lease Fund?
183.10 How can the Tribe use income from the Lease Fund?

CLEARANCE REQUIREMENTS

183.11 What documents must the Tribe submit to request money from the Lease Fund?
183.12 How long will it take to receive a decision?
183.13 What would cause the Secretary to disapprove a request?

LIMITATIONS

183.14 What limits are there on how the Tribe can spend funds?

## Subpart D—Reports

183.15 Must the Tribe submit any reports?
183.16 What information must be included in the Tribe's annual report?

### Subpart E—Liability

183.17 If expenditures under this part lead to a claim or cause of action, who is liable?
183.18 Information collection requirements

AUTHORITY: Pub. L. 102–575, 106 Stat. 4740 *et seq.*

SOURCE: 66 FR 21088, Apr. 27, 2001, unless otherwise noted.

## Subpart A—Introduction

### § 183.1 What is the purpose of this part?

This part implements section 3707(e) of the San Carlos Apache Tribe Water Settlement Act (the Act), Public Law 102–575, 106 Stat. 4748, that requires regulations to administer the Trust Fund, and the Lease Fund established by the Act.

### § 183.2 What terms do I need to know?

In this part:

*Administrative costs* means any cost, including indirect costs, incurred by the Tribe reasonably related to an allowed use of funds under the Settlement Act, including indirect costs.

*Beneficial use* means any use to which the Tribe's water entitlement is put that is authorized by the Settlement Act, the Settlement Agreement, or by the Tribal Council under the Settlement Act, the Settlement Agreement or otherwise permitted by law.

*CAP* means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 *et seq.*).

*Community development project or purpose* means any business, recreational, social, health, education, environment, or general welfare project approved by the Tribal Council for the benefit of any community within the reservation.

*Economic development project or purpose* means any commercial, industrial, agricultural, or business project approved by the Tribal Council for the purpose of profit to the Tribe.

*Income* means interest or income earned or accrued on the principal of the Trust Fund or the Lease Fund and is available for distribution to the Tribe in accordance with the Settlement Act and this part. Beginning with calendar year 2001, any income that has been earned or has accrued on the principal of the Trust Fund or the Lease Fund and that has not been requested for distribution by the Tribe by December 31, shall become part of the principal of the Trust Fund or the Lease Fund on January 1 of the next calendar year.

*Lease Fund* means the San Carlos Apache Tribe Lease Fund established in the Treasury of the United States under section 3711(d)(3)(E)(iv) of the Settlement Act.

*Principal* means:

(1) The amount of funds in the Trust Fund or the Lease Fund as of January 1, 2002; and

(2) Any income thereon that is not distributed, and has been added to the principal, in accordance with the Settlement Act and this part.

*Pro forma budget* means a budget, and operating statement, showing the estimated results for operating the economic development project for two years after injection of the principal or income into the operation.

*Secretary* means the Secretary of the Interior or an authorized representative acting under delegated authority. The term ''Secretary':

(1) Includes the Regional Director for the Western Regional Office of the Bureau of Indian Affairs; and

(2) Does not include the Superintendent of the San Carlos Agency of the Bureau of Indian Affairs.

*Settlement Act* means the San Carlos Apache Tribe Water Settlement Act of 1992, Title XXXVII of Public Law 102–575, 106 Stat. 4740, and any amendments thereto.

*Settlement Agreement* means the agreement and any amendments executed and approved in accordance with the Settlement Act.

*Tribe* means the San Carlos Apache Tribe, a Tribe of Apache Indians, under the Apache Treaty, July 1, 1852, 10 Stat. 970, organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary of the Interior.

*Trust Fund* means the San Carlos Apache Tribe Development Trust Fund established in the Treasury of the

United States under section 3707(b) of the Settlement Act.

*We* and *us* mean the Secretary of the Interior as defined in this section.

### § 183.3 Does the American Indian Trust Fund Management Reform Act of 1994 apply to this part?

Yes. We will manage and make distributions from the Trust Fund in accordance with the American Indian Trust Funds Management Act of 1994 (Management Act), except where the Management Act conflicts with the Settlement Act or this part. If there is a conflict, we will follow the provisions of the Settlement Act or this part.

## Subpart B—Trust Fund Disposition

USE OF PRINCIPAL AND INCOME

### § 183.4 How can the Tribe use the principal and income from the Trust Fund?

The Tribe may use the principal and income from the Trust Fund in the following ways:

(a) To put to beneficial use the water entitlement provided to the Tribe in the Settlement Act;

(b) To defray the cost to the Tribe of CAP operation, maintenance, and replacement charges;

(c) For economic development purposes; provided, however, that principal may only be used for long-term economic development projects and income may be used for other economic and community development purposes; and

(d) For Administrative Costs reasonably related to the above uses.

CLEARANCE REQUIREMENTS

### § 183.5 What documents must the Tribe submit to request money from the Trust Fund?

To request a distribution of principal or income from the Trust Fund, the Tribe must submit to us all of the following documents.

(a) A certified copy of a duly enacted resolution of the Tribal Council requesting a distribution from the Trust Fund;

(b) A written budget and supporting documentation, approved by the Tribal Council, showing precisely how the tribe will spend the money, including what amounts should come from principal and what amounts should come from income;

(c) A pro forma budget for each identified economic development project, and a program budget for each identified community development project; and

(d) A certification stating that the Tribe will use the funds in accordance with budgets submitted under this section.

### § 183.6 How long will it take to get a decision?

Within 30 days of receiving the information required by § 183.5 we will approve your request if it complies with the Settlement Act and this part. If we disapprove your request we will do so in writing and will provide you with the reasons for disapproval.

### § 183.7 What would cause the Secretary to disapprove a request?

We will only disapprove a request for the distribution of principal or income from the Trust Fund if the request does any of the following:

(a) Fails to provide the documents identified in § 183.5;

(b) Fails to provide reports required under §§ 183.15 and 183.16; or

(c) Includes a use requested or written budget that does not comply with a specific provision of the Settlement Act, or this part.

LIMITATIONS

### § 183.8 How can the Tribe spend funds?

(a) The Tribe must spend principal or income distributed from the Trust Fund only in accordance with a written budget submitted under § 183.5.

(b) The Tribe must not spend the principal or income from the Trust Fund to make per capita payments to members of the Tribe.

## Subpart C—Lease Fund Disposition

USE OF PRINCIPAL AND INCOME

### § 183.9 Can the Tribe request the principal of the Lease Fund?

No. We cannot distribute the principal from the Lease Fund to the Tribe.

### § 183.10 How can the Tribe use income from the Lease Fund?

The Tribe may use income from the Lease Fund for the following purposes:

(a) For economic development purposes;

(b) For community development purposes; and

(c) For administrative costs reasonably related to the above.

CLEARANCE REQUIREMENTS

### § 183.11 What documents must the Tribe submit to request money from the Lease Fund?

To request a distribution of income from the Lease Fund, the Tribe must submit to us all of the following documents:

(a) A certified copy of a duly enacted resolution of the Tribal Council requesting a distribution from the Lease Fund;

(b) A pro forma budget for each identified economic development project and a program budget for each identified community development project, approved by the Tribal Council, showing precisely how the Tribe will spend the money;

(c) Supporting documentation for the budgets required by paragraph (b) of this section, and

(d) A certification stating that the Tribe will use the funds in accordance with budgets submitted under this section.

### § 183.12 How long will it take to receive a decision?

Within 30 days of receiving the information required by § 183.11 we will approve your request if it complies with the Settlement Act and this part. If we disapprove your request we will do so in writing and will provide you with the reasons for disapproval.

### § 183.13 What would cause the Secretary to disapprove a request?

We will only disapprove a request for distribution of income from the Lease Fund if the request does any of the following:

(a) Fails to provide the documents identified in § 183.5;

(b) Fails to provide reports required under §§ 183.15 and 183.16; or

(c) Includes a use requested or written budget that does not comply with a specific provision of the Settlement Act or this part.

LIMITATIONS

### § 183.14 What limits are there on how the Tribe can spend funds?

(a) The Tribe must spend income distributed from the Lease Fund only in accordance with a written budget submitted under § 183.5.

(b) The Tribe must not spend the income from the Lease Fund to make per capita payments to members of the Tribe.

## Subpart D—Reports

### § 183.15 Must the Tribe submit any reports?

Yes. The Tribe must submit the following reports after receiving funds under this part:

(a) An Annual Report, that must be submitted no later than December 31 of each year; and

(b) A Financial Audit, that must be submitted no later than March 1 of each year.

### § 183.16 What information must be included in the Tribe's annual report?

The Tribe's annual report must contain the following information:

(a) An accounting of the expenditures of funds distributed to the Tribe from the Trust Fund or the Lease Fund for the preceding 12 months;

(b) A description, in detail, of how the Tribe has used the funds distributed from the Trust Fund or the Lease Fund consistently with the requirements in the Settlement Act, this part, and the budget approved by the Tribal Council and the Secretary; and

(c) Sufficient documentation for us to determine that the Tribe has satisfied the requirements of paragraph (b) of this section.

## Subpart E—Liability

### § 183.17 If expenditures under this part lead to a claim or cause of action, who is liable?

The Tribe may be liable. The United States must not be liable for any claim or cause of action arising from the Tribe's use or expenditure of monies distributed from the Trust Fund or the Lease Fund.

### § 183.18 Information collection requirements

The information collection requirements contained in this part do not meet the requirements of ''ten or more persons'' annually; therefore, the Office of Management and Budget does not need to clear the collection. You may direct comments concerning this information collection to the Bureau of Indian Affairs, Information Collection Control Officer, 1849 C Street, NW, Washington, DC 20240.