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25 CFR Part 15, et al.

Trust Management Reform: Leasing/Permitting, Grazing, Probate and Funds Held in Trust; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 15, 114, 115, 162 and 166

RIN 1076–AE00

Trust Management Reform: Leasing/Permitting, Grazing, Probate and Funds Held in Trust

AGENCY: Bureau of Indian Affairs.

ACTION: Final Rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), revises its regulations in the areas of probate, funds held in trust for Indian tribes and individual Indians, leasing/permitting, and grazing. These revisions are meant to further fulfill the Secretary's fiduciary responsibility to federally-recognized tribes and individual Indians. Particularly, revisions to the probate regulations institute necessary procedures to expedite the probate process for Indian decedents' estates. Revisions to regulations dealing with funds held in trust standardize the process for collecting, distributing, and accounting for individual Indian monies and monies held in trust for tribal governments. Revisions to leasing/permitting regulations implement the Indian Agricultural Resource Management Act and address appropriate procedures for entering into leases and permits on Indian lands and, more importantly, aid in properly determining and accounting for the value of such leases to individual land owners and tribal entities. Revisions in the grazing permit regulations address similar concerns and further standardize the process and forms utilized in granting permits on Indian lands. In the interests of economy of administration, and because all the revisions clarify and standardize Departmental policy, they are illustrated in one rulemaking vehicle.

EFFECTIVE DATE: March 23, 2001.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW., MS 7412 MIB, Washington, DC 20240, telephone 202/208–4582.

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I. Background

Pursuant to the Department's ''Trust Management Improvement Project—High Level Implementation Plan,'' certain parts within 25 CFR were identified for immediate revision. These parts were identified through an internal review by the Bureau of Indian Affairs (BIA) in consultation with the Office of the Special Trustee for American Indians (OST), and from tribal responses to consultations held in the field over a period of years. Additionally, non-governmental Indian organizations were consulted on areas of BIA trust management needing clarification and more uniform application of policy and administration throughout Indian Country. This rulemaking was initiated as an appropriate response to the Administration's stated goal of improving the administration and management of individual Indian and tribal trust resources. The Final Rule was developed with attention to Secretarial Order 3215, ''Principles for the Discharge of the Secretary's Trust Responsibility,'' of April 28, 2000, which was converted to and made permanent in the Departmental Manual on October 31, 2000. **See** 303 DM 2.

The proposed regulation was published in the **Federal Register** on July 14, 2000, (65 FR 43874) with a 90-day public comment period. During the comment period, the BIA held eight formal tribal consultation sessions to discuss the proposed regulations and receive oral comments on the record. Additionally, the BIA met informally with the interested organizations, such as the policies and procedures working group formed with the National Congress of American Indians (NCAI) and the Inter-Tribal Agricultural Council, and encouraged them to provide written comments.

Comments were forwarded to a clearinghouse for compilation, and responses by the BIA to substantive comments are noted below. The comments and compilation documents were carefully reviewed by the regulation drafting teams, made up of BIA employees from central, regional and agency offices, and trust program attorneys from the Solicitor's Office. As noted in the part-by-part analysis below, in direct response to comments the regulations have been clarified and reorganized. Additionally, some sections have been deleted, while new provisions have been added to provide for increased clarity and precision. The regulations generally have been revised to afford greater recognition of tribal sovereignty and self-determination, as well as greater recognition of the inherent rights of the Indian landowners. Time frames for BIA or Departmental action have been added, as have provisions identifying the entity within the Department responsible for taking official action. Further, we have strengthened the provisions for the BIA's enforcement of leases and permits on trust and restricted lands, including collection of trust income. Further, we have revised and standardized the provisions in each part that address the creation and maintenance of trust records.

As we explain below in the part-by-part analysis, the passage of the Indian Land Consolidation Act Amendments of 2000, Public Law 106–462 (ILCA Amendments), extensively alters the legal framework governing activities on fractionated trust and restricted lands. As a result, at this time the Department will not issue new final regulations affecting business and residential leases. Such regulations will be re-proposed after the full impact of the ILCA Amendments is fully ascertained and more consultation with tribes is held.

Lastly, as explained more fully below, in order to accommodate many of the comments pertaining to Individual Indian Money (IIM) accounts, including supervised accounts and the use of IIM accounts to secure loans, the BIA will not issue final regulations in part 115 that would directly address these subjects. These provisions will be re-proposed for further comment and consultations.

To facilitate comparison between the Proposed Rule and the Final Rule, we have provided the following tables. Sections deleted from the Proposed Rule are denoted with asterisks (**) in the final regulation columns, and new sections added to the final regulations are denoted by their section numbers and a plus (+) sign in the column for final regulations.

25 CFR Part 15.—Probate of Indian Estates Except for Members of the Five Civilized Tribes

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.1	.104	.106	.202	.202	.303	.303	.310	.310	.....	+.405
.2	.2	.105	.104	.203	.203	.304	.304	.311	.311	.405	.403
.3	.3	.106	.105	.204	.206	.305	.305	.312	.312	.501	.501
.4	.4	.107	.107	.205	**	.306	.306	.401	.401	.502	.502
.101	.101	.108	.108	.206	.205	.307	.307	.402	.402	.503	**
.102	.102	.109	.109	.301	.301	.308	.308	.403	.403	.....	+.503
.103	.103	.201	.201	.302	.302	.309	.309	.404	.404	.....	+.504

25 CFR Part 115.—Trust Funds for Tribes and Individual Indians

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.001	.208	.812	.311	**	.337	.502	.363	**	.389	**	.506	.607
.2	.002	.209	**	.312	**	.338	.503	.364	.418	.390	**	.507	.608
.100	.700	.210	.806	.313	**	.339	.504	.365	.413	.400	.900	.508	.609
.101	.701	.211	.814	.314	.409	.340	.403	.366	.428	.....	+.400	.509	.610
.102	.103	.212	.818	.315	.416	.341	**	.367	.429	.401	.901	.510	.611
.102	.702	.213	.819	.316	**	.342	**	.368	.430	.....	+.401	.511	.612
.103	.805	.214	.820	.317	**	.343	**	.369	**	.402	.902	.512	.613
.104	**	.215	.808	.318	**	.344	.422	.370	.431	.340	+.402	.513	.614
.105	**	.216	.809	.319	**	.345	.423	.371	**	.403	.903	.514	.615
.106	.703	.216	.813	.320	**	.346	.424	.372	**	.404	.904	.....	+.606
.107	.705	.217	.810	.321	**	.347	.425	.373	**	.....	+.406	.....	+.616
.108	.706	.218	.811	.322	**	.348	.102	.374	**	.314	+.407	.515	.617
.109	.707	.219	.815	.323	**	.349	**	.375	**	.....	+.408	.516	.618
.110	.708	.220	.816	.324	**	.350	**	.376	**	.....	+.412	.517	.619
.111	.710	.221	.817	.325	**	.351	**	.377	**	.....	+.414	.518	.620
.112	.711	.300	**	.326	**	.352	**	.378	**	.....	+.419	.600	.107
.113	.712	.301	**	.327	**	.353	**	.379	**	.358	+.421	.700	.1000
.114	.713	.302	**	.328	.102	.354	**	.380	**	.....	+.500	.701	**
.200	.800	.303	**	.329	.410	.355	**	.381	**	+.501	.702	.1001	
.201	.801	.304	.404	.330	.411	.356	**	.382	**	.....	+.600	+.704	
.202	.802	.305	.709	.331	**	.357	.421	.383	**	.500	.601	.801	.105
.203	.803	.306	.405	.332	.415	.358	.420	.384	**	.501	**	.802	.106
.204	.709	.307	**	.333	**	.359	.417	.385	.104	.502	.602	.803	.100
.205	**	.308	**	.334	**	.360	.427	.386	**	.503	.603	.....	.804
.206	**	.309	**	.335	**	.361	**	.387	**	.504	.604	.....	+.807
.207	**	.310	**	.336	**	.362	**	.388	**	.505	.605	.....	.....

Part 162.—Leases and Permits

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.100	.23	.244	.42	.226	.83	**	.126	.252	.173	**
.1	.103	.24	.230	.43	.227	.84	**	.126	.619	.174	**
.2	.101	.25	.230	.44	.223	.85	**	.127	.240	.175	**
.3	.103	.26	.219	.45	.234	.86	**	.127	.612	.176	**
	+.105	.26	.220	.46	.234	.87	**	.....	+.254	.177	**
	+.106	.26	.221	.47	.235	.88	**	.128	.255	.178	**
	+.107	.26	.223	.48	.236	.89	**	.....	+.256	.179	**
.3	.200	.26	.231	.49	.236	.90	**	.129	**	.180	.111
.4	.108	.26	.238	.50	.236	.91	**	.130	.620	.180	.112
	+.109	.27	.229	.51	.237	.100	.226	.140	.102	.....	+.300
.5	.202	.28	**	.52	.237	.101	.226	.141	**	.....	+.400
.6	.203	.....	+.231	.....	+.239	.102	.110	.142	**	.190	.500
.7	.205	.29	.232	.60	**	.110	.228	.143	**	.191	.501
.8	.204	.30	.233	.61	**	.110	.241	.144	**	.192	.502
.9	.202	.31	.233	.62	.206	.111	.228	.145	**	.193	**
.10	**	.32	.224	.63	**	.111	.241	.146	**	.194	.503
.11	.201	.33	**	.64	.207	.112	.228	.147	.102	.195	**
.12	.214	.34	.224	.65	**	.112	.241	.150	.211	.....	.601
.12	.215	.34	.613	.66	.207	.113	.228	.151	.211	.....	.602
.13	.213	.35	.224	.66	.212	.113	.241	.152	.222	.....	.603
.14	.217	.35	.247	.67	.104	.114	.228	.160	**	.....	.604
.15	.217	.36	.248	.68	.104	.114	.241	.161	**	.....	.605
.16	.217	.36	.615	.70	.102	.120	**	.162	**	.....	.606
.17	.110	.37	.225	.70	.207	.121	.250	.163	**	.....	.607

PART 162.—LEASES AND PERMITS—Continued

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.18	.218	.37	.249	.71	.208	.121	.617	.164	**	.....	.608
.19	**	.37	.614	.71	.209	.122	.251	.165	**	.....	.609
.20	.221	.37	.616	.72	.207	.122	.618	.166	**	.....	.610
.21	.230	.38	.248	.73	.210	.123	.251	.167	**	.....	.611
.21	.242	.38	.615	.74	.207	.123	.618	.168	**	.....	+.621
.....	.22	.230	.39	.224	.75	.216	.124	.251	.169	**	+.622
	+.243	.40	.224	.80	**	.124	.253	.170	**	.....	+.623
	+.245	.....	.....	.81	**	.125	.252	.171	**	.....	.....
.22	.246	.41	.226	.82	**	.125	.619	.172	**	.....	.....

25 CFR PART 166.—GRAZING PERMITS ON INDIAN LANDS

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.1	.122	.221	.....	+.308	.412	.418	.606	.607	.811	.811
	+.2	.123	.222	.206	.309	.413	.411	.607	.608	.812	.812
.2	.3	.124	.223	.207	.310	.414	.412	.700	.700	.813	.813
.100	.200	.125	.224	.208	.316	.415	.419	.701	.701	.814	.814
.101	.201	.126	.225	.209	.317	.416	.420	.....	+.702	.815	.815
.102	.203	.127	.226	.210	.311	.417	.414	.702	.703	.816	.816
.103	.204	.128	.1	.211	.312	.....	+.415	.703	.704	.817	.817
	+.205	.129	**	212	.313	.418	.413	.704	.706	.818	.818
.104	.202	.130	**	.....	+.314	.419	**	.705	.606	.819	.819
.105	.206	.131	**	.....	+.315	.420	.419	.706	.705	.900	**
.106	.207	.132	**	.300	.100	.421	.416	.707	**	.1000	.1000
.107	.208	.133	**	.301	.101	.422	.417	.....	+.707	.1000	.1001
.108	.209	.134	**	.302	.102	.....	.421	.708	.708	.1100	.900
.109	.209	.135	.1	.303	.103	.423	.422	.709	**	.1101	.901
.110	.209	.136	.227	.304	.104	.424	.423	.....	+.709	.1102	.902
.111	.212	.137	.228	.400	.400	.425	.424	.800	.800	.1103	.903
.112	.213	.138	.229	.401	.401	.500	.500	.801	.801	.1104	.904
.113	.214	.....	+.230	.402	.402	.501	.501	.802	.802	.1105	.905
.114	.210	.....	+.231	.403	.403	.502	.502	.803	.803	.1106	.906
	+.211	.200	.300	.404	.404	.503	.503	.804	.804	.1107	.907
.115	.215	.201	.301	.405	.405	.504	.504	.805	**	.1108	.908
.116	.216	.202	.302	.406	.406	.600	.600	.....	+.805	.1109	.909
.117	.217	.203	.303	.407	.407	.601	.601	.806	.806	.1110	.910
.118	.218	.....	+.304	.408	.309	.602	.602	.807	.807	.....	.....
.119	.219	.204	.305	.409	.408	.603	.603	.808	.808	.....	.....
.120	.220	.....	+.306	.410	.409	.604	.604	.809	.809	.....	.....
.121	**	.205	.307	.411	.410	.605	.605	.810	.810	.....	.....

II. Response to Comments

The Department solicited comments from all interested parties through its publication of the Proposed Rule on July 14, 2000, and further solicited informal comments through eight regional consultation sessions: Aberdeen, SD (August 7–8, 2000); Anchorage, AK (August 10, 2000); Oklahoma City, OK (August 10, 2000); Bloomington, MN (August 17, 2000); Albuquerque, NM (August 21 and 22, 2000) [two separate consultation meetings]; Billings, MT (August 24, 2000); and Reno, NV (August 28–29, 2000). Transcripts were made of these sessions in order to ensure that both oral and written comments were considered. Following the consultation meetings, several BIA regional and agency offices established informal local working groups with tribes to encourage discussion of the proposed regulations and submission of written comments. Throughout the comment period we met on an informal basis to discuss the regulations with interested organizations, including the NCAI working group and the Inter-Tribal Agricultural Council.

The Department received a total of 317 written comments on all parts of the proposed rulemaking, representing 349 individual signatures. Written responses were received from respondents in 25 states, although many responses were received in a format that did not reveal their geographic origin. The Department received 159 written responses from tribal governments (representing 168 signatures and including four tribal government resolutions), and 31 responses from non-governmental Indian organizations (representing 34 signatures). Six respondents identified themselves as tribal members. Additionally, one response was received from a state governmental entity, and five from business entities. The remaining respondents included unaffiliated individuals (57 responses) and federal agencies (58 responses, representing 78 individual signatures). All substantive comments were reviewed by the Department and, depending upon their merit, the Department accepted, accepted with revision, or rejected for reason particular comments made on each part of the rule. Substantive comments are summarized below.

A. General Comments—Overall Rulemaking

Many tribes, tribal organizations and individuals expressed strong opinions that the Department should not finalize these regulations as planned. Primarily, respondents expressed concern that the process by which the regulations were

developed did not include sufficient time to analyze the scope of the regulations and identify and resolve issues, nor did it incorporate sufficient consultation with tribes and affected individuals. The regulations were proposed only after full communication of the Department's intentions after requesting information and opinions from the tribes and individual Indians affected by the regulations.

The Department has committed to this schedule in response to the tremendous need to improve the execution of the Secretary's trust responsibility in accordance with the American Indian Trust Fund Management Reform Act, 25 U.S.C. § 4001 *et seq.* We have committed to this schedule through the Department's High Level Implementation Plan, developed in cooperation with and under the oversight of the OST, and in response to ongoing litigation.

Well before the proposed regulations were published in the **Federal Register**, the Department recognized the need to complete these revisions prior to the end of the current Administration in order to prevent delays caused by the upcoming presidential transition. Based on priorities identified by BIA trust program staff, we identified the regulatory reforms that could be accomplished within this time frame and developed a schedule that would ensure consultation with tribes and consideration of their opinions to the greatest extent possible. We invited the NCAI to convene a work group of tribal representatives and other interested persons to assist in developing the regulations. To assist the NCAI, the BIA provided funding and agreed to meet as many times as necessary to complete the job. Also, we conducted early consultations with tribal leaders, advising them of the specific trust regulations to be addressed first. These meetings provided an early opportunity for meaningful input into the rule making process.

In a significant departure from past practice, the BIA distributed the preliminary drafts of the proposed regulations to the NCAI and to tribes through BIA regional directors, with a request for comments and recommendations. Several subsequent meetings were held with the NCAI working group to discuss the evolving draft regulations prior to publishing the proposed regulations on July 14, 2000. These meetings included the Assistant Secretary—Indian Affairs, the Deputy Commissioner of Indian Affairs, staff of the Trust Policies and Procedures (TPP) project, trust program managers, and trust program attorneys from the Solicitor's Office. Notably, tribal representatives from each BIA region and BIA managers participated in a three-day meeting in Mesa, AZ, in April 2000, to discuss the draft regulations.

Following the publication of the proposed rules, as noted above TPP staff conducted eight regional consultation meetings with tribal leaders, individual Indians, and other interested parties. In sum, despite the accelerated schedule for developing and issuing these regulations, tribes and individual Indians have had an extraordinary opportunity to provide meaningful input on the proposed regulations through informal consultations on the early drafts, formal consultations, and the public comment period.

Many respondents asserted that Executive Order 13084 required a negotiated rule-making process in developing and implementing the proposed regulations. Contrary to these assertions, Executive Order 13084 does not require a negotiated rule-making process.

We disagree with the concern expressed by several respondents that the proposed rules would create new processes and requirements in all areas of trust management, resulting in negative impacts to both tribes and individual Indians. Rather, these regulations strengthen the Department's exercise of its trust responsibility by codifying current practices and will provide an important measure of consistency and uniformity in these practices on a nationwide basis.

Many commenters believe that the proposed regulations did not sufficiently address the issues of tribal sovereignty and principles of tribal self-determination. We agree that the proposed regulations did not go far enough to recognize tribal sovereignty and self-determination, and have now made significant revisions within the bounds of existing law. However, many of the antiquated trust statutes that govern the actions of the Department predate the tribal self-determination legislation. When amendatory legislation is enacted, we will revise the regulations accordingly.

The management of trust records is integral to the performance of the trust responsibility, and must be carried out by all entities and individuals who undertake such activities, including tribes performing federal trust functions. It is essential that everyone managing trust assets, both tribes and the Department, be subject to the same requirements for the creation, maintenance, and retention of records that evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the management of trust assets. Without a consistent nationwide system for creating and maintaining trust records, the United States will be unable to fulfill its trust responsibilities to tribes or individual Indians. Accordingly, the records language in the proposed regulations have been modified to be consistent across the board.

Of particular importance are the provisions in each part that specify who owns trust records: Records are the property of the United States if they are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part pursuant to Public Law 93–638 as amended, including the operation of a trust program, and evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under the regulations. If records are not covered by the preceding definition, but are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior, they are the property of the tribe. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under these regulations, the tribe may be prevented 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.

The language is consistent in each part of the final regulations, and builds on the provisions that were proposed under part 115. The Department will provide more detailed direction on the management of trust records in 2001.

Finally, we received comments requesting that the Department include in the regulations provisions for the establishment and maintenance of an accounts receivable system. The Department is building such a system in its Trust Asset and Accounting Management System. However, we believe the regulations are not an appropriate place to address an accounts receivable system; to define such a system by regulation would remove operational flexibility that is necessary to address the many complex factors involved in managing trust assets.

III. Part-by-Part Analysis

A. 25 CFR Part 15—Probate of Indian Estates

The purpose of this regulation is to describe the authorities, policies and procedures the BIA uses to probate an Indian decedent's estate. This is a revision to the existing part and amends and replaces the part in its entirety.

The regulation implements administrative procedures by which the BIA will process and determine certain probate cases where a hearing is not required nor requested. These procedures, embodying a return to the BIA of the responsibility to determine particular probate cases, are the result of the recommendations of the Department's Indian Probate Reinvention Lab (IPRL). Formed in 1999, the IPRL examined the Department's Indian probate process from a multi-agency perspective, including the BIA, the Office of Hearings and Appeals (OHA), which handles Indian probate cases requiring hearings, and the OST. The IPRL recommended, among other things, that the BIA establish attorney decision-makers at regional offices to handle certain probate cases under criteria to be established by regulation. This recommendation was based on an analysis that included reviewing reports from previous studies of Indian probate matters, site visits and interviews of customers and employees. The final revisions of part 15 will implement in the BIA the procedural aspects of the IPRL's recommendations. At the appropriate time, the OHA will amend its regulations to accommodate the BIA's responsibility for these probate cases and to ensure that the same standards and criteria for determining heirs and paying claims are consistently applied between the BIA and OHA.

In addition to establishing the process by which the attorney decision makers in the BIA will decide certain probate cases, the regulations in part 15 also address the summary processing of Indian estates. Formerly handled only by agency superintendents, summary distribution of estates will also be decided by the attorney decision makers. See 65 FR 25449–25450 (May 2, 2000).

The various subparts of part 15 address the purpose and scope of the Indian probate procedures; the definition of terms; the mechanics of initiating the probate process, including the appropriate notifications of the selection of the deciding official; the preparation of the probate package itself, including the identification of necessary documents to facilitate a timely process; the disposition of claims against an estate; the ultimate distribution of the decedent's assets to the determined heirs or devisees; and the procedures for appeals should a dispute arise during any stage of the probate process. Cross references have been made to the OHA's hearings and appellate procedures and disposition of funds held in trust for decedents.

General Observations Regarding Changes From Proposed Rule

Overall, respondents commended the Department for its efforts to address a longstanding problem with the probate backlog primarily caused by a lack of staffing and resources over the years. Commenters focused on the need for devising specific time frames for each step of the probate process to ensure timely processing of the estates including the preparation and submission of the probate package, issuance of decisions, and the closing of estates. A primary concern for many commenters in adding a new BIA deciding official to expedite the probate process was that probable heirs or beneficiaries should be advised of the right to a hearing before an ALJ. These concerns were given great consideration and incorporated into the final regulations.

Finally, to be consistent with the regulations published under parts 115, 162 and 166, we have added two sections addressing the maintenance of records relating to probate cases.

Subpart A—Introduction

Summary of Subpart

This subpart addresses the purpose and scope of the Indian probate procedures, the definition of terms used in part 15, and process for probating estates. This subpart sets forth the limitation on the scope of the application of part 15 to the Five Civilized Tribes in Oklahoma and the Osage Nation. The overall process from notification of death to the appeal of decisions is described by reference to other subparts.

Comments

The Secretary's jurisdiction to decide probate cases is limited to trust or restricted assets except as otherwise provided by federal laws for the Five Civilized Tribes and the Osage Nation. The Final Rule clarifies that trust lands of the Five Civilized Tribes and Osage Nation may be included in part 15. Several respondents requested more clarification of terms used in the regulations. In response to these requests, the definitions ''OTFM,'' ''probate clerk,'' ''trust land'' and ''restricted land'' have been added to § 15.2.

The Final Rule does not significantly depart from the Proposed Rule with respect to the basic steps in the probate process and the preparation of the probate package. In response to several comments, the steps in the probate process prior to the submission to a deciding official have been standardized and streamlined by requiring that all agencies and tribes prepare the probate package in the same manner as recommended by the IPRL. The final regulations reflect the addition of the attorney decision maker as a BIA deciding official to expedite the probate of estates in certain circumstances.

Subpart B—Starting the Probate Process

Summary of Subpart

This subpart includes the procedures for starting the probate process by notifying the BIA of the death of an Indian with trust or restricted assets; the preparation of the probate package itself, including the identification, collection, and submission of the necessary documents to the BIA to facilitate the timely processing of a probate package; the circumstances in which the family of a decedent may apply for emergency assistance for funeral arrangements; the assignment of the responsibility to the BIA agency to process the package; and the procedures for the potential heirs' disclaimer of interest in the estate.

Comments

We received several comments on the types of documents that should be acceptable as evidentiary documents to support the family heirship data. Of significant importance to these respondents is the reliability of documentation relied on for proof of death. In the Final Rule at § 15.101, we have clarified the documents necessary to prove death by requiring that a certified copy of a death certificate must be provided to the BIA. Only in circumstances where a death certificate is non-existent will the BIA accept other documents. This section also allows for a tribe to verify a member's death. Where evidence other than a death certificate is submitted to verify a death, an affidavit of death must be submitted that is prepared by the tribe with whom the decedent associated or someone with direct personal knowledge about the decedent's death.

Many comments addressed the provision that allows immediate assistance for funeral services from the

decedent's IIM account. To distinguish between emergency financial assistance to pay for funeral arrangements prior to the burial of the decedent and claims for funeral expenses against the decedent's estate, we added the word ''emergency'' to the question. Some commenters objected to obtaining receipts for traditional burial services such as payment of cooks and grave-diggers and the direct payment to the service providers. We weighed these objections against the Secretary's trust responsibility for proper accounting of the decedent's IIM account. Thus, we renumbered the section to § 15.106 and divided it into four subparts to clarify the cost estimates for funeral arrangements and to achieve a compromise position between tribal traditions and the Secretary's trust responsibility to preserve the decedent's IIM account for the probable heirs and beneficiaries. In order to preserve the trust estate for probable heirs or beneficiaries, the BIA continues its long-standing practice of limiting the amount of money that may be distributed for funeral expenses prior to completion of the probate. Therefore, the Final Rule does not change the limit on the amount of money that can be disbursed for funeral expenses prior to the probate.

One of the problems causing significant delays in the processing of probate files is the time-intensive gathering of evidence required as supporting documents for the probate package. In certain situations where the decedent's family resides in a remote area without transportation or telephonic communications, the collection of documents proceeds very slowly. Some respondents stated that the BIA should assume an affirmative role in assisting the family in collecting documents, rather than place the burden of obtaining all of the supporting documents entirely on the decedent's family. We accepted these comments, and have changed the wording in the Final Rule at § 15.104 from ''must'' to ''should.''

Section 15.104 lists the documents that must be included in a probate package. This section has been rearranged to provide for documents that must be obtained from a court of competent jurisdiction, which may be a tribal or state court. Name changes and orders requiring the payment of child support were added at the suggestion of the commenters. The Final Rule at § 15.104 also provides that the probate package will contain all information provided by an interested party whether the BIA has requested it or not.

We received several suggestions on the manner in which an agency or tribe is assigned the responsibility for preparing probate packages for non-enrolled decedents and decedents enrolled in more than one tribe. The proposed standard was the agency that has jurisdiction over the trust property of the decedent or the greater amount of trust property. Respondents suggested that we assign responsibility to the agency with the strongest contacts with the decedent and/or the agency where the IIM account is located. The existing BIA policy which assigns the probate to the agency with the strongest association with the decedent has been incorporated in the Final Rule at § 15.108. The most expedient manner for processing the probate package is to maintain contact with a family member of the decedent who has lived nearby the decedent and is familiar with the family relationships of the decedent. This standard was continued because a decedent may reside within the jurisdiction or have more contacts with an agency that does not necessarily have jurisdiction over the greatest amount of the decedent's trust property. The likelihood of an agency or tribe obtaining the most information about the decedent comes from an agency with the strongest associations with the decedent.

While § 15.202(g) allows the submission of a disclaimer of interest to be filed with the probate order, the Final Rule at § 15.109 provides that the probable heir or beneficiary may renounce their interest anytime up to the time a deciding official issues an order. The final regulation also incorporates the existing requirement in 43 CFR Part 4, Subpart D, that a disclaimer of any Indian interest requires a formal hearing before an ALJ.

Subpart C—Preparing the Probate Package

Summary of Subpart

This subpart addresses the requisite documents that must be contained in a complete probate package; the selection of the deciding official and notice of this decision to the interested parties; the contents of the notice; the identification of the processing times; the right of the interested parties to request a formal hearing with an ALJ; the circumstances under which the BIA will refer a probate package to an ALJ; and the procedures for the summary distribution of an estate containing only trust cash assets of less than $5,000.

Comments

We have revised this section to address similar comments on the selection of the BIA or OHA deciding official, and the notice of this selection. Incorporating many of the comments received, we provide in the Final Rule a more comprehensive notice scheme that identifies the probable intestate heirs; states whether a will has been submitted and provides a copy; and states whether any claims have been filed against the estate. In response to several comments, a new section at § 15.204 has been added to clarify that the probable heirs or beneficiaries may request a hearing before an ALJ at any time before a decision has been made by an attorney decision maker.

Many commenters were concerned over the clarity of the criteria used by the probate specialist to weigh in determining where to send the probate package. In response, we have added several new items in § 15.205(c) to clarify the circumstances under which the probate package should be sent to an ALJ and to provide consistency with other sections. These items include questions involving paternity, disclaimers of interest by an Indian heir or beneficiary, and any challenges to the jurisdiction of a court that has issued an order which has been used as a supporting document in the probate. A new subsection (d) has been added to clarify that approval of settlement agreements among heirs must be by the OHA. To address the concern that a probate specialist may not foresee all of the kinds of problems identified in § 15.205, the attorney decision maker must review the probate package and determine whether there are any issues of fact or law that would require a formal hearing. If so, then the attorney decision maker will immediately forward the case to the appropriate ALJ.

In response to several requests for more clarity, the process for summary distribution has been reorganized and placed at the end of this subpart. The summary process provides that the BIA deciding officials (the superintendent, field representative, regional director in cases of self-governance tribes, or attorney decision maker) may decide cases that contain only trust cash assets of less than $5,000. Relocating this section clarifies that the criteria for selecting the deciding official applies to the expedited intestate and testate summary distribution process. Section 15.206 provides for 30 days for the probable heirs and beneficiaries to request a formal hearing before an ALJ; 60 days after notice has been sent for the BIA deciding official to assemble the probable heirs or beneficiaries and conduct an informal hearing; and 30 days for the BIA deciding official to issue a decision after the informal hearing. Under § 15.206(c), the BIA

deciding official must apply §§ 15.302–311 to determine the distribution of the Indian estate. As recommended, the incorporation of these sections in the summary distribution process ensures that the same standards will be applied on a national scale by every BIA deciding official. Lastly, many respondents stated that they were confused by the differing appeal procedures of the decision of the superintendent and the attorney decision maker, and that the same appellate process should be in place for all BIA deciding officials. The Final Rule incorporates in § 15.206(d) a single appellate process for all BIA deciding officials.

Subpart D—Probate Processing, Claims and Distributions

Summary of Subpart

This subpart states when the BIA must forward the probate package to an ALJ for a formal hearing or to an attorney decision maker for an informal hearing. The choice of law to be applied to the facts of the Indian estate is defined to standardize the deciding official's application of law. This subpart also includes the process for submitting claims against the estate; allowance and payment of claims; priority of claims; reduction of claims; use of future income to pay claims; the payment of interest; the contents of the BIA deciding official's written decision/order; and the handling of the estate while an appeal is pending.

Comments

Numerous respondents requested that we clarify time frames and deadlines that the public and BIA must follow. Accordingly, § 15.301 imposes deadlines on the attorney decision maker for the regular processing of probate packages. The comments strongly recommend that if the attorney decision maker keeps the probate package, the attorney decision maker should hold informal hearings or conferences with the interested parties to identify any potential problems, will contests, or contested claims, which may prompt a formal hearing with an ALJ. Additionally, several commenters expressed a concern that the attorney decision maker should hold an informal hearing because many traditional Indian people may not feel comfortable or wish to make a written objection or request a formal hearing. We have accepted these comments. The Final Rule at § 15.301 incorporates the informal hearing procedure for all probate proceedings in the same manner as the existing regulations at 43 CFR 4.271.

Additional deadlines for the attorney decision maker have been incorporated in § 15.301 and § 15.310 to conduct an informal hearing and issue a decision. As many comments recommended, we will allow up to 180 days for an attorney decision maker to issue a decision.

The comments provide considerable discussion of what law is to be applied to determine heirs, approve wills, and determine whether or how to pay claims. Some tribes suggested that the Uniform Probate Code, a code adopted in portion by many states, be used on a national basis. Other tribes suggested that tribal law and tribal courts administer the Secretary's trust responsibility for the probate of Indian estates. Questions were raised about how conflicting intestate processes and land fractionation would be reconciled under tribal and state laws. Some commenters objected to the application of the inheritance laws of all fifty states. Others suggested that the law to be applied should be the law of the state where the IIM account is located. Some commenters stressed that there are also federal statutes that direct inheritance procedures in certain circumstances (e.g., Indian Land Consolidation Act) or for specific tribes (e.g., Standing Rock Sioux Tribe), and that the application of state probate law has been preempted in these circumstances. In addition to the statutory inheritance laws, many noted that the Secretary has approved tribal inheritance codes for several tribes.

These comments were considered in great depth. The Final Rule in § 15.302 continues the existing practice by acknowledging that, unless provided otherwise by federal law or by tribal inheritance codes approved by the Secretary, the state law of the decedent's domicile will determine the distribution of the estate.

There were nearly equal numbers of comments for and against the payment of any claims against an Indian decedent's estate. In particular, many were concerned that credit may not be extended if claims were precluded from Indian estates. The respondents opposing the allowance of any claims against the estate stated that in intestate situations an Indian decedent has not authorized any claims to be paid and that the assets of the estate rightfully belong to the heirs. Some tribes commented that the BIA should defer to any tribal law that addresses the filing and collection of creditors' claims. To the extent such requirements are included in a tribal inheritance code approved by the Secretary, the tribal laws will apply. Several commenters felt that trust assets should be used to pay debts only when there are no non-trust assets available. The Final Rule in § 15.303 allows the payment of claims out of trust cash assets only after evidence of exhaustion or non-existence of non-trust assets have been provided by the claimant.

Many respondents were concerned about the standards to be applied by the deciding officials in paying claims, as well as the priority of claims to be paid. Many stated that tribal claims should be a priority claim because tribes are generally the major creditor on Indian reservations. Many were concerned that failure to pay tribal loans by the estate would dramatically reduce the availability of credit to Indians. Several comments also stated that claims reduced to judgment in a court of competent jurisdiction should also be a priority. The Final Rule at § 15.305 incorporates both of these claims as priorities.

Comments from tribes and tribal advocates stated that the inclusion of the United States' claims as priority claim confers an economic benefit on the trustee that is inconsistent with its fiduciary duty. We agree. The trustee is obligated to preserve the estate for the benefit of the heirs and beneficiaries, and permitting the federal trustee to reach into the Indian trust corpus and seize property for his own benefit raises a serious conflict of interest and is inconsistent with fundamental principles of trust law. After serious consideration of the United States' role as trustee in light of potentially conflicting statutory provisions for collection of debts owed to the United States, we have deleted claims of the United States as a priority claimant against trust estates in § 15.305.

In response to many concerns that there was no provision for prorating general claims, the Final Rule at § 15.306 adds separate authority for the BIA deciding official to reduce or disallow both priority and general claims.

The BIA proposed to allow estates to remain open up to five years to pay creditors of the estate. In comparison, the current regulations at 43 CFR 4.251(d) allow an estate to remain open up to seven years. The majority of the commenters, however, objected to holding estates open for the payment of any claims, regardless of priority or general claims. Commenters stated that the United States, as trustee, has placed the creditors of Indian individuals in a better position than creditors of other non-Indian citizens by holding the estates open to pay creditor claims. After serious consideration and the weighing of comments, the Final Rule

deletes the proposed section that holds estates open to pay claims.

We received comments both in favor of and against the suspension of interest that may accumulate on a claim against the estate before it is paid. Comments favoring the payment of interest stated that non-payment would create another road block to an Indian's ability to obtain credit. Comments opposed to paying interest stated that the estate should be preserved for the heirs. The Final Rule at § 15.309 leaves in place the Proposed Rule declining to pay interest or penalties on any type of claim that may accrue after the decedent's death.

The Proposed Rule in § 15.310 addressed the responsibility of the administrator of the estate to file tax returns. Many commenters noted an administrator is not generally appointed for Indian estates. Many also noted that the Secretary, as trustee, is the functional equivalent of the administrator of the estate and therefore the heirs should consult applicable tax laws to determine if there is any tax liability related to the estate. In response to these comments, this section was deleted in its entirety.

Finally, many respondents stated that the official roles of the BIA and the OTFM should be specifically defined in executing probate cases decisions, including the distribution of income. In response, the Final Rule at § 15.312 provides that in executing probate decisions, the BIA changes land title records as appropriate and the OTFM processes payments from IIM accounts and the distributes income in accordance with the probate decision.

Subpart E—Appeals

Summary of Subpart

This subpart addresses the procedures for appeal of the decision of the BIA deciding official. The time for appeal, the status of the estate during appeal, and the standard of review of the decision are set forth in this subpart.

Comments

Many respondents stated that it was too confusing to have two separate appellate processes for the superintendents and attorney decision makers. Two separate procedures might result in the interested parties filing an appeal with the wrong entity, which would adversely affect the exercise of their right to appeal. The Final Rule incorporates this recommendation and establishes only one route of appeal for probate decisions issued by BIA deciding officials.

One commenter questioned the definition of ''known evidence'' in appeal proceedings. Further, the commenter was concerned that the right to appeal the decision of an attorney decision maker during the 60–day appeal period would not allow for the submission of new evidence, nor would it allow an appeal on the basis that known evidence was not included in the probate package. After careful consideration, the Final Rule at § 15.403(b)(1) and (2) includes clarified provisions for requesting after-deadline appeals based on new or unknown evidence.

Commenters suggested that the regulations specify that review of decisions of the attorney decision makers should be *de novo*. Due to the expedited procedure, informal hearing process, and absence of a full record to review, we accept this comment. The Final Rule at § 15.405 adds a new section for the *de novo* standard of review before the ALJ.

Subpart F—Information and Records

Summary of Subpart

This subpart includes general questions regarding *ex parte* communications with a BIA deciding official and the contact persons for inquiries about the status of a probate case, and new provisions addressing applicable records ownership and retention requirements.

Comments

We received several comments on the proposal that members of the public could not directly contact the attorney decision makers. The commenters generally recognized that there is clearly a need to avoid even the appearance of impropriety, but that trained adjudicative personnel understand and know the constraints of their offices. One commenter stated that no similar restriction is imposed upon agency superintendents who decide summary distributions. Other responses emphasized the need for the BIA to ensure that attorney decision makers are independent and impartial. After weighing these competing interests, we provide in the Final Rule at § 15.501 a single standard for all BIA deciding officials that precludes off-the-record communications with the attorney decision maker that might be construed as attempting to influence the substance of the final probate decision.

The comments suggested that references to the nationwide tracking system be deleted as the system was not in place and there is no date certain when the system would be in place. We agree. In the Final Rule we have deleted the references to the nationwide tracking system.

B. 25 CFR Part 114—Special Deposits

The purpose of this part was to set forth the conditions governing the deposit, investment, and distribution of principal and interest on trust funds held by the Department in special deposit accounts. In addition, this part provided procedures required for determination of ownership and distribution of funds which are on deposit in account 14X6703, ''Indian Moneys Proceeds of Labor Escrow Account—Pending Determination of Ownership.'' This special deposit account (IMPL Escrow Account) has been obsolete since September 30, 1987, as any unobligated balances were then deposited into miscellaneous receipts of the U.S. Treasury. Since this part dealt largely with this IMPL Escrow Account, the text of this part has been deleted in its entirety. Those provisions concerning other ''special deposit accounts'' are now referenced and explained in the newly revised part 115. It was the decision of the Department to move those provisions to part 115 because that part deals specifically with tribal and individual Indian trust funds. Part 114, therefore, has been ''reserved.''

Comments

No comments were received on the deletion of part 114 and its subsequent reservation within 25 CFR.

C. 25 CFR 115—Trust Funds for Tribes and Individual Indians

The purpose of this regulation is to describe how the Secretary, primarily through the BIA and the Office of Trust Funds Management (OTFM) within the Office of the Special Trustee (OST), carries out the trust duties owed to tribes and individual Indians in managing and administering trust assets for the exclusive benefit of tribes and individual Indian beneficiaries. The regulation also implements provisions of the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103–412, 108 Stat. 4239, 25 U.S.C. 4001 (Trust Reform Act). The Final Rule removes and reserves the existing part 114 (special deposit account provisions are incorporated into part 115) and amends and replaces part 115 in its entirety.

As the section-by-section chart above illustrates, there have been changes to the Final Rule from the Proposed Rule of July 14, 2000. These changes are, however, reasonably limited by the decision by the BIA to remove those proposed provisions that relate to Individual Indian Money (IIM) accounts

for adults and to continue in large part with the language in the current 25 CFR 115 that addresses adult IIM accounts. This action was taken in response to the many comments received from tribes and individual Indians who were concerned with the rule's proposed supervised and encumbered IIM account provisions. In order to incorporate many of the recommendations, we believe that the Administrative Procedures Act requires that we re-propose those sections of the regulation for further public comment. Therefore, most of those sections included in subpart D of the proposed rule have been removed from the Final Rule, and will be re-proposed at a later time. The IIM account sections proposed for minors and estate accounts have been retained in the Final Rule. These sections have been amended or clarified to reflect many of the comments received. We have responded to the comment that suggested the Final Rule identify the responsibilities of OTFM and the BIA in managing and accounting for Indian trust funds, by specifying, where possible, whether OTFM or the BIA has the responsibility for an action. For more specific delegations of Secretarial authority regarding trust responsibility, we encourage interested parties to look on our web page at www.doi.gov. With respect to the numerous comments requesting language concerning how we will collect trust revenue, we refer you to parts 162 and 166.

Subpart A—Purpose, Definitions and Public Information

Summary of Subpart

Subpart A addresses the purpose of the regulation in providing guidance for the administration and management of tribal and IIM trust accounts. Additionally, definitions and common terms used throughout the subpart are explained in some detail.

Comments

Comments were received that encouraged the BIA to look to private sector trust management systems as a model for the Department's trust management system. Respondents also requested that the BIA designate a position of ultimate responsibility for the administration of trust property. The Secretary has the ultimate responsibility for the administration of trust property and a system of trust management is already in place with oversight provided by the Special Trustee as designated in the Trust Fund Reform Act. Comments received regarding the addition of more terms or clarification of definitions were accepted with more detail where appropriate, e.g., trust resources and legal disability. There were numerous calls seeking clarification of the definition of an ''adult in need of assistance'' while others strongly objected to the requirement of a court order as the only method to allow supervision of an account. Those comments were accepted in part and the definition of ''adult in need of assistance'' was amended to allow a determination either (a) through a BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional, or (b) by an order or judgment of a court of competent jurisdiction. The determination must include language that the individual is ''incapable of managing or administering his or her property, including his or her financial affairs.''

Subpart B—IIM Accounts

Summary of Subpart

As discussed above, the proposed rule had sections regarding adult IIM accounts that will require re-proposal of these provisions before we can issue a Final Rule. In the development of the provisions to be re-proposed, we will take into consideration comments received during the July 14–October 12, 2000 comment period. Subpart B of the Final Rule is largely the verbatim illustration of part 115 as it currently reads in 25 CFR. This subpart deals with specific provisions for particular tribes (Five Civilized Tribes and the Agua Caliente Band of Missions Indians); adults under legal disability; payment by other Federal agencies; restrictions; and appeals. However, provisions dealing with minors' accounts, estate accounts and the hearing process for restricting an IIM account (which were regulated in the current part 115) have been revised in accordance with the proposed rule and moved to the new subparts C, D, and E of part 115 of the Final Rule. In addition, provisions dealing with voluntary deposits and purchase orders (which were regulated in the current part 115) have been removed in accordance with the proposed rule and those sections are reserved for future use.

Comments

Comments on the Proposed Rule generally concerned the supervised account and encumbered account sections of the proposal. In particular, the respondents focused on the requirement of an order from a court of competent jurisdiction in order for the BIA to (1) supervise an IIM account or (2) encumber an IIM account to pay a debt to a third party. We plan to re-propose these sections. In the interim, to maintain some standard for dealing with adult IIM accounts (which is an ongoing BIA function), the BIA decided to retain the sections concerning adult IIM accounts in the current part 115 in this subpart B. The one change that was made in the Final Rule that affects the provisions retained from the current part 115 is the addition of a definition for an ''adult in need of assistance'' which has been revised from the proposed rule as discussed in the comment section of the Subpart A discussion above.

Subpart C—IIM Accounts: Minors

Summary of Subpart

This subpart deals in some detail with the procedures related to the management and supervision of a minor's account. A withdrawal from a minor's supervised account will be permitted only under a BIA approved distribution plan that provides for expenditures directly related to the minor's health, education, or welfare. A custodial parent, a legal guardian or a person who the BIA recognizes as having the control and custody of the minor, who withdraws funds from a minor's supervised account on behalf of the minor must account to the BIA with receipts for the use of those funds. The minor will not have access to information concerning his/her account. Procedurally, the provisions state that information about a minor's account will be provided to the custodial parent(s) or legal guardian(s) in a quarterly statement of performance; supervised accounts will be reviewed annually; and emancipated minors will have supervised accounts but will have access to account information and may receive funds on their own behalf.

Comments

One comment noted that the BIA should not require minors (or adults) with supervised accounts to have a ''legal guardian.'' We respond by reminding the public that all minor's accounts will be automatically supervised and that legally, a minor should always have a ''custodial parent'' or a ''legal guardian'', unless emancipated by a court of competent jurisdiction. There were comments that information about an account should not be provided to foster parents. We accepted those comments with revision. The BIA will only provide account information to parents, legal guardians and emancipated minors. We rejected those comments received that stated

that minors, specifically those who have reached the age of ten or thirteen, should have access to their account information. By law, minors are not legally capable of handling and managing their financial affairs. However, account information will be provided to emancipated minors although we do not accept the comment to allow emancipated minors unrestricted access to their account. All minors, including emancipated minors, will have supervised accounts. The BIA must be kept informed of the current address information for a minor, particularly if the minor's address is different from that of their parent or legal guardian.

A concern was raised about the necessity of obtaining receipts for all purchases made from those funds disbursed from a minor's supervised account. In addition there were comments suggesting that we differentiate between parents and legal guardians when requiring receipts for expenditures from a minor's supervised account. In response, we note that under a minor's distribution plan a parent or legal guardian will be treated equally and that receipts will be required for all expenditures unless a specific provision in the plan permits a minimal disbursement for a minor's miscellaneous expenditures to be made without requiring receipts for purchases. However, we stress that it is important for the integrity of the minor's supervised account that all withdrawals be appropriately documented. Comments were received that encouraged involvement of a parent(s) or legal guardian(s) in the development of the minor's distribution plan. We note that under normal circumstances, the parent(s) or legal guardian(s) will be involved in the development of both the evaluation plan and the distribution plan, and should sign the distribution plan acknowledging that they have read/reviewed the plan. In addition, parents and guardians are responsible for meeting the obligations detailed in those signed plans. Respondents were concerned about the potential necessity to distribute emergency funds from a minor's supervised account where that amount was not included in the distribution plan. We note that distribution plans may be amended at any time for emergencies or a change in circumstances, depending upon the needs of the minor. We accept in part the comments received to place a limit on the amount of funds to be distributed from a minor's supervised account and on the purposes for which a distribution may be made. Funds will not be automatically disbursed from a minor's supervised account to create a flow through account to anyone including a parent or legal guardian. Rather, the BIA will consider all available resources to meet the minor's needs when evaluating a request for funds from a minor's supervised account and in the development of the distribution plan. As a matter of policy, we strongly discourage the use of a minor's trust funds to meet the basic needs of a minor. All distributions must be made pursuant to the terms of an approved distribution plan and receipts for expenditures must be provided to the BIA. Finally, there were numerous comments that the BIA needs to recognize that there are informal custody arrangements and foster care placements for minors with IIM accounts and that there may be a need for disbursements from a minor's supervised account to a caregiver (referenced in comments as a ''minor's payee'') to help meet the minor's needs. We recognize that minor account holders may be cared for in informal living arrangements or in foster care situations, and that the Secretary may, in certain circumstances, need to recognize the caregiver and authorize limited disbursements that are in the best interests of the minor from the minor's supervised account. Other concerns raised included access by the caregiver to account information for a minor's supervised account. Account information will not be provided to the caregiver due to legal limitations such as the Privacy Act.

Subpart D—IIM Accounts: Estate Accounts

Summary of Subpart

This subpart reflects the notion in the current part 115 of providing for certain obligations and other expenditures that are attendant to an Indian decedent's estate. This is a new subpart in this Final Rule; however, its provisions were included in the Proposed Rule. The provisions in this subpart mirror the provisions contained within the Final Rule for 25 CFR part 15. Particularly, this subpart identifies when an estate account is established; how long an estate account remains open; refers to heirs to a decedent's account; establishes protocols for withdrawing monies prior to final probate; and dispositions to those having life estate interest in income-producing trust or restricted property.

Comments

Comments on Indian decedents' estates were captured in our discussions of part 15, Probate of Indian Estates above.

Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

Summary of Subpart

This subpart outlines the notice requirement and hearing process (so-called ''Kennerly'' process) associated with placing a restriction on an IIM account under current §§ 115.102 and 115.104. This subpart outlines the circumstances under which the BIA will place a restriction on an IIM account; information that must be included in a notice to restrict an account; time lines for requesting a hearing to challenge BIA's decision to restrict an IIM account; pendency of a restriction during an appeal; and remedies available when an administrative error has been caused by BIA or OTFM.

Comments

We received several comments on this subpart, including that the BIA should only require the ''Kennerly'' process, described in the final rule in this subpart, for restricting an IIM account if there is no valid non-BIA proceeding. We note in response that the notice requirement has been in place in the current regulation for the past 40 years and, further, we must provide due process to all account holders before we take action against their account. We believe that due process is served (and our trust responsibility properly exercised) through the use of the notice and hearing process. Accordingly, we did not accept this comment for revision in the Final Rule. Other comments recommended that we not place a restriction on an account until after the hearing process is completed; that we add five (5) additional days to the time periods proposed for placing the restriction on an account; and that we extend the time period in which to request a hearing from 40 days to 90 days. We did not accept these comments because due process is provided within the time periods proposed. The funds at issue when an account is restricted will be protected and will not be disbursed until after the hearing process and appeal period, if any, have ended. One comment stated that we should explain that social services staff should not have the responsibility for collecting debts from an IIM account. In response, we note that social service providers are only involved in the development of a distribution plan where the BIA's decision is to supervise an IIM account, not when the account is to be encumbered. Finally, there were comments involving BIA's recognition

of child support awards. Concerns included honoring excessive awards; limiting amounts awarded by a court of competent jurisdiction; and other comments stating that there should be no discretion to reduce the amount of a child support award to be paid from an IIM account. Consistent with federal policy, we believe that parents are responsible for providing support for their children and that child support awards are to be determined by courts of competent jurisdiction. If there is a dispute regarding a child support award and we are provided with notice of an appeal of a child support award, upon request we will postpone the hearing.

Subpart F—Trust Fund Accounts: General Information

Summary of Subpart

This subpart discusses the sources of trust funds that may be deposited into the Secretary's trust funds management system. Particularly, this subpart explains which trust funds may be accepted for deposit into a tribal or an IIM account; the process for depositing money into an account; the requirement that the Secretary must conduct an annual audit on trust funds; and an explanation of how trust funds deposited in a trust account earn income.

Comments

Several respondents suggested that this subpart should clearly state what money would be accepted into IIM accounts while others requested that we accept specific types of non-trust monies. In response, we have described in § 115.702 what sources of trust funds may be accepted for deposit into a trust account. We note that the BIA must have specific authority to accept non-trust monies into a trust account. Therefore, we will not accept pension funds, retirement funds, conveyance fees and child support awards into trust as requested. Some respondents were concerned that an annual audit on trust accounts was not required and others wanted the inclusion of language specifying the accounting standards to be used in the audit.

The Trust Reform Act requires that an annual audit be conducted on trust funds. Prescribed auditing standards will be used in conducting those audits. In addition, a number of comments concerned the timeliness of deposits of trust funds received by the Secretary into a trust account. Deposits received by the Secretary on behalf of a tribe or an individual will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository. Another respondent stated that to require a compacting tribe to make deposits payable to the Secretary on behalf of tribes or individual Indians within a twenty-four hour time period would create problems because many tribes are isolated, live hours away from banks and ''it is not always practical to do banking but once a week.'' We respond that where a tribe has compacted or contracted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds payable to the Secretary on behalf of the owner of the trust asset pursuant to a contract that specifies that payments are to be made to the Secretary, the tribe must follow the same standards as the Secretary under § 115.708 for the deposit of the trust funds into a trust account. We also received an inquiry as to whether interest earned on trust funds are automatically reinvested. Interest earned on trust funds is automatically reinvested. Although we called for comments regarding income derived from tribal operations, we do not address this issue in the Final Rule. We have provided a list of all sources of trust funds that will be accepted by the Secretary for deposit within the trust fund management system in § 115.702. Further, a tribe or individual Indian will not be allowed to deposit trust funds received through direct pay into a trust account, except when provided by law under 25 U.S.C. 3109. However, we have amended the regulation to allow the Secretary to accept for deposit trust funds made payable to the owner of the trust asset (direct pay) when submitted by the payor (e.g., lessee, permittee) when the payor presents evidence (i.e., an envelope marked by the United States Post Office ''undeliverable'') that shows attempted delivery to the tribe or individual owner of the trust asset. We are unable to respond in the regulation to the request for a listing of OTFM offices, however, a current list of OTFM offices may be obtained from Department's web page at www.doi.gov. There were several comments requesting that we identify the tax status of, and certain agency exemptions for, trust funds. We are unable to incorporate these recommendations as this rule regulates the Department of the Interior and not other federal agencies that have a trust responsibility to tribes and individual Indians. Comments also indicated that there was general confusion about when we would accept funds from another federal agency on behalf of an individual Indian. By law, we are only able to take funds from another federal agency when the federal agency has appointed the BIA as the representative payee to receive benefits on behalf of an individual Indian because there is no legal guardian to be appointed as representative payee.

Subpart G—Tribal Accounts

Summary of Subpart

This subpart discusses the trust funds that are deposited into tribal accounts and their management by the BIA. Particularly, the subpart outlines when, and how, OTFM opens a tribal account; information regarding a statement of performance and when it is sent to a tribe; which trust funds may be deposited; tribal investments and how they are managed; procedures for withdrawing tribal trust funds; and what happens to unclaimed per capita funds.

Comments

Respondents suggested that income under a 25 U.S.C. 450f *et seq.* contract or compact should be able to be deposited into tribal trust accounts so that they may be invested and the interest earned reinvested daily. Any funds appropriated to administer a 25 U.S.C. 450f *et seq.* contract or compact are not trust funds, and cannot be deposited into tribal IIM accounts. If trust funds are to be deposited into a trust account, the contract for the sale or use of trust lands or resources (e.g., lease, permit) must specify that payments be made payable to the Secretary on behalf of the trust owner regardless of whether the Secretary manages the program or a tribe has compacted or contracted with the Secretary to operate the federal program. If a tribe that is compacting or contracting the federal program which administers/manages the tribe's contract involving trust assets receives trust funds derived from those trust assets made payable to the Secretary, then the contracting or compacting tribe must deposit those funds into a Treasury General Account. Any payments made payable to a tribe (direct pay) will not be accepted for deposit into a tribal trust account.

Another comment suggested that time lines should be prescribed for processing tribal account withdrawals. We have provided time lines in response to this comment. We are unable to accept the comments requesting that we give tribes authority over trust fund investments. By law, the Secretary is responsible for making all

trust fund investment decisions. However, we do accept with revision those comments requesting consultation with tribes on an annual basis because some tribes may not wish to meet with OTFM on an annual basis. Upon request by the tribe, OTFM will consult with a tribe annually regarding investments of tribal trust funds. Many respondents were concerned about a tribe requesting the return of unclaimed per capita funds. Unclaimed per capita funds will not automatically be returned to a tribe after six years. By law, a tribe may request, but is not required to request, the return of unclaimed per capita funds after six years. A decision to make a request for return of per capita funds is an internal tribal decision. Funds not returned to a tribe will remain in an ''unclaimed per capita account.'' We have decided to remove several of the provisions regarding tribal budgets and budget approvals in response to comments that these sections were confusing and seemed to add requirements that were not required by law. Tribes must continue to present budgets for the use of trust funds to the Secretary when required by law. Tribes are also encouraged to meet with OTFM to discuss cash flow needs so that OTFM may make informed investment decisions regarding tribal trust funds.

Subpart H—Special Deposit Accounts

Summary of Subpart

This subpart, which replaces part 114, limits the types of monies that may be deposited into special deposit accounts. Particularly, this subpart includes an explanation of who receives the interest earned on trust funds in a special deposit account; when trust funds in a special deposit account are distributed to the owner of the funds; whether administrative or land conveyance fees paid as federal reimbursements can be deposited into special deposit accounts; and what other types of monies may be deposited into special deposit accounts.

Comments

We received one comment on this section which requested that conveyance fees be allowed for deposit into special deposit accounts. In response, we restate that the Secretary only has authority to accept trust funds into a trust account. Conveyance fees are not trust funds.

Subpart I—Records

Comments

As previously noted, the provisions addressing the ownership and maintenance of trust records associated with the performance of this part, contained in subpart H of the Proposed Rule, have been modified in response to comments. These provisions are found in subpart I of the Final Rule.

D. 25 CFR Part 162—Leases and Permits on Indian Lands

The purpose of this regulation is to describe the authorities, policies and procedures the BIA uses to grant, approve and administer surface leases and permits on certain Indian land and Government land. It revises, amends and replaces the existing part 162 in its entirety, and implements the American Indian Agriculture Resource Management Act (AIARMA), 25 U.S.C. 3703, *et seq.* with regard to leases on Indian agricultural land. With respect to those regulations governing the administration of leases on specific reservation lands, the Final Rule will not effect any substantive changes, but renumbers those sections. The section pertaining to the Colorado River Reservation has been removed at the request of the tribe.

This regulation balances the responsibilities the Secretary has as trustee of Indian land with the need for tribes and individual Indian landowners to exercise maximum control over their Indian agricultural lands. These regulations will apply to all leases in effect on the date the regulations take effect.

General Observations Regarding Changes From Proposed Rule

The recent enactment of the ILCA Amendments affects the management of Indian lands held by multiple Indian landowners, including both tribes and individual Indians. The policies introduced by this legislation require extensive revisions to the Department's regulations affecting the leasing of individually owned allotted lands. Specifically, section 219 of the ILCA Amendments addresses all leases or other agreements affecting individually owned allotted lands or any other trust or restricted lands. Because section 219 of the new statute expressly provides that it does not amend or modify the AIARMA, the Department is now issuing final regulations in part 162 that address agricultural leasing under the authority of the AIARMA. The Department will extensively revise the regulations governing non-agricultural leases at a later date. Because the ILCA Amendments also affect tribes that own fractional shares of trust or restricted lands, the Department will not finalize new regulations affecting non-agricultural leasing on tribal lands until the full extent of the ILCA Amendments is determined and new regulations are re-proposed and additional tribal consultations are conducted.

Nevertheless, leasing must be able to continue even on lands that are subject to the new provisions of the ILCA Amendments. For these lands, most of the provisions of the superseded version of part 162 are republished in subpart F, modified such that provisions that conflict with the new definitions or agricultural leases (now covered in subpart B) have been deleted. Subpart F will be replaced with future rules, as described above. Additionally, in response to many comments calling for the BIA to strengthen its enforcement of leases, sections are included in subpart F that address the BIA's duties to collect delinquent lease payments and enforce lease violations on trust and restricted lands. These sections are modeled directly on the related sections in subpart B. Both the general provisions applicable to all leases and the new subpart F note that, if any of the provisions of these regulations conflict with the ILCA Amendments, the statute will govern.

A few respondents objected to the implementation of the AIARMA in the context of the part 162 regulations, requesting that separate regulations be issued. We reject this comment. Because agricultural leases are a specialized form of the BIA's overall leasing program and are administered under the authority of the AIARMA in combination with the Indian Long-Term Leasing Act, 25 U.S.C. 415, there is no need for stand-alone AIARMA regulations.

Agricultural leases are administered in a manner that is significantly different from other types of leases on trust and restricted Indian lands, such as business and residential leases. The Department has responded to the majority of comments addressing both the proposed leasing and grazing regulations by significantly restructuring and clarifying the leasing regulations in order to address agricultural leases independently. Separate subparts C and D, for residential and business leases, respectively, are identified and reserved for future rulemaking after the impact of the ILCA Amendments is assessed.

The process of separating provisions pertaining to agricultural leases from those that govern residential and business leases, and the consideration of public comments as described below, has resulted in extensive refinement, clarification and restructuring of the agricultural lease provisions. In its final form, the provisions pertaining to agricultural leases do not closely resemble the final grazing regulations at part 166 as much as they did in the

proposed regulations. Every effort has been made to ensure that both the agricultural lease provisions of part 162 and the grazing regulations at part 166 are substantively the same, to the greatest extent possible and practicable, insofar as they implement the provisions of the AIARMA. Additionally, specific provisions addressing trespass under the AIARMA that were contained in subpart L of the Proposed Rule have been deleted in favor of cross-referencing to the AIARMA trespass provisions in part 166.

In response to the majority of comments, the final agricultural leasing provisions reflect significant deference to tribal and individual Indian landowners, such as deferral to tribal laws and requirements for consultation between the BIA and the Indian landowner on all facets of management and enforcement activities, including enforcing lease and permit violations and trespass. The final regulations also provide more flexibility to the Indian landowner to negotiate, with the assistance of the BIA, desirable and favorable provisions in their leases. The BIA will provide subsequent guidance, including model lease language, to assist Indian landowners in negotiating their own leases.

The final leasing regulations provide for more pervasive deference to tribal law and tribal self-determination, not only as required under the AIARMA for grazing and agricultural leasing (subpart B), but also in the provisions that will apply to general leasing activities (subpart A). Several tribes and the NCAI pressed for more complete deference to tribal leasing decisions than the Department believes can be accommodated under current law, notwithstanding the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq*. For example, the NCAI requested that the Department adopt regulations that would provide for routine approvals of tribal short-term leases. However, existing statutory authorities require meaningful review by the Secretary in carrying out the trust responsibility. Moreover, a rule providing for such routine approvals of tribal short-term leases would fail to take into account those tribes that do not yet have sufficient policies and procedures in place to ensure that the trust assets are properly managed.

Nevertheless, the Department is committed to speeding up its review, approval, administration and enforcement of leases. Throughout these regulations, reasonable time frames for action by the BIA have been inserted to strengthen the management of leases. For the reasons stated in the preceding paragraph, under existing law we must reject those comments seeking automatic lease approvals if the time frames are not met.

A few commenters, particularly the NCAI, requested that the BIA identify with specificity the individual official responsible for taking action or making a decision in any given instance. We reject these comments, as we believe such matters are properly addressed in Bureau and Departmental delegations of authority, which may be changed as work load and other factors demand. To commit to such delegations in regulations would inflexibly bind the BIA and Department from addressing pressing workforce needs in an efficient and effective manner. The NCAI further requested that the BIA adopt a ''trust officer'' model for managing trust land, similar to that used in the private sector. We believe such a model already exists at the individual BIA agency and field office level; the agency superintendent and field representative effectively serve as the responsible ''trust officer'' responsible for the administration of trust land within their jurisdiction.

Consistent with the majority of comments, the final regulations continue to provide for direct payment to Indian landowners for leases on their trust lands, as long as direct payment is a specific term in the lease or permit. In order to ensure that the Secretary can properly enforce lease and permit payment terms, leases and permits authorizing direct payments must require that tenants maintain documentary proof of payment. Several respondents suggested that the Secretary should require that proof of payment be submitted to the agency with every direct payment. However, such a requirement would be inconsistent with historic practice and would result in an unsustainable drain on agency resources. Absent a system for tracking such notices, the requirement would not produce the desired goal of ensuring prompt enforcement of payment of trust income. Further, it would be far less effective than relying on the Indian landowner to advise the BIA immediately upon discovering that a payment has not been made and requesting enforcement assistance. Therefore, the final regulations provide that the Indian landowner notify the Secretary that a required payment has not been made. The Secretary then will take prompt and effective action based on that specific information. The Department continues to recognize the advantages to Indian landowners of direct payments. However, this advantage necessarily brings with it increased responsibility of Indian landowners to assist in the enforcement of non-payment of their leases and permits. With this regulatory change, Indian landowners who opt for and negotiate direct payments are clearly notified of their responsibilities to notify the BIA of late payments. Similarly, tenants are notified both by these regulations and in the lease itself that documentary proof of payment will be necessary to demonstrate that a payment was timely made in the correct amount due, should there be any question about a payment.

The Department is not taking on any obligation to manage or account for funds paid directly to Indian landowners that are not actually held in trust by the United States. This is consistent with section 102(a) of the American Indian Trust Management Reform Act of 1994, 25 U.S.C. 4011. Although we invited the public to comment on the question of accounting for direct payments, no specific recommendations were received beyond a general recommendation to collect proof of payment.

In both general lease and permit enforcement, as well as in trespass enforcement, the final leasing regulations reflect the suggestions of a large number of commenters to establish reasonable time frames in which the BIA will take appropriate enforcement action, and to reduce the amount of procedural steps necessary for effective enforcement. Significantly, the final rule includes new provisions identifying the BIA's responsibility for collecting delinquent rent payments.

Subpart A—General Provisions

Summary of Subpart

Subpart A addresses the purpose and scope of part 162 and describes the general authorities, objectives and policies the BIA uses to approve, grant, administer and enforce surface leases of Indian land. This subpart also defines key terms used throughout part 162 and identifies the land, interests in land, and types of leases covered by part 162. This subpart describes how tribal laws will apply to leases, and how records are maintained that document the leasing of trust and restricted lands.

Comments

Subpart A of this Final Rule now includes new provisions addressing the scope of part 162, policy statements, and other general provisions not found in the Proposed Rule. As noted above, many commenters suggested that the Final Rule include separate standards

for different types of leases, including agricultural, business and residential leases. In response, this Final Rule provides for separate subparts for agricultural leases (subpart B), residential leases (subpart C), and business leases (subpart D). Subparts C and D are reserved for publication at a later date. Accordingly, we will not address any of the provisions in subpart E or elsewhere in the Proposed Rule concerning residential or business leases, or the comments relating to those provisions.

Section 162.101 of the Final Rule contains definitions of key terms used throughout part 162. In response to many comments, we have clarified and streamlined most of the definitions in concert with those used in the final rules at parts 151 and 166. We have added definitions for day, emancipated minor, fee interest, immediate family, interest, minor, mortgage, remainder, surety, and tenant. Several confusing terms have been deleted or revised. For example, we have deleted specific definitions of appeal bond and surety in favor of a single definition of bond. In response to many comments, we generally have discontinued using the term lessee in favor of tenant.

Several respondents raised questions about the scope of the Proposed Rule. In response, § 162.102 clarifies that only land and land interests held in trust or restricted status are covered, and § 162.103 defines the types of agreements covered. Section 162.102(b) sets forth the general rule with respect to the leasing of life estates and remainder interests, with a cross-reference to 25 CFR Part 179. The information in subpart J of the Proposed Rule concerning fee interests or ''non-trust'' interests has been relocated to § 162.102(c) of this Final Rule. In addition, the provision in § 162.70 of the Proposed Rule which recognized that tribes could lease tribal land without BIA approval under federal charters has been moved to § 162.102(d) of this Final Rule. Finally, § 162.102(e) of this Final Rule notes that to the extent part 162 conflicts with the recently-enacted ILCA Amendments, the provisions of the ILCA Amendments will govern. In § 162.103, the Final Rule expands the cross-references in § 162.1(a) of the Proposed Rule, to distinguish the surface leases and permits covered by part 162 from other transactions involving trust or restricted land.

Many questioned whether the individual Indian landowners of undivided interests in fractionated tracts would need leases from their co-owners (i.e., ''owner's use''), before taking possession. In response, § 162.104(b) clarifies that an Indian landowner of an undivided interest may not take possession without a lease unless the Indian co-owners give their permission. We have not accepted the requests to eliminate the owner's use provision in its entirety. This provision is necessary to ensure protection for, and to foster cooperation and negotiation among, all Indian co-owners.

Several commenters also expressed confusion as to how the trespass rules in subpart L of the Proposed Rule would apply to leases. As previously noted, some suggested that failure to pay rent be treated immediately as trespass. In response, the special provisions on trespass have been removed, but those provisions (as still incorporated in part 166) have been cross-referenced in §§ 162.106(b) and 162.256 of this Final Rule. We have rejected the comments requesting that we treat non payment as trespass, based on the availability of contract remedies prior to the cancellation of the lease. We have noted, however, that we will treat any possession of Indian land without a lease as a trespass, whether or not it occurs it occurs on Indian agricultural land.

Several respondents indicated that the Proposed Rule did not sufficiently define the BIA's responsibilities in the leasing of trust and restricted land; promote tribal self-determination through the negotiation of tribal leases and the administration of reservation lands under self-determination contracts or self-governance compacts; or support tribal sovereignty through the formal recognition of tribal laws and leasing policies. We have accepted these comments. Accordingly, §§ 162.107–162.108 define our objectives in granting or approving leases involving trust or restricted land and our responsibilities in the administration and enforcement of such leases, as noted above. The policies expressed in §§ 162.107–162.108 are intended to reflect our strong support for the rights of Indian landowners, tribal governing authority, and tribal administration of BIA programs. In § 162.109(b) we expressly recognize that tribal laws will broadly apply to all land under tribal jurisdiction, and generally allow tribal laws to supersede or modify the regulations in part 162 with respect to leases of tribal land.

In the Proposed Rule, we invited comments with respect to the distribution of rents derived from unitized leases comprised of multiple tracts with different Indian landowners. In response to the small number of comments received, we have combined §§ 162.17 and 162.102 of the Proposed Rule in § 162.105 of this Final Rule. We continue to provide that rents will be distributed based on the size of the Indian landowner's interest in proportion to the acreage in the entire lease tract, unless the lease provides otherwise. We also clarify that minimum Indian landowner consent requirements will apply to each tract separately rather than to the unitized lease tract as a whole.

Finally, to be consistent with the regulations published under parts 15, 115, and 166, we have added two sections addressing the maintenance of records relating to probate cases. These provisions, §§ 162.111 and 162.112, replace subpart M of the Proposed Rule.

Subpart B—Agricultural Leases

Summary of Subpart

Subpart B, consisting of six groupings of sections, governs agricultural leases on Indian lands. Under ''General Provisions'' are sections addressing the applicability of tribal laws and policies to agricultural leases. The sections under ''How to Obtain a Lease'' set forth procedural requirements including who can grant agricultural leases, how the BIA approves such leases, the documentation and recording requirements for such leases, and the effective dates of leases and BIA decisions. ''Lease Requirements'' includes sections that describe mandatory lease provisions, the amount of rent to be paid and the manner of payment (including late payments and penalties), improvements, bonds, and insurance. Under ''Lease Administration'' are provisions governing administrative fees and amendments, assignments, subleases and mortgages. ''Lease Enforcement'' includes sections identifying the BIA's responsibilities and time frames for collection of delinquent rent payments and other violations of agricultural leases, lease cancellation procedures, emergency action and inspections by the BIA.

Comments

General Provisions

A large number of commenters questioned provisions in the Proposed Rule that implemented the AIARMA. As we noted above and provide with respect to part 166, we have rejected the comments suggesting that special AIARMA regulations be promulgated independent of the BIA's leasing and grazing programs. As noted, the AIARMA-based trespass provisions in subpart L of the Proposed Rule have

been removed, leaving appropriate cross-references to 25 CFR Part 166. Many of the respondents were also concerned about the applicability of tribal laws and leasing policies. As indicated above, we have replaced § 162.4 of the Proposed Rule with the more specific § 162.109 in this Final Rule, to clarify that tribal laws will broadly apply to all types of leases, but will supersede or modify our regulations only in limited circumstances.

We have moved the AIARMA-based provisions found in §§ 162.5–162.9 and § 162.11 of the Proposed Rule to this heading in subpart B of the Final Rule. Consistent with the AIARMA, section 162.200 provides that subpart B will apply not only to agricultural leases, but also to business leases that support the Indian agricultural community. Section 162.201 provides that lands be managed in accordance with any agricultural resource management plan that have been adopted. As required by AIARMA, § 162.201(c) broadly authorizes waivers of regulations that are inconsistent with any agricultural resource management plan.

The provisions in §§ 162.5 and 162.9 of the Proposed Rule, relating to the implementation and enforcement of tribal laws affecting agricultural land, have been combined in § 162.202 of this Final Rule. In response to comments, § 162.202(b)(3) includes provisions that clarify that BIA appearances in tribal forums may be limited by Departmental regulations at 43 CFR Part 2, and by provisions in the AIARMA to preserve the sovereign immunity of the United States and limit tribal court review of BIA actions. Section 162.202(c) broadly authorizes waivers of regulations that are inconsistent with tribal laws.

Section 162.6 of the Proposed Rule, addressing when our standard regulations can be superseded or modified by certain types of tribal leasing policies, has been slightly modified and redesignated as § 162.203. It should also be noted that the broad AIARMA provision authorizing our approval of an agricultural lease of tribal land at any rate determined by tribal governing body has been incorporated in this Final Rule through standard regulations, at § 162.222(b), as well as through tribal policies made applicable under § 162.203 of the Final Rule. Although a number of commenters requested guidance as to how a superseding leasing policy might be adopted by a tribe, the Final Rule leaves the matter to the discretion of each tribe. The notice provisions in § 162.8 of the Proposed Rule have been clarified and extended to Indian landowners in § 162.204. Although some commenters objected to any notice requirement being placed on tribes, we continue to require that tribes provide us with notice of any tribal law or leasing policy that supersedes or modifies any of the regulations in part 162, so that we may provide the notices required by AIARMA. Finally, § 162.205 clarifies the provisions in § 162.7 of the Proposed Rule, authorizing individual Indian landowners to exempt their land from a leasing policy which supersedes or modifies one of our standard regulations prohibiting tenant preferences, requiring a bond, or guaranteeing three months notice before we grant a lease. Consistent with the AIARMA, we continue to require that at least 50% of the Indian landowners request the exemption and add a new provision that the exemption be requested each time a lease is granted or approved. Although numerous commenters objected to the exemption provision, these exemption rights are expressly provided for in AIARMA and have thus been retained in this Final Rule.

How To Obtain a Lease

In response to many comments, we have clarified the circumstances under which leases can be obtained through negotiation or advertisement or granted or approved without an appraisal or other documented valuation. In doing so, we have reduced and consolidated the provisions in subpart C of the Proposed Rule into §§ 162.206 and 162.212, respectively, in this Final Rule. Further, we have consolidated the provisions subpart D of the Proposed Rule into §§ 162.207–162.210 of the Final Rule, with several corrective amendments. The provisions relating to fair annual rental determinations, proposed in §§ 162.150–162.151 of the Proposed Rule, have been consolidated in § 162.211 of the Final Rule, with a clarification that fair annual rental determinations are not needed in cases where a lease may be approved at less than a fair annual rental, unless the Indian landowners request such a determination. We have also clarified that the BIA will determine fair annual rental value for leases on Indian lands by appraisal, advertisement, competitive bidding, or any other appropriate method that complies with the USPAP. The BIA does not intend to specify in part 162 the particular method for appraising Indian land; rather, ensuring flexibility in choosing an appraisal method allows the Secretary to most effectively discharge his responsibility as trustee.

Many respondents questioned the proposed provisions that addressed the granting of leases on fractionated tracts, including ''owner's use'' leases. In response, the provisions in the Proposed Rule that indicated that land being used by an Indian owner of a fractional interests could be leased to another party have been modified. Section 162.209(b) provides that we will not exercise our authority under 25 U.S.C. § 380 to grant a lease on behalf of all of the Indian owners of a fractionated tract where the Indian co-owners have given one of the Indian landowners permission to possess the tract without a lease.

A number of commenters objected to the provisions in § 162.12 of the Proposed Rule that identified the factors to be used in applying the ''best interest'' standard of review for lease approvals. Some noted that the BIA incorrectly applied 25 U.S.C. § 415(a). Others requested that the BIA consider additional factors beyond those provided in the statute. In response, § 162.214(a)(3) provides that we must assure ourselves that adequate consideration has been given to the five factors identified in 25 U.S.C. § 415, consistent with the statutory language. A sixth, non-statutory factor was suggested by the NCAI and identified in the Proposed Rule. This factor would require that we consider any tribal assessment of potential impacts on tribal culture and sovereignty. We received contradictory objections to this provision as being at once too paternalistic and yet too deferential to tribes. Because the sixth factor pertains primarily to long-term, business and residential leases, we have deleted it from the Final Rule for agricultural leases.

Many commenters requested that we include a time frame in which we must make a decision whether to grant or approve a lease. In response, § 162.214(b) requires action within 30 days, so long as the lease is in a form which has been previously accepted or approved, and all of the requisite supporting documents have been received. Those supporting documents are generally described in § 162.213, including a cross-reference to the bond requirement not found in proposed § 162.13, the corresponding provision of the Proposed Rule.

Many questions were raised about the effective dates of our decisions to grant or approve leases. With respect to the effective date of an agricultural lease, and the relation between the effective date of our decision to grant or approve the lease and the commencement date of the lease, the provisions in §§ 162.12(c) and 162.28 of the Proposed Rule have been consolidated and clarified in

§ 162.215 of the Final Rule. This section confirms that our decision can be made retroactively effective.

In response to numerous comments, we have significantly revised the applicability of the appeals process for decisions to grant or approve leases. Contrary to § 162.75 and subpart I of the Proposed Rule, § 162.216 makes a grant or approval decision effective immediately, notwithstanding any appeal that may be filed under 25 CFR Part 2.

Finally, we received many inquiries as to why we proposed only to record leases greater than one year in duration. We agree with those concerns and will record all leases. The Proposed Rule omitted mention of recording permits; the final rule provides that all permits will be recorded, as well. The provisions in §§ 162.14–162.16 of the Proposed Rule have been consolidated and clarified in § 162.217, expressly exempting permits from the recording requirement.

Lease Requirements

We received many comments requesting that the BIA be less prescriptive in mandatory lease requirements and allow for greater flexibility in negotiating leases that are favorable to the Indian landowner. We have balanced these concerns against the need for mandatory provisions that provide sufficient protection of Indian landowners. Accordingly, under the heading ''Lease Requirements'' are minimal mandatory provisions for agricultural leases, as well as provisions addressing matters that we strongly encourage be negotiated.

The mandatory provisions listed in § 162.26 of the Proposed Rule have been clarified and streamlined in §§ 162.219 and 162.220 of this Final Rule. Many respondents criticized the provisions relating to the description of the leased premises, as found in §§ 162.20 and 162.26(i) of the Proposed Rule, as being too restrictive for business purposes. We agree with these comments. In consolidating these sections in § 162.221 of the Final Rule, we state a clear preference for public or private surveys, but will accept any legal description that adequately identifies the property.

As previously noted in the general discussion of the changes to part 162, we have responded to the numerous comments received regarding direct rent payments. We are retaining the authority for direct payments and requiring tenants to retain documentation evidencing proof of payment. The provisions in §§ 162.41–162.42 and §§ 162.100–162.101 have been consolidated in § 162.226 of this Final Rule.

Section § 162.225 addresses late payments, combining §§ 162.34 and 162.36–162.37 from the Proposed Rule. In response to the majority of comments, this section provides that interest will begin to accrue immediately after a payment is missed, and that negotiated late payment penalties also may be imposed. Section 162.227 allows payments made directly to the Indian landowners to be made by any method specified in the lease. This section also allows payment by personal or business checks, in accordance with virtually every comment received on this issue. To minimize the risk to Indian landowners where such checks are dishonored, we have added a provision in § 162.248(d) stating that a lease is violated by the dishonoring of a check, and future payments must be made by one of the alternative methods identified in § 162.227.

Several commenters requested that the BIA allow greater flexibility in requirements for adjusting rental payments over the course of a lease. In response, § 162.223 provides for a minimum of one adjustment during the term of an agricultural lease, but Indian landowners may negotiate additional adjustments. We received few comments addressing the adjustment method and have clarified that the parties may negotiate the method of adjustment, with assistance from the BIA.

A number of comments also addressed the maximum lease term for agricultural leases. We have clarified this information in § 162.229, consistent with the AIARMA, to state that the maximum term for an agricultural lease is ten years, unless otherwise provided by law, and unless substantial investment in improvement of the land justifies extending the term up to 25 years.

Most commenters who addressed lease amendments, assignments, subleases, and leasehold mortgages requested that the BIA approve every such transaction. We agree that, with respect to agricultural leases, such approval continues to be necessary to protect Indian landowners. Section 162.230 has been amended accordingly, combining provisions in found in the Proposed Rule at §§ 162.21–162.25 and 162.87–162.90.

Many respondents requested additional clarity in the treatment of improvements to agricultural lands, both during and after the term of a lease. We have responded to these comments in §§ 162.232 and 162.233, by providing for negotiation of ownership of improvements in the lease, with suggestions for favorable terms, and provisions for BIA enforcement.

Finally, in response to many comments seeking strengthened remedies protecting Indian landowners in the event of lease violations, § 162.240 of the Final Rule amplifies the rights of Indian landowners to negotiate remedies that may be applied in addition to those taken by the BIA, including the possibility that the Indian landowner may cancel the lease. We also encourage Indian landowners to address the matter of tribal court jurisdiction for the resolution of lease disputes involving such negotiated remedies. However, this section provides that the BIA may not be bound by such decisions, but we generally will defer to tribal court proceedings as appropriate.

Lease Administration

Some commenters found the organization of the Proposed Rule confusing because it failed to distinguish clearly between the review and processing of a lease, and subsequent lease amendments, assignments, subleases, and leasehold mortgages. In response, we have created this grouping of sections entitled ''Lease Administration,'' which combines the provisions relating to the review and processing of amendments, assignments, subleases, and leasehold mortgages, as contained in subpart B of the Proposed Rule, with the provisions relating to administrative fees, proposed in subpart G.

With respect to administrative fees specifically, several commenters felt that the provisions in subpart G of the Proposed Rule were unclear as to the authority of tribes to charge and collect such fees, whether or not the tribe is administering the leasing program under a self-determination contract or self-governance compact. In response, § 162.241 establishes a standard 3% fee, subject to modification by a tribe or a discretionary waiver by us, and clarifies who pays the fee, why it is paid, and when it is subject to tribal modification. This provision has a consistent counterpart in part 166. As indicated above, the provisions in § 162.114 of the Proposed Rule, relating to the payment of other types of fees and charges, have been relocated to § 162.228 of this Final Rule.

Many respondents noted that subpart E of the Proposed Rule, which was intended to apply only to business leases, contained general provisions applicable to other types of leases. We believe the reorganized structure of part 162 will address these concerns. As

noted above in the general discussion of these Final Rules, numerous commenters suggested that the Final Regulations include time frames binding the BIA, with automatic approval of leases should BIA time frames be missed. With respect to agricultural leases, we added time frames to improve BIA review and approval procedures, but have rejected the comments suggesting automatic approval if the BIA fails to meet the specified time frames.

We have retained the basic structure and content of the Proposed Rule's standard of review provisions for assignments, subleases and mortgages, respectively. Additionally, in response to several comments, we have added a standard of review provision for lease amendments at § 162.242. We also eliminated the provision in the Proposed Rule that would have required that a tenant remain liable even after an assignment is approved, leaving such matters to negotiation between the parties. In § 162.45, we have added a provision stating that amendments, assignments, subleases, and leasehold mortgages are immediately effective upon approval, notwithstanding any appeal which may be filed under 25 CFR Part 2.

The recording requirement for leasehold mortgages, as found in § 162.22 of the Proposed Rule, has been extended to all subsequently approved lease documents by § 162.246 of this Final Rule.

Lease Enforcement

Many respondents criticized the enforcement provisions in subpart H of the Proposed Rule, recommending that we employ stricter definitions of our enforcement responsibilities, including time frames for BIA action. In particular, commenters urged us to develop very specific enforcement provisions governing enforcement of a tenant's failure to pay rent. We have accepted these comments, and have combined some of the collection provisions in subpart B of the Proposed Rule with the enforcement provisions in subpart H of the Proposed Rule. In response to several commenters, § 162.248 contains new provisions specifying the actions the BIA will take to enforce a tenant's failure to pay rent. These actions include a written notice of violation, immediate action to recover undisputed overdue rent prior to lease cancellation, and the acceptance of partial payments. Additionally, in § 162.249 we have added a new provision addressing the BIA's authority to assess against delinquent tenants special fees to cover the cost of collection. The inspection provision in § 162.121 of the Proposed Rule has been strengthened in § 162.250 of the Final Rule, providing that appropriate investigation will be initiated within five days of the date on which the BIA receives notice that a specific violation has occurred.

Many respondents requested that we strengthen the provisions by which we cancel leases for violations. Specifically, commenters requested that we speed up the cancellation process to better protect Indian landowners against financial losses during the pendency of any appeal of a cancellation decision. We have accepted these comments in the Final Rule. First, the provisions relating to notices of violations, found in §§ 162.122–162.124 of the Proposed Rule, have been consolidated and clarified in § 162.251 of the Final Rule, by eliminating the right of a tenant to appeal a notice of violation other than by responding to the notice itself. The provisions in §§ 162.123(c) and 162.125–162.127 of the Proposed Rule outlining the actions a tenant could take to cure a violation have been combined in § 162.252 of the Final Rule, with the election of remedies to be based in part on consultation with the Indian landowners. Second, special streamlined appeal provisions will be applied to lease cancellations. For example, in § 162.253, bonding requirements for decisions to cancel leases will differ from those in 25 CFR Part 2. Additionally, § 162.254 provides that cancellation decisions will be stayed only for thirty days pending the filing of an appeal. Third, the provisions relating to emergency actions from §§ 162.128–162.129 of the Proposed Rule have been consolidated and strengthened in § 162.255 of the Final Rule. Finally, § 162.256 provides that holdover tenants will be treated as trespassers.

Subpart C (Residential Leases) Is Reserved

Subpart D (Business Leases) Is Reserved

Subpart E—Special Requirements for Certain Reservations

Summary of Subpart

Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. These provisions were in subpart N of the proposed regulations. Except for the removal, at the request of the tribe, of the section pertaining to the Colorado River Reservation, there have been no changes from the superseded or proposed regulations.

Subpart F—Non-Agricultural Leases

Summary of Subpart

As noted above, because of the enactment of the ILCA Amendments and the separation of agricultural leases into a distinct subpart, the BIA will promulgate new regulations for business and residential leases in the future. Until then, such leases must continue under existing authority. Therefore, new subpart F contains the general leasing authorities from the superseded regulations at 25 CFR 162.2–162.10, and §§ 162.12–162.13. In response to the many comments requesting stronger provisions for collection of lease rent and enforcement of lease provisions, subpart F contains new collection and enforcement provisions for non-agricultural leases, modeled on those in subpart B. Subpart F will be withdrawn when the new business and residential lease subparts are issued.

E. 25 CFR Part 166—Grazing Permits on Indian Lands

The purpose of this part is to describe the authorities, policies and procedures the Secretary uses to grant, approve and administer grazing permits on agricultural lands that are restricted against alienation or are held by the United States in trust for federally recognized Indian tribes and individual Indians, as well as certain lands owned by the federal government. It revises and entirely replaces the existing part 166, and implements the AIARMA with regard to grazing permits on Indian agricultural land and education in agriculture management. We have taken care to ensure consistency of related provisions in both parts 166 and 162 that implement the AIARMA.

Part 166 balances the Secretary's responsibilities as trustee of Indian land and resources with the need for Indian tribes and individual Indian landowners to exercise control over their agricultural trust lands and business affairs. Part 166 is organized to include ten subparts for the convenience of the reader. The expanded sections clarify existing policies and procedures governing the administration of grazing permits on Indian agricultural lands and is intended to bring consistency to the administration of grazing permits by the BIA. Part 166 does not address leasing of any type, nor does it address permitting for purposes other than grazing. Leasing of Indian lands is covered in part 162 of 25 CFR.

General Observations Regarding Changes From Proposed Rule

The Final Rule follows the format used in the Proposed Rule. Specific

changes and responses to significant comments are outlined below.

Subpart A—Purpose, Scope, and Definitions

Summary of Subpart

Subpart A addresses the purpose and scope of part 166 and describes the authorities, policies, and procedures the Secretary uses to approve, grant, and administer grazing permits of Indian agricultural land. This subpart also defines key terms used throughout part 166. These terms are consistent with those found in the AIARMA.

Comments

As we noted in our general discussion of the final regulation and our discussion of part 162, several commenters recommended that the BIA develop a stand-alone rule to implement the AIARMA exclusively. This recommendation was not accepted. Part 166 fully implements the AIARMA as it pertains to grazing permits on Indian land.

One tribe recommended that the Final Rule not impact tribal grazing lands currently governed by other parts of Title 25 of the Code of Federal Regulations. This recommendation was accepted. Section 166.1(c) was added to clarify that tribal grazing programs authorized under separate statutory authority are not subject to part 166.

Several respondents requested clarification of definitions including ''conservation practices,'' ''fair annual rental,'' ''majority interest,'' ''on-and-off grazing permit,'' ''owner's use,'' and ''parcel.'' These comment were accepted and the revisions have been incorporated into the definitions found in subpart A. Also in response to several comments, all the definitions were reviewed and revised to maintain consistency with the AIARMA and part 162.

Subpart B—Tribal Policies and Laws Pertaining to Permits

Summary of Subpart

Under subpart B, tribal laws and ordinances, including laws regulating the environment, cultural or historic preservation, land use, and other activities under tribal jurisdiction, apply to grazing permits on Indian agricultural lands unless such tribal laws and ordinances are prohibited by federal law. Tribes are responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands with the assistance of the Secretary.

Consistent with the AIARMA, this subpart makes clear that when authorized by an appropriate tribal resolution, the Secretary will comply with certain general tribal policies pertaining to permitting on Indian agricultural lands. Also consistent with the AIARMA, subpart B provides that individual Indian landowners who have at least a 50% interest in a fractionated tract of Indian land can exempt their Indian land from the Secretary's implementation of these certain general tribal policies by submitting a written request to the BIA.

Comments

Similar to part 162, many comments questioned provisions of part 166 that allow individual Indian land owners to exempt their lands from certain general tribal policies pertaining to permitting on Indian agricultural lands. Comments also recommended that tribes should not be authorized to define ''highly fractionated undivided heirship lands.'' These comments were not accepted. Section 3715(b) of the AIARMA authorizes tribes to establish certain general tribal policies pertaining to permitting on Indian agricultural lands through an appropriate tribal resolution which also includes the authorization of tribes to define ''highly fractionated undivided heirship lands'' for notification purposes. Section 3715(c)(3) of the AIARMA authorizes individual Indian landowners who have at least a 50% interest in a fractionated tract of Indian land to exempt their Indian land from the Secretary's implementation of these certain general tribal policies pertaining to permitting on Indian agricultural lands by submitting a written request to the BIA. Part 166 fully complies with these provisions of the AIARMA.

Many comments recommended that tribes not be required to notify the BIA when new tribal laws or policies are enacted. These comments were not accepted. Section 3712(b) of the AIARMA requires the Secretary to provide notice of tribal laws or policies to persons or entities undertaking activities on Indian agricultural lands. It is reasonable to require tribes to notify the BIA of new applicable tribal laws or policies so that the Secretary may comply with the AIARMA. This notice requirement does not invalidate tribal laws or policies if tribes do not provide the BIA with notice of such new laws or policies. Finally, in response to comments, a provision was added in § 166.104 that states the BIA will notify affected Indian landowners, in addition to permittees, of new applicable tribal laws or policies.

Subpart C—Permit Requirements

Summary of Subpart

This subpart describes general requirements for obtaining a grazing permit, obtaining a grazing permit (leasehold) mortgage, modifying and assigning a grazing permit, and subpermitting of an existing grazing permit. This subpart also recognizes the authority of tribes to determine the duration of permits on tribal lands. Pursuant to the AIARMA, 25 USC 3715(a), subpart C provides that grazing permits would be generally granted for a period of ten years unless a longer term of up to 25 years is appropriate.

Subpart C recognizes that the Secretary has authority to grant or approve only permits of trust interests in Indian lands. Subpart C also makes clear that to ensure the preservation and proper use of trust lands, the Secretary requires permittees to conduct grazing operations in accordance with tribal goals and priorities for multiple use, sustained yield, agricultural resource management planning, and sound conservation practices. This subpart further requires permittees to fulfill all financial obligations to the Indian landowners and to conduct only those activities authorized by the grazing permit. Failure by a permittee to meet these expectations may result in an imposition of fines or penalties under subpart H, ''Permit Violations,'' or subpart I, ''Trespass,'' in order to protect the interests of the Indian landowners.

Comments

Several comments recommended a clarification of whether the BIA must approve tribal permits. The recommendation was accepted. Clarifications were made in § 166.1 of subpart A which describe specific circumstances for which Secretarial approval is not required for tribal permits.

Many respondents recommended that the regulations provide protection to Indian landowners so that their land may not be subpermitted at higher rates without a commensurate benefit to the Indian landowners. These recommendations were accepted. Section 166.229 provides protection to the Indian landowner by requiring BIA approval and the written consent of all parties to the permit (including Indian landowners) prior to an amendment, modification, assignment, transfer, or subpermit.

The proposal to eliminate the ''on-and-off'' grazing permit system that allowed for the administration of range units that involve both trust and non-trust lands was the subject of many

concerns. These respondents raised concerns about prudent range management practices where grazing trust land is permitted adjacent to non-trust land where grazing also occurs. These comments were accepted. A new provision, § 166.308, was added to allow the modification of the number of animals on permitted Indian land in order to accommodate adjacent non-trust lands so long as the conservation plan and the permit for the permitted Indian land accounts for this practice. However, the Secretary has no management authority over non-trust lands and will not approve grazing on non-trust lands.

The non-trust interest provisions previously located in subpart C of the Proposed Rule was eliminated. A discussion of the Secretary's responsibility regarding non-trust interest is now found in § 166.1.

A small number of comments recommended that leasehold mortgages not be allowed on grazing permits. Because such mortgages can be an important mechanism for economic development, these comments were not accepted. Section 166.223 preserves the option of mortgages on the permitted interest for those wishing to do so. Such mortgages apply only to the permit interest, not the interest in Indian land, and are a valid source of secured lending. The BIA recognizes that leasehold mortgages should be available where the parties to the permit agree. Mortgaging a permit interest is not required, and the parties to the permit remain free to negotiate a provision to allow or disallow such mortgages.

Several comments recommended that part 166 contain a 30-day time frame for notifying permittees of the removal of tribal land from a range unit. These comments were not accepted. Permittees require a reasonable time to make other arrangements for their livestock when tribal lands are removed from a range unit. Thus, § 166.228 continues the current 180-day notice requirement.

Several comments recommended that tribes be responsible for conducting their own appraisals and valuations. While the comments have merit, the Secretary has a trust responsibility to ensure that appropriate valuation is obtained for each permit. Tribes may conduct their own valuations in addition to valuations required by part 166.

Several comments recommended that the BIA should not limit valuation methods to appraisals. These comments were accepted. Section 166.401 was re-written to clarify that additional valuation methods may be employed as appropriate if consistent with the Uniform Standards of Professional Appraisal Practices (USPAP).

Many comments recommended that emancipated minors be recognized as adults and be authorized to grant permits on their own behalf. These comments were accepted. Section 166.202 was re-written to enable emancipated minors to grant grazing permits on their own behalf.

A number of respondents recommended that part 166 clarify the Indian landowner's responsibility in negotiating and advertising permits. These comments were accepted. Sections 166.220 and 166.221 were clarified to reflect that Indian landowners may negotiate permits and advertise for bids. The BIA will continue to assist Indian landowners with negotiations and advertisement or negotiate or advertise on behalf of Indian landowners when requested.

Subpart D—Land and Operations Management

Summary of Subpart

Subpart D, ''Land Operations and Management,'' describes how the BIA will establish range units and grazing capacity in consultation with Indian landowners.

All grazing permits issued under subpart D must be consistent with an agricultural resource management plan prepared in accordance with § 3711(b) of the AIARMA by a tribe or by the BIA in close consultation with a tribe. To ensure that a permittee's intended objectives regarding animal husbandry and other grazing issues represent sound practice, § 166.312 requires that a conservation management plan be developed with the permittee for each permit. The conservation management plan must be consistent with the tribe's approved agricultural resource management plan.

Comments

Several comments recommended that the Final Rule include an ''on-and-off'' grazing permit that allows the number of animals and/or season of use to be modified on the permitted land if adjacent trust or non-trust rangelands are used. These comments were accepted. Section 166.308 of this subpart describes how the number of animals and/or adjacent trust or non-trust rangelands may be included in an ''on-and-off'' grazing permit.

Several comments recommended that the final rule accommodate tribes that wish to decide livestock ownership requirements on tribal land, including those pertaining to non-Indian cattle owners and Indian cattle enterprises. These recommendations were accepted. A new provision, § 166.309, was added to support the tribe's authority to determine tribal livestock ownership requirements on tribal lands.

Several respondents recommended that conservation plans not be developed by permittees, and that tribes should be included when preparing and evaluating conservation plans. Many also recommended that part 166 provide greater specificity on how tribes should develop their agriculture resource management plans. Section 166.312 provides that conservation plans will be developed with the permittee for each permit and must be approved by the BIA prior to issuance of the permit. The conservation plan must also be consistent with the tribe's agriculture resource management plans in accordance with the AIARMA. As written, § 166.312 does not mandate options by which tribes may fund or contract plan development in order to maintain flexibility.

Several commenters recommended that part 166 identify who would be liable for completing or maintaining a conservation practice through a USDA cost share program or other similar program if the permittee no longer holds the permit. These comments were accepted. A new provision, § 166.315, was added that requires the parties to the permit to negotiate and identify which party will be responsible for completing and/or maintaining a conservation practice should the permit expire or be canceled.

Subpart E—Grazing Rental Rates, Payments, and Late Payment Collections

Summary of Subpart

Subpart E, ''Grazing Rental Rates, Payments, and Late Payment Collections'' preserves the ability of tribes to establish grazing rental rates on tribal lands. The BIA continues to set the grazing rental rates for individually owned Indian land. This subpart clarifies the procedures by which tribes may set grazing rental rates higher or lower than the BIA's established fair annual rental rate.

As trustee, the Secretary must determine the fair annual rental value of Indian trust lands in order to assist Indian landowners in negotiating permits with potential permittees and to determine if a permit is in the best interest of the Indian landowner. Subpart E clarifies that the BIA will determine fair annual rental value for grazing permits on Indian agricultural lands by appraisal, advertisement,

competitive bidding, or any other appropriate method that complies with the USPAP. The BIA does not intend to specify in part 166 the particular method for appraising agricultural land; rather, ensuring flexibility in choosing an appraisal method allows the Secretary to most effectively discharge his responsibility as trustee.

Subpart E continues the practice of direct payments to Indian landowners, and requires adequate proof of payment.

In § 166.424, the BIA will prorate grazing rental payments made 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.

Comments

Many comments recommended that the BIA clarify and expand payment methods to allow greater flexibility for landowners such as by allowing rental payments by electronic funds transfer, personal, and business checks. These comments were accepted. In addition, § 166.419(c) allows for partial rental payments only under special circumstances with the written consent of the parties to the permit and the BIA approval when necessary to obtain the maximum payment possible for the Indian landowner.

Many comments were received about the BIA's obligation to collect late rental payments owed to Indian landowners. These comments were accepted. Part 166 includes new provisions that describe the BIA's responsibility in collecting late rental payments. For example, § 166.419 describes the collection actions the BIA will take (including canceling the permit, assessing payment penalties, interest, and administrative fees, and referring unpaid debts to the United States Department of Treasury for collection) against a permittee to collect on a late payment. The NCAI recommended that the BIA adopt a collection process from another federal agency that would initiate trespass action immediately for non-payment of rental payments. This recommendation was not accepted because permits must be canceled before a permittee can be determined to be in trespass.

Subpart F—Administrative and Tribal Fees

Summary of Subpart

Subpart F, ''Administrative and Tribal Fees,'' provides a schedule of administrative fees based on the dollar value of the permit. This subpart provides a minimum and maximum administrative fee amount. The BIA continues to be able to waive such administrative fees. This subpart also acknowledges that tribes may establish and collect their own administrative fees in addition to administrative fees assessed by the BIA.

Comments

Several comments recommended that the BIA use a flat administrative fee rate to charge permittees for the administration of permits. These comments were accepted. The BIA will charge a flat three percent administrative fee based on the annual grazing rental to cover costs associated with the performance of administrative duties. The existing minimum and maximum administrative fees described in the proposed regulation were retained in § 166.501(b).

Subpart G—Bonding and Insurance Requirements

Summary of Subpart

Subpart G, ''Bonding and Insurance Requirements,'' clarifies current BIA practices by requiring that a bond be provided for each permit issued to ensure performance and compliance with permit terms. Upon request of an Indian landowner, the BIA may waive the bond requirement. For grazing permits on tribal lands, this subpart recognizes tribal authority to negotiate the form of the bond.

Comments

Many comments recommended that part 166 include bonding requirements that address overgrazing on Indian lands. These comments were accepted. Section 166.601(a)(4) as described in the proposed regulation was retained and allows a bond to be applied to the costs of restoration and reclamation of Indian land damaged by a permittee. Also, § 166.602(b) states that Indian landowners may negotiate a permit term that specifies the use of any bond forms described in § 166.602(a).

Several comments recommended that the BIA pay interest on cash bonds. These comments were not accepted. Cash bonds are not trust funds and are not administered as trust funds, and therefore are ineligible for interest payments without additional statutory authority.

Subpart H—Permit Violations

Summary of Subpart

Subpart H, ''Permit Violations,'' provides for Secretarial action should the BIA learn that a violation of the terms of a grazing permit may have occurred.

Comments

Several comments recommended that grazing unit inspections by the BIA for permit compliance be required more often than one time per year. These comments were not accepted. Due to the varying circumstances of each range unit, flexibility in grazing unit inspections must be maintained. While the BIA intends to increase its ability to monitor range units for permit compliance, the BIA must continue to rely on information provided by Indian landowners. Thus, § 166.703(a) was added to clarify that Indian landowners may contact the BIA to request that appropriate enforcement action be taken by the BIA should an Indian landowner believe that a violation has occurred.

Several comments recommended that the final rule support the tribe's authority to adopt its own appeal process for range unit violations. These comments were accepted. Section 166.702 was modified so that the parties to a grazing permit may negotiate a provision in the permit that would defer to tribal remedies for permit violations.

Subpart I—Trespass

Summary of Subpart

Subpart I, ''Trespass,'' defines trespass under a grazing permit to include any unauthorized occupancy, use of or action on Indian agricultural or government lands assigned to the control of a tribe. This subpart describes the process for trespass notification, enforcement, actions, penalties, damages, and costs.

Comments

Many comments recommended that part 166 should include a trespass inspection schedule. These comments were not accepted. As with grazing unit inspections under subpart H, flexibility in inspections must be maintained to take into account varying range unit circumstances and the need to rely on Indian landowners. Part 166 provides that the BIA will continue to act on specific information about trespass on Indian agricultural lands. Section 166.801 clarifies our obligation to investigate and respond to allegations of trespass.

Several comments recommended that penalties received from a grazing trespass be paid directly to the permittee. These comments were partially accepted. Section 3713(c) of the AIARMA authorizes the payment of proceeds from trespass for the loss of forage or other damage. However, the

AIARMA is unclear as to whether permittees are to receive all or some of such proceeds. The BIA recognizes that the loss of forage or other damage is often sustained by the permittee. In order to provide for trespass payments to permittees (as an affected party under section 166.818) for the loss of forage or damage due to trespass, the parties to the permit may include a trespass reimbursement provision in the permit that allows for such reimbursement.

One comment recommended the final rule should not suggest that tribes are required to adopt the trespass provisions of part 166 in order to secure tribal trespass jurisdiction. This comment was accepted. Section 166.802(b) was added to specifically recognize the authority of tribes to take any trespass action tribal law may allow.

Subpart J—Agriculture Education, Education Assistance, Recruitment, and Training

Summary of Subpart

Subpart J, Agriculture Education, Education Assistance, Recruitment, and Training, outlines the provisions for implementing subchapter II of the AIARMA, Education in Agriculture Management.

Comments

Many comments recommended that students receive one year of funding for one year worked in the agricultural education program in accordance with the AIARMA. This comment was accepted. Section 166.901(f)(3) was changed to support the requirement that students 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.

Subpart K—Records

As noted previously, new provisions have been added addressing the ownership and maintenance of trust records associated with the performance of this part. These provisions replace those in subpart K of the Proposed Rule.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), OMB must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Accordingly, OMB has determined that this rule is not a significant regulatory action and is largely administrative and technical in nature. The rule describes how the federal government will administer its trust responsibility in managing the trust fund accounts. Thus, the impact of the rule is confined to the federal government and the Indian trust beneficiaries and does not impose a compliance burden on the economy generally. The Department did submit the entire Proposed Rule for review by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) as a significant policy matter impacting all federally-recognized Indian tribes and individual Indians. This decision was made because of the magnitude of the monies involved in Indian trust matters and the notion that any revisions to existing regulations that impact trust account management could have significant impacts on tribal governments, communities and individual Indians. In particular, the Department conducted an economic analysis of the revisions to part 115 and found that there were significant benefits in management, security and reporting of trust accounts and only small increases on tribal governments or individual Indians. The increased benefits are better identification of funds, ability to gain performance reports on tribal or individual accounts, clarifications in what funds could be deposited into such accounts, better distribution procedures, and clarifications on when and how such accounts could be restricted or otherwise encumbered. The revisions to part 115 were found to have potential for administrative savings.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the proposed regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule streamlines the Department's policies, procedures, provisions and clauses that apply to certain Indian trust resources. Indian tribes are not small entities under the Regulatory Flexibility Act. Any impacts on identified small entities affected by this rulemaking are minimal as they would concern a small number of farmers, ranchers, and individuals doing business on Indian lands. Accordingly, the Department of the Interior has determined that this regulation will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more. The revised parts represent programs that are ongoing within the BIA and no new monies are being introduced into the stream of commerce. This rule will not result in a major increase in costs or prices. The effect of this rulemaking will be to streamline ongoing policies, procedures and management operations of the BIA in their handling of tribal and individual Indian trust resources. No increases in costs for administration will, therefore, be realized and no prices would be impacted through these administrative and technical clarifications of existing field practice. This rulemaking will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the rulemaking will be realized by tribal governments and individual Indians having a protected trust resource. These administrative and technical clarifications of Departmental policy and procedure will not otherwise have a significant impact on any other small businesses or enterprises.

E. Review Under the Paperwork Reduction Act

This rulemaking requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995, Public Law 104–13, is required. Accordingly, the Department prepared an OMB form 83–I for review and approval by OMB. Having reviewed the submissions of the Department with respect to the burden hours of each part of this rulemaking, along with any comments that were submitted by the reviewing public, OMB has approved the information collection requirements contained in this rulemaking and has assigned OMB control number 1076–0154.

F. Review Under Executive Order 13132—Federalism

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this rule will impact tribal governments, there is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule has no sufficient federalism implications to warrant the preparation of a Federalism Assessment.

G. Review Under the National Environmental Policy Act of 1969

This rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The Department, however, determined that the rulemaking would uniquely affect tribal governments and, accordingly, followed Departmental and Administration protocols in consulting with tribal governments on this rulemaking. See discussion on consultations found in the Background section of this preamble. These consultations were in keeping with the President's Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.''

List of Subjects

25 CFR Part 15

Estates, Indians—law.

25 CFR Part 114

Accounting, Indians—business and finance.

25 CFR Part 115

Administrative practice and procedure, Indians—business and finance.

25 CFR Part 162

Indians—lands.

25 CFR Part 166

Grazing lands, Indians—lands, Livestock.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends 25 CFR as follows:

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

1. Part 15 is revised to read as follows:

Subpart A—Introduction

Sec.
15.1 What is the purpose of this part?
15.2 What terms do I need to know?
15.3 Will the Secretary probate all the property in Indian estates?
15.4 How does the probate process work?

Subpart B—Starting the Probate Process

15.101 How do I begin the BIA probate process?
15.102 May I notify the BIA of a death if I am not related to the decedent?
15.103 When should the BIA be notified of a death?
15.104 What other documents does the BIA need to process a probate package?
15.105 Will the BIA wait to begin the probate process until it is notified of the decedent's death?
15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?
15.107 Who prepares an Indian probate package?
15.108 What agency prepares the probate package if the decedent was not an enrolled member of a tribe or is a member of more than one tribe?
15.109 Can a probable heir or beneficiary give up his/her interest in trust or restricted lands or trust funds?

Subpart C—Preparing the Probate Package

15.201 What will the BIA do with the documents that I provide?
15.202 What must the complete probate package contain?
15.203 What happens after the BIA prepares the probate package?
15.204 After the probate package has been sent to a BIA deciding official, may I still request a formal hearing with an ALJ?
15.205 When will the BIA refer a probate to the OHA?
15.206 Is there a summary process for distributing an estate with only trust cash assets?

Subpart D—Probate Processing, Claims and Distributions

15.301 What does the attorney decision maker do with the probate package?
15.302 What law is used by the deciding official to determine the distribution of the trust estate?
15.303 If the decedent owed me money, how do I file a claim against the estate?

15.304 How does the BIA deciding official determine if a claim will be allowed and paid?
15.305 What claims will be paid first?
15.306 Can the BIA deciding official reduce the amount of claims?
15.307 What if there is not enough money in the decedent's IIM account to pay all claims?
15.308 Will the BIA use future income to pay claims?
15.309 Will the BIA deciding official authorize payment of interest or penalties accruing after the date of death?
15.310 When will the BIA deciding official issue a decision on the probate?
15.311 What is in the written decision/order of the BIA deciding official?
15.312 What happens after the decision is made?

Subpart E—Appeals

15.401 May I appeal the decision of the BIA deciding official?
15.402 How do I file an appeal of the decision/order?
15.403 How long do I have to file an appeal?
15.404 What will happen to the estate if an appeal is filed?
15.405 How does the ALJ review a decision issued by a BIA deciding official?

Subpart F—Information and Records

15.501 If I have a question about a probate that has been assigned to a BIA deciding official, may I contact the deciding official directly?
15.502 How can I find out the status of a probate?
15.503 Who owns the records associated with this part?
15.504 How must records associated with this part be preserved?

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 588, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022, 25 U.S.C. 372, 373, 374, 373a, 373b; Federal Records Act, as amended, 44 U.S.C. § 3101, *et seq.* (1950).

Cross reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five Civilized Tribes, see Title 25 Code of Federal Regulations, Part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to initiate the probate of the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by the BIA, and how probates may be sent to the OHA for disposition.

§ 15.2 What terms do I need to know?

ALJ means an administrative law judge or other employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom authority has been conferred by the Secretary to conduct hearings in accordance with 43 CFR Part 4 Subpart D.

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

IIM account means Individual Indian Money Account.

LTRO means the Land Titles and Records Office within the BIA.

OHA means the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

OTFM means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Agency means the agency office or any other designated office in the BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the BIA probate function under 25 U.S.C. § 450f or 25 U.S.C. § 458cc.

Attorney decision maker means an attorney with the BIA, who reviews a probate package, determines heirs, approves wills and beneficiaries of the will, determines creditors claims, and issues a written decision.

Beneficiary means any individual who receives trust or restricted property or money in a decedent's will.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Deciding official means the official with the delegated authority to make a decision on a probate matter, and may include a BIA regional director, agency superintendent, field representative, or attorney decision maker (BIA deciding official); or an OHA ALJ or other OHA designated official (OHA deciding official).

Decision/order means a written document issued by the deciding official determining heirs, approving wills and beneficiaries of the will, approving creditors claims, and ordering distribution of property and money.

Domicile means the legal residence of the person.

Estate means the trust cash assets, restricted or trust lands owned by the decedent at the time of his death.

Form OHA–7 means a form issued by the OHA which lists data for heirship and family history, and provides information on any wills, trust and restricted property, adoptions, names and addresses of all interested parties.

Heir means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

IIM account means funds held in an individual Indian monies account by the OTFM or a tribe performing this function under a contract or compact.

Interested parties means any probable or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate means the decedent died without a will.

Minor means an individual that has not reached age of majority as defined by the applicable tribal or state law.

Probate means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of the decedent's estate is applied to: (1) determine the heirs; (2) approve wills and beneficiaries; and (3) transfer any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

Probate clerk means a BIA or tribal employee who is responsible for processing a probate package.

Probate specialist means the BIA or tribal employee who is trained in Indian probate matters.

Restricted land 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.

Superintendent or Field Representative means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

Testate means the decedent executed a will before his death.

Trust cash assets means the funds held in an IIM account.

Trust land means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

Vendor or Creditor means any individual or company who submits a claim for payment from a decedent's estate.

We/Us means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

Will means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

You/I means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

§ 15.3 Will the Secretary probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

§ 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C for details);

(c) We refer the completed probate package to a deciding official in the BIA or the OHA (see subpart D for details);

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account (see subparts D and E for details).

Subpart B—Starting the Probate Process

§ 15.101 How do I begin the BIA probate process?

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death. You must provide a certified copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper; or

(b) Any other document that we accept that verifies the death, such as a church record or a court record; and

(c) An affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that supports the information in paragraph (a) or (b) of this section.

§ 15.102 May I notify the BIA of a death if I am not related to the decedent?

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

§ 15.103 When should the BIA be notified of a death?

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

§ 15.104 What other documents does the BIA need to process a probate package?

(a) You should provide us with the following documents and information before we can begin to process the probate package.

(1) Social Security number of the decedent;

(2) The birth certificate or other record of birth of the decedent;

(3) All death records including those listed in § 15.101;

(4) A list of known creditors against the estate and their addresses;

(5) Current names and addresses of potential heirs and beneficiaries;

(6) Any statements renouncing an interest in the estate;

(7) Documents from a court of competent jurisdiction, including but not limited to:

(i) All marriage licenses of the decedent;

(ii) All divorce decrees of the decedent;

(iii) Adoption and guardianship records relevant to the decedent;

(iv) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(v) Any name changes; and

(vi) Order requiring payment of child support;

(8) All original or certified copies of wills and codicils, and any revocations; and

(9) Any additional documents you provide or that we request.

(b) You must inform us if any of the documents or information identified in this part are not available.

§ 15.105 Will the BIA wait to begin the probate process until it is notified of the decedent's death?

No. We may find out about the death of a person without being notified by an interested party. If we do, and if the decedent meets the criteria in § 15.3, we will initiate the process to collect the necessary documentation. You should not assume that we will find out about a death. To assure timely distribution of the estate, you should notify us as provided in § 15.101.

§ 15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?

(a) If you are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account and you have an immediate need to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to $1,000 from the decedent's IIM account if the decedent's IIM account has more than $2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to $1,000 that are necessary for the burial services, taking into consideration the total amount in the account, the number of probable heirs or beneficiaries of whom we are aware, the amount of any claims against the account of which we are aware, and any other relevant factor.

(d) We will make payments directly to the providers of the services.

§ 15.107 Who prepares an Indian probate package?

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package in consultation with the probable heirs or beneficiaries who can be located.

§ 15.108 What agency prepares the probate package if the decedent was not an enrolled member of a tribe or is a member of more than one tribe?

(a) If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, the agency that has jurisdiction over the tribe with the strongest association with the decedent will prepare the probate package, unless otherwise provided by federal law.

(b) If the decedent was is a member of more than one tribe, the agency that has jurisdiction over the tribe with the strongest association with the decedent

will prepare the probate package, unless otherwise provided by federal law.

§ 15.109 Can a probable heir or beneficiary give up his/her interest in trust or restricted lands or trust funds?

Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, you must file a statement renouncing your interest with the BIA or the OHA before the deciding official issues an order.

(a) If you are a non-Indian and 21 years or older, you may give up all or part of your interest by submitting a notarized statement in which you renounce your interest in the estate.

(b) If you are an Indian and 21 years or older and you wish to give up all or part of your interest in the estate, we must refer your request to the OHA in accordance with 43 CFR 4.208.

Subpart C—Preparing the Probate Package

§ 15.201 What will the BIA do with the documents that I provide?

Once we receive the documents that you provide us under § 15.105, the probate specialist or probate clerk will:

(a) Use the documents to prepare a probate package; and

(b) Consult with you and any other sources to obtain any additional information needed for a complete package.

§ 15.202 What must the complete probate package contain?

The complete probate package must contain all of the following:

(a) A certified copy of the death certificate, if one exists, or some other reliable evidence of death as required by § 15.101;

(b) A completed Form OHA–7, ''Data for Heirship Findings and Family History,'' certified by the BIA;

(c) A certified inventory of trust or restricted real property;

(d) A statement describing all income generating activity;

(e) A copy of the decedent's IIM account ledger showing:

(1) The balance of the account at the date of death; and

(2) The balance of the account at the date of probate package submission;

(f) All original or certified copies of wills, codicils and any revocations of wills or codicils;

(g) Any statements renouncing interest that have been submitted to the agency;

(h) Claims of creditors against the estate;

(i) All documentation of payment of claims paid prior to probate proceeding;

(j) All other documents required in § 15.105;

(k) Tribal options to purchase interests of a decedent;

(l) Affidavit of the probate clerk or probate specialist that all efforts to locate the probable heirs and beneficiaries have been exhausted; and

(m) Any other documentation that may be required at the time of probate proceedings.

§ 15.203 What happens after the BIA prepares the probate package?

Within 30 days after all the documents required by § 15.105 and § 15.202 are received, a probate specialist will review the probate package and determine who will be the appropriate deciding official.

(a) If the decedent's estate contains only trust cash assets of a value less than $5,000 not including any interest that may have accrued after the death of the decedent, the probate package may be processed in accordance with § 15.206 and may be referred to a BIA deciding official subject to the provisions in § 15.205.

(b) All other probate cases will be referred to a BIA attorney decision maker or an OHA deciding official subject to the provisions in § 15.205.

(c) We will notify all interested parties of:

(1) The right of the probable heirs or beneficiaries to request a formal hearing before an ALJ;

(2) The identification of the probable legal heirs; or

(3) The submission of an original or certified copy of a will or revocation and listed beneficiaries;

(4) Any known claims against the estate; and (5) The address of the designated office where the probate package has been sent.

(d) If the deciding official is at the BIA and you have not requested a formal hearing before an ALJ, the probate specialist will send the probate package to the BIA deciding official within 30 days after the date the probate specialists mailed the notice to you.

(e) If the deciding official is at the OHA, then we will send the probate package to the OHA deciding official and notify the probable heirs that they may ask the OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available), or a decision based on documents in the probate package.

(f) On the same day that the probate specialist has determined who will be the designated deciding official, we will notify you of this determination by certified mail, return receipt requested.

§ 15.204 After the probate package has been sent to a BIA deciding official, may I still request a formal hearing with an ALJ?

Yes, you may request a formal hearing before an ALJ at any time up until the date the BIA deciding official renders a decision.

§ 15.205 When will the BIA refer a probate to the OHA?

We will refer a probate to the OHA under § 15.203(d) if the probate specialist determines that a referral is appropriate. In determining whether to refer a probate to the OHA, the probate specialist will consider all of the criteria listed below:

(a) *Problems with the will.* The probate specialist will refer the probate package to the OHA if it appears that the will:

(1) Is likely to be contested;

(2) Is complex or ambiguous; or

(3) Is of questionable validity.

(b) *Contested claims.* The probate specialist will refer the probate package to the OHA if you:

(1) Contest a creditor claim; or

(2) Contest a claim made by a family member.

(c) *Other problems.* The probate specialist will be refer the probate package to the OHA if it appears there are:

(1) Questions about family relationships;

(2) Conflict in prior probate orders;

(3) Problems with the evidence;

(4) Questions about adoption of an heir;

(5) Questions involving paternity;

(6) Presumptions of death;

(7) Rights of minor heirs that might be jeopardized;

(8) Disclaimers of interests by Indian probable heirs or beneficiaries;

(9) Determinations of escheat under 43 CFR § 4.205;

(10) Challenges to the jurisdiction of any court that issued an order that has been used as a supporting document; or

(11) Questions concerning the decedent's domicile.

(d) *Approval of settlement agreements.* The probate specialist will refer the case to the OHA if there is a settlement agreement between heirs or beneficiaries as to the disposition of the estate.

§ 15.206 Is there a summary process for distributing an estate with only trust cash assets?

Yes. Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, a decedent's estate that contains only trust cash assets of a value less than $5,000 not including any interest that may have

accrued after the death of the decedent, may be summarily processed by a BIA deciding official.

(a) Within 30 days after notice under § 15.203 has been sent, the probable heirs may request a formal hearing before an ALJ to determine the proper distribution of the trust cash assets. Upon notice of a request for a formal hearing, the probate specialist will forward the probate package to the appropriate ALJ within five days.

(b) Within 60 days after notice under § 15.203 has been sent and if the probable heirs have not requested a formal hearing with an ALJ, the BIA deciding official to whom the probate has been referred will assemble the probable heirs and hold an informal hearing to determine the distribution of the trust cash assets.

(c) Within 30 days after the informal hearing, the BIA deciding official will prepare an order in accordance with § 15.302 through § 15.311.

(d) Any interested party may appeal a summary distribution decision in accordance with subpart E of this part.

Subpart D—Probate Processing, Claims and Distributions

§ 15.301 What does an attorney decision maker do with the probate package?

(a) Upon receipt of the probate package, the attorney decision maker reviews the probate package and determines whether there are issues of fact or law of the case that indicate that the probate package should be referred to the OHA. If any issues of fact or law that require a hearing are apparent from the review of the case, the attorney decision maker will refer the probate package to the appropriate ALJ within five days.

(b) Within 30 days after notice under § 15.203 has been sent, the probable heirs may request a formal hearing before an ALJ to determine the distribution of the estate. Within five days of the receipt of notice of a request for a formal hearing, the attorney decision maker will forward the probate package to the appropriate ALJ.

(c) Within 120 days after the notice under § 15.203 has been sent and if the probable heirs have not requested a formal hearing with an ALJ, the attorney decision maker will assemble the probable heirs and hold an informal hearing to determine the distribution of the estate.

(d) Within 60 days after the informal hearing, the attorney decision maker will issue an written order in accordance with § 15.310.

§ 15.302 What law is used by the deciding official to determine the distribution of the trust estate?

Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, the law of the state where the decedent was domiciled will determine the distribution of the estate.

§ 15.303 If the decedent owed me money, how do I file a claim against the estate?

(a) If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt showing the amount of the original debt and the remaining balance on the date of the decedent's death.

(b) The itemized statement must state whether you have filed a claim against the decedent's non-trust assets.

(c) We must receive your claim within 60 days from the date the BIA receives the verification of the decedent's death in § 15.101 to be included as part of the probate package.

§ 15.304 How does the BIA deciding official determine if a claim will be allowed and paid?

(a) The BIA deciding official may direct the payment of some or all of the debts of the decedent after reviewing the probate package in accordance with the standards provided at 43 CFR 4.250 (c) through (g), and no claim prohibited by 43 CFR 4.250 will be paid.

(b) No claim will be paid from trust or restricted assets where the BIA deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

§ 15.305 What claims will be paid first?

(a) The first claims to be paid, referred to as priority claims, are paid in order of priority. The priority claims are:

(1) Funeral expenses (including the cemetery marker);

(2) Medical expenses for the last illness;

(3) Nursing home or other care facility expenses;

(4) A claim of an Indian tribe;

(5) A claim reduced to judgment by a court of competent jurisdiction.

(b) After payment of the priority claims, the BIA deciding official may authorize all remaining claims, referred to as general claims.

§ 15.306 Can the BIA deciding official reduce the amount of claims?

The BIA deciding official has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.

(a) If a claim is reduced, the BIA deciding official will order payment only of the reduced amount.

(b) The BIA deciding official may reduce or disallow both priority claims and general claims.

§ 15.307 What if there is not enough money in the decedent's IIM account to pay all claims?

(a) If there is not enough money in the IIM account to pay all claims, the BIA deciding official will order payment of the priority claims first in the order identified in § 15.305.

(b) If there is not enough in the IIM account to pay the priority claims, the BIA deciding official may order payment of the priority claims on a pro rata (reduced) basis.

(c) If less than $1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.

§ 15.308 Will the BIA use future income to pay claims?

No. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

§ 15.309 Will the BIA deciding official authorize payment of interest or penalties accruing after the date of death?

No. Interest or penalties charged against either priority or general claims after date of death will not be paid.

§ 15.310 When will the BIA deciding official issue a decision on the probate?

Within 60 days after an informal hearing has been held, the BIA deciding official will issue a written decision/order in accordance with § 15.311. Upon receipt of the decision/order, the BIA deciding official will send all interested parties a copy of the decision/order.

§ 15.311 What is in the written decision/order of the BIA deciding official?

The BIA deciding official issues a written decision/order that:

(1) In intestate cases: Lists the names, relationship to the decedent, and shares of the heirs; provides citations to the law of descent and distribution; or the fact that the decedent died leaving no legal heirs;

(2) In testate cases: approves or disapproves a will; interprets provisions of the approved will; provides the names and relationship of the beneficiaries to the decedent; describes the property each beneficiary is to receive;

(3) Allows or disallows claims against the estate; orders the amount of payment for all approved claims;

(4) States whether the heirs or beneficiaries are Indian or non-Indian;

(5) Determines any rights of dower, curtesy or homestead which may constitute a burden upon the interest of the heirs;

(6) Attaches a certified copy of the inventory of trust or restricted lands, if any; and

(7) Advises all interested parties of their appeal rights in accordance with subpart E of this part.

§ 15.312 What happens after the decision is made?

We will not pay claims, transfer title to land, or distribute trust cash assets for 75 days after the decision/order is mailed to the interested parties. After 75 days and if no appeal has been filed, the following actions will take place:

(a) The LTRO will change its land title records for the trust and restricted property in accordance with the decision/order; and

(b) The OTFM will pay claims and distribute the IIM account in accordance with the decision/order.

Subpart E—Appeals

§ 15.401 May I appeal the decision of the BIA deciding official?

You have a right to appeal the decision made by the BIA deciding official if you are an interested party and are affected by the probate decision.

§ 15.402 How do I file an appeal of the decision/order?

(a) To file an appeal of the decision/order, you may send or deliver a signed, written statement to the BIA deciding official where the probate package was sent that contains:

(1) The name of the decedent;

(2) A description of your relationship to the decedent;

(3) An explanation of why you are appealing; and

(4) Any errors you believe the BIA deciding official made.

(b) Within ten days from the receipt of the appeal, the BIA deciding official will notify all other interested parties of the appeal and forward the case to the appropriate ALJ.

§ 15.403 How long do I have to file an appeal?

(a) You must send or deliver your written appeal within 60 days of the date that appears on the decision mailed to you. If you mail your appeal, it must be postmarked within 60 days of the date of the decision.

(b) If the 60-day appeal period is missed, you still have a right to file a written statement with the BIA deciding official asking to have the decision changed for one or more of the following reasons:

(1) You did not receive notice of the probate;

(2) You have obtained new evidence or information after the decision was made; or

(3) You have evidence that was known at the time of the probate proceeding but was not included in the probate package.

(c) After we have received your request, we will forward it to the appropriate ALJ within ten days for action in accordance with 43 CFR Part 4, Subpart D.

§ 15.404 What will happen to the estate if an appeal is filed?

The BIA deciding official will refer your appeal to the appropriate ALJ in the same manner provided under 43 CFR § 4.210. Until the appeal has been resolved, the BIA will not distribute any of the decedent's property or modify the land title records and the OTFM will not pay claims or distribute any funds in the decedent's IIM account.

§ 15.405 How does the ALJ review a decision issued by a BIA deciding official?

The ALJ will conduct a *de novo* review; that is, conduct a formal hearing on the merits of the case.

Subpart F—Information and Records

§ 15.501 If I have a question about a probate that has been assigned to a BIA deciding official, may I contact the deciding official directly?

In order to avoid off-the-record communications with the BIA deciding official about your specific case that might be interpreted as an attempt to influence final decision on the probate case, you should direct your questions to the BIA deciding official's clerk or the probate specialist or probate clerk who prepared your probate package.

§ 15.502 How can I find out the status of a probate?

You may request information about the status of an Indian probate from any BIA agency or regional office.

§ 15.503 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 this part, including the operation of a trust program pursuant to Public Law 93–638 as amended; 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.

§ 15.504 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 15.503(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 § 15.503(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, the tribe or tribal organization may be prevented 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 114—SPECIAL DEPOSITS—[REMOVED AND RESERVED]

2. Under authority of 25 U.S.C. 2, 25 U.S.C. 9; Pub. L. 97–100; and Pub. L. 97–257, part 114 is removed and reserved.

PART 115—TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS

3. Part 115 is revised to read as follows:

Subpart A—Purpose, Definitions, and Public Information

Sec.
115.001 What is the purpose of this part?
115.002 What definitions do I need to know?

Subpart B—IIM Accounts

115.100 Osage Agency.
115.101 Individual accounts.
115.102 Adults under legal disability.
115.103 Payments by other Federal agencies.
115.104 Restrictions.
115.105 Funds of deceased Indians of the Five Civilized Tribes.
115.106 Assets of members of the Agua Caliente Band of Mission Indians.

115.107 Appeals.

Subpart C—IIM Accounts: Minors

115.400 Will a minor's IIM account always be supervised?
115.401 What is a minor's supervised account?
115.402 Will a minor have access to information about his or her account?
115.403 Who will receive information regarding a minor's supervised account?
115.404 What information will be provided in a minor's statement of performance?
115.405 How frequently will a minor's statement of performance be mailed?
115.406 Who provides an address of record for a minor's supervised account?
115.407 How is an address of record for a minor's supervised account changed?
115.408 May a minor's supervised account have more than one address on file with the BIA?
115.409 How is an address for a minor's residence changed?
115.410 What types of identification will the BIA or OTFM accept as ''verifiable photo identification''?
115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?
115.412 Will child support payments be accepted for deposit into a minor's supervised account?
115.413 Who may receive funds from a minor's supervised account?
115.414 What is an authorized disbursement request?
115.415 How will an authorized disbursement from a minor's supervised account be sent?
115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?
115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?
115.418 What types of trust funds may a minor have?
115.419 Who develops a minor's distribution plan?
115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?
115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?
115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?
115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?
115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?
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Subpart I—Records

115.1000 Who owns the records associated with this part?
115.1001 How must records associated with this part be preserved?

Authority: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87–283; Pub. L. 97–100; Pub. L. 97–257; Pub. L. 103–412; Pub. L. 97–458; 44 U.S.C. 3101 *et seq.*

Subpart A—Purpose, Definitions, and Public Information

§ 115.001 What is the purpose of this part?

This part sets forth guidelines for the Secretary of the Interior, including any tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. § 450f) or a Self-Governance compact (pursuant to 25 U.S.C. § 558cc), to carry out the trust duties owed to tribes and individual Indians to manage and administer trust assets for the exclusive benefit of tribal and individual Indian beneficiaries pursuant to federal law, including the American Indian Trust Fund Management Reform Act of 1994, Public Law 103–412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act).

§ 115.002 What definitions do I need to know?

As used in this part:

Account holder means a tribe or a person who owns the funds in a tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

Account means a record of trust funds that is maintained by the Secretary for the benefit of a tribe or a person.

Administratively restricted account means an IIM account that is placed on temporary hold by OTFM where an account holder's current address of record is unknown or where more documentation is needed to make a distribution from an account.

Adult means an individual who has reached 18 years of age, except when the individual's tribe has determined the age for adulthood to be older than 18 for access to tribal trust fund per capita proceeds.

Adult in need of assistance means an individual who has been determined to be ''incapable of managing or administering his or her property, including his or her financial affairs'' either (a) through a BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional, or (b) by an order or judgment of a court of competent jurisdiction.

BIA means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

Bond means security for the performance of certain obligations or a guaranty of such performance as furnished by a third-party surety. As used in this part, bonds may include cash bonds, performance bonds, and surety bonds.

Court of competent jurisdiction means a federal or tribal court with jurisdiction; however, if there is no tribal court with jurisdiction, then a state court with jurisdiction.

Day means a calendar day unless otherwise specified.

Department means the Department of the Interior or its authorized representative.

Deposits mean receiving funds, ordinarily through a Federal Reserve Bank, for credit to a trust fund account.

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.

Encumber or encumbrance means to attach trust assets held by the Secretary with a claim, lien, or charge that has been approved by the Secretary.

Encumbered account means a trust fund account where some portion of the proceeds are obligated to another party.

Estate account means an account for a deceased IIM account holder.

FOIA means the Freedom of Information Act, 5 U.S.C. § 552.

Guardian means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property. However, this definition does not apply to property subject to § 115.106 of this part.

Individual Indian Money (IIM) accounts means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary. There are three types of IIM accounts: unrestricted, restricted, and estate accounts.

Legal disability means the lack of legal capability to perform an act which includes the ability to manage or administer his or her financial affairs as determined by a court of competent jurisdiction or another federal agency where the federal agency has determined that the adult requires a representative payee and there is no legal guardian to receive federal benefits on his or her behalf.

MSW means a Master of Social Work degree from an accredited college or university.

Minor means an individual who is not an adult as defined in this part.

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

OST means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

OTFM means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Privacy Act means the Federal Privacy Act, 5 U.S.C. § 552a.

Restricted fee land(s) 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; it also means a tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. § 450f) or a Self-Governance compact (pursuant to 25 U.S.C. § 558cc).

Special deposit account means a temporary account for the deposit of trust funds that cannot immediately be credited to the rightful account holders.

Supervised account means a restricted IIM account, from which all disbursements must be approved by the BIA, that is maintained for minors, emancipated minors, adults who are in need of assistance, adults who under legal disability, or adults who are non-compos mentis.

Tribal account or tribal trust account generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary.

Tribe means any Indian 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 which is federally recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

Trust account means a tribal account, an IIM account, or a special deposit account for trust funds maintained by the Secretary.

Trust assets mean trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians.

Trust funds means money derived from the sale or use of trust lands, restricted fee lands, or trust resources and any other money that the Secretary must accept into trust.

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

Trust Reform Act means the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103–412, 108 Stat. 4239, 25 U.S.C. § 4001.

Trust resources means any element or matter directly derived from Indian trust property.

Unrestricted account means an IIM account in which an Indian account holder may determine the timing and amount of disbursements from the account.

Voluntary hold means a request by an individual Indian with an unrestricted IIM account to keep his or her trust funds in a trust account instead of having the trust funds automatically disbursed.

We or *Us* or *Our* means the Secretary as defined in this part.

You or *Your* means an IIM account holder.

Subpart B—IIM Accounts

§ 115.100 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this subchapter.

§ 115.101 Individual accounts.

Except as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts. Upon their application, or an application made in their behalf by the Secretary or his authorized representative, their funds shall be disbursed to them. All such disbursements will be made at such convenient times and places as the Secretary or his authorized representatives may designate.

§ 115.102 Adults under legal disability.

The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.

§ 115.103 Payments by other Federal agencies.

Moneys received from the Veterans Administration or other Government agency pursuant to the Act of February 25, 1933 (47 Stat. 907; 25 U.S.C. 14), may be accepted and administered for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 115.104 Restrictions.

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account. For rules

governing the payment of judgments from individual Indian money accounts, see § 11.208 of this chapter.

§ 115.105 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary or his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

§ 115.106 Assets of members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90–597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

§ 115.107 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR part 2, subject to the terms of subpart E.

Subpart C—IIM Accounts: Minors

§ 115.400 Will a minor's IIM account always be supervised?

Yes, all IIM accounts established by BIA for minors will be a supervised by the BIA.

§ 115.401 What is a minor's supervised account?

A minor's supervised account is a restricted IIM account from which all disbursements must be made pursuant to a distribution plan approved by the BIA that is established for:

(a) A minor, or

(b) An emancipated minor.

§ 115.402 Will a minor have access to information about his or her account?

A minor will not have access to information about his or her IIM account without approval of the custodial parent(s) or legal guardian. However, an emancipated minor will have access to information about his or her IIM account.

§ 115.403 Who will receive information regarding a minor's supervised account?

(a) The parent(s) with legal custody of the minor or the minor's legal guardian will receive a minor's statement of performance at the address of record for the minor's supervised account.

(b) An emancipated minor will receive his or her statement of performance at the address of record for the minor's supervised account.

§ 115.404 What information will be provided in a minor's statement of performance?

A minor's statement of performance will identify the source, type, and status of the funds deposited and held in the account; the beginning balance; the gains and losses; receipts and disbursements, if any; and the ending balance of the quarterly statement period for the minor's supervised account.

§ 115.405 How frequently will a minor's statement of performance be mailed?

We will mail a minor's statement of performance to the address of record quarterly, within and no later than 20 business days after the close of the quarterly statement period.

§ 115.406 Who provides an address of record for a minor's supervised account?

(a) The custodial parent or the legal guardian must provide an address to the BIA and this address will be the address of record for the minor's supervised account. Where applicable, a parent or legal guardian must provide a copy of the custodial order or guardianship order from a court of competent jurisdiction when providing the address of record for the minor's supervised IIM account.

(b) The emancipated minor must provide his or her address of record to the BIA.

(c) Upon receipt of the change of address of record from the parent or legal guardian, the BIA must provide the change of the address of record to the OTFM.

§ 115.407 How is an address of record for a minor's supervised account changed?

(a) To change an address of record for a minor's supervised IIM account, a custodial parent(s), legal guardian, or emancipated minor must provide BIA with the following information:

(1) The minor's or emancipated minor's name;

(2) The name of the custodial parent(s) or legal guardian, if applicable;

(3) A custody order from a court of competent jurisdiction or a copy of a guardianship, if applicable;

(4) The new address of the custodial parent(s), legal guardian, or emancipated minor; and

(5) The signature, mark or thumb print of a custodial parent, legal guardian, or emancipated minor that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address of record, the following information will further assist us to identify the minor's account:

(1) The minor's or emancipated minor's IIM account number;

(2) The minor's or emancipated minor's date of birth;

(3) The minor's or emancipated minor's tribal enrollment number; and

(4) The minor's or emancipated minor's social security number.

§ 115.408 May a minor's supervised account have more than one address on file with the BIA?

Yes, a minor's supervised account may have more than one address on file with the BIA. We request that the parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor, notify us of the following addresses for the minor:

(a) The minor's residence;

(b) The address of record where the statement of performance will be mailed;

(c) The address where disbursement checks will be mailed or financial institution information for direct deposits of trust funds as authorized under an approved distribution plan.

§ 115.409 How is an address for a minor's residence changed?

(a) To change an address for a minor's residence, the custodial parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor must provide BIA with the following information:

(1) The minor's name;

(2) The name of the custodial parent(s) or legal guardian;

(3) A copy of a custodial order from a court of competent jurisdiction or a guardianship order, where applicable;

(4) The new address of the minor's residence; and

(5) The signature, mark or thumb print of the individual who is providing the updated address for the minor's residence that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address for a minor's residence, the following information will further assist us to identify the minor's account:

(1) The minor's IIM account number;

(2) The minor's date of birth;

(3) The minor's tribal enrollment number (if known); and

(4) The minor's social security number (where known).

§ 115.410 What types of identification will the BIA or OTFM accept as ''verifiable photo identification''?

BIA or OTFM will accept the following forms of identification as ''verifiable photo identification'':

(a) A valid driver's license;

(b) A government-issued photo identification card, such as a passport, security badge, etc.; or

(c) A tribal photo identification card.

§ 115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?

If the individual making a request regarding a minor's supervised account does not have any verifiable photo identification, the individual may make a request in person at the BIA and we will talk with the individual and review information in the minor's file to see if we can attest to the individual's identity. If we cannot establish the identity of the individual, we will not accept the request.

§ 115.412 Will child support payments be accepted for deposit into a minor's supervised account?

The Secretary will not accept child support payments for deposit into a minor's supervised account.

§ 115.413 Who may receive funds from a minor's supervised account?

A custodial parent, a legal guardian, a person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor may be eligible to withdraw funds from a minor's supervised account if there is an authorized disbursement request that is based upon the terms of a BIA-approved distribution plan.

§ 115.414 What is an authorized disbursement request?

An authorized disbursement request is the form or letter that must be approved by the BIA that specifies the funds to be disbursed from an IIM account. The authorized disbursement request may not be issued to disburse funds from a minor's supervised account unless an approved distribution plan exists, the amount to be disbursed is in conformity with the distribution plan and the disbursement will be made to an individual or third party specified in the plan.

§ 115.415 How will an authorized disbursement from a minor's supervised account be sent?

OTFM will make an authorized disbursement based on the approved distribution plan from a minor's supervised account by:

(a) Making a direct deposit to a specified account at a financial institution (a direct deposit into the specified account will eliminate lost, stolen or damaged checks and will also eliminate delays associated with mailing the check);

(b) Mailing a check to the address of record or to a specified disbursement address; or

(c) Mailing a check to a specified third party's address.

§ 115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?

(a) Federal law does not allow the United States post office to forward checks that are issued by the federal government. Therefore, a check from a minor's supervised account will not be forwarded to an address left with the United States post office. The new address of record must be provided directly to BIA.

(b) Where a forwarding address has been provided to the United States post office, the United States post office will forward a statement of performance and general correspondence regarding a minor's supervised account that is mailed to the minor's address of record for a limited time period. However, it is the responsibility of a custodial parent, legal guardian, or emancipated minor to give BIA the new address of record for the minor's supervised account.

§ 115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?

Trust money in a minor's supervised account will not be distributed without a review of other resources that may be available to meet the needs of the minor. Any trust funds of a minor that are distributed must be used for the direct benefit of the minor and in accordance with any additional limitations (*e.g.,* statutory, court order, tribal resolution, etc.) placed on the use of specific trust funds. Allowable uses may include health, education, or welfare when based upon a justified unmet need. The BIA will require receipts for expenditures of funds disbursed from a minor's account to a custodial parent, legal guardian, person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor.

§ 115.418 What types of trust funds may a minor have?

A minor may have one or more of the following types of trust funds:

(a) Judgment per capita funds: Withdrawals may only be made upon BIA approval of an application made under Public Law 97–458. See 25 CFR 1.2.

(b) Tribal per capita funds: Withdrawals may only be made under a BIA approved distribution plan and in accordance with the terms of the tribe's per capita resolution/document.

(c) Other trust funds: Withdrawals may only be made under a minor's BIA-approved distribution plan that is based on a justified unmet need for the minor's health, education, or welfare.

(d) Funds from other federal agencies (e.g., SSA, SSI, VA) received for the benefit of the minor: Withdrawals must be made only under a BIA-approved distribution plan that must be consistent with the disbursing agency's (e.g., SSA, SSI, VA) allowable uses for the funds.

§ 115.419 Who develops a minor's distribution plan?

A social service provider will develop a minor's distribution plan for approval by the BIA after evaluating the needs of the minor in consultation with a custodial parent, a legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or emancipated minor. A minor's distribution plan may only provide for those expenditures outlined in part § 115.417.

§ 115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?

When developing a minor's distribution plan, the following information must be considered and included in the evaluation:

(a) Documentation which establishes who has physical custody of the minor

(e.g., home visits, school records, medical records, etc.);

(b) A copy of any custodial orders or guardianship orders from a court of competent jurisdiction;

(c) The name(s) of the person and his or her relationship to the minor, if any, who make a request for a disbursement from the minor's account;

(d) An evaluation of other resources, including parental income, that may be available to meet the unmet needs of the minor;

(e) A list of the amounts, purposes, and dates for which disbursements will be made;

(f) The name(s) of the person to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor;

(4) An emancipated minor; and/or

(5) Any third parties to whom the BIA will make direct payment for goods or services provided to the minor and supported by an invoice or bill of sale;

(g) The date(s) (at least every six months) when the custodial parent, the legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or the emancipated minor must provide receipts to the BIA to show that expenditures were made in accordance with the approved distribution plan;

(h) Additional requirements and justification for those requirements, as necessary to ensure that any distribution(s) will benefit the minor;

(i) The dates the disbursement plan was developed, approved, and reviewed, and the date for the next scheduled review;

(j) The date(s) the distribution plan was amended and an explanation for any amendment(s) to the distribution plan, when an amendment is necessary;

(k) The signature of the BIA official approving the plan with the certification that the plan is in the best interest of the account holder; and

(l) The signature(s) of the custodial parent, legal guardian, with date(s) signed, certifying that he or she has been consulted and has agreed to the terms of the evaluation and the distribution plan.

§ 115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?

A minor's distribution plan must contain the following:

(a) A copy of any custodial order or guardianship order from a court of competent jurisdiction;

(b) A list of the amounts, purposes, and dates for which disbursements will be made;

(c) The name(s) of the person(s) to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor and the address of that person;

(4) An emancipated minor; and/or

(5) Any third parties and the address(es) of the third parties to whom the direct payment will be made for goods or services provided to the minor and supported by an invoice or bill of sale, where applicable;

(d) The date that the disbursement plan was approved and the expiration date of the distribution plan; and

(e) The date and signature of the BIA official approving the plan with a certification that the plan is in the best interest of the account holder.

§ 115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?

If you are a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor who receives funds from a minor's supervised account, you must:

(a) Consult with the social service provider on the development of an evaluation;

(b) Sign an acknowledgment that you have reviewed the evaluation;

(c) Follow the terms of a distribution plan approved by the BIA;

(d) Follow any applicable court order;

(e) Provide receipts to the social services provider in accordance with terms of the evaluation for all expenses paid out of the minor's IIM funds;

(f) Review the statements of performance for the supervised account for discrepancies, if applicable;

(g) File tax returns on behalf of the account holder, if applicable; and

(h) Notify the social service provider of any change in circumstances that impairs your performance of your obligations under this part or inform the social service provider of any information regarding misuse of a minor's trust funds.

§ 115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?

At the Secretary's discretion, the BIA may authorize the disbursement of funds from a minor's supervised account for the benefit of the minor.

§ 115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?

The BIA-approved distribution plan will be provided to:

(a) The custodial parent; or

(b) A legal guardian; or

(c) At the Secretary's discretion, in unusual circumstances, to a family member who has been recognized as having control and custody of the minor; or

(d) An emancipated minor; and

(e) OTFM.

§ 115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?

If we find that a distribution plan has not been followed or that a custodial parent, a legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor has failed to satisfactorily account for expenses or has not used the minor's funds for the primary benefit of the minor, we will:

(a) Notify the individual; and

(b) Take action to protect the interests of the minor, which may include:

(1) Referring the matter for civil or criminal legal action;

(2) Demanding repayment from the individual who has improperly expended trust funds or failed to account for the use of trust funds;

(3) Liquidating a bond posted by the legal guardian, where applicable, to recover improperly expended trust funds up to the amount of the bond; or

(4) Immediately modifying the distribution plan for up to sixty days, including suspending the authority of the individual to receive further disbursements.

§ 115.426 What is the BIA's responsibility regarding the management of a minor's supervised account?

The BIA's responsibility in regard to the management of a minor's supervised account is to:

(a) Review and approve the evaluation and the distribution plan;

(b) Authorize OTFM to disburse IIM funds in accordance with an approved distribution plan; and

(c) Conduct annual reviews of case records for minors' supervised accounts

to ensure that the social service providers have managed the accounts in accordance with the approved evaluation and distribution plan.

§ 115.427 What is the BIA's annual review process for a minor's supervised account?

A BIA social worker with an MSW will conduct an annual review of minors' supervised accounts by:

(a) Verifying that all receipts for disbursements made under a distribution plan were collected in accordance with the terms specified in the evaluation;

(b) Reviewing the receipts for disbursements made from a minor's supervised account to ensure that all expenditures were made in accordance with the distribution plan;

(c) Reviewing all case worker reports and notes;

(d) Reviewing account records to insure that withdrawals and payments were made in accordance with the distribution plan;

(e) Verifying current addresses, including the address of record, the address of the minor's residence, and the disbursement address; and

(f) Deciding whether the distribution plan needs to be modified.

§ 115.428 Will you automatically receive all of your trust funds when you reach the age of 18?

No, we will not automatically send your trust funds to you when you reach the age of 18.

§ 115.429 What do you need to do when you reach 18 years of age to access your trust funds?

You must contact OTFM to request withdrawal of any or all of your trust funds that may be available to you. OTFM may require certain information from you to verify your identity, etc. prior to the release of your trust funds. All signatures must be notarized by a notary public or witnessed by a DOI employee. In addition, if you choose to have a check mailed to you, you must provide us with your address of record. If you choose to have your trust funds electronically transferred to you, you must provide your financial institution account information to OTFM.

§ 115.430 Will your account lose its supervised status when you reach the age of 18?

Your account will no longer be supervised when you reach the age of 18 unless statutory language or a tribal resolution specifies an age other than 18 years of age for access to specific trust funds. However, if a court of competent jurisdiction has found you to be non-compos mentis, under legal disability, or the BIA has determined you to be an adult in need of assistance, your account will remain supervised and you will be notified in accordance with subpart E.

§ 115.431 If you are an emancipated minor may you withdraw trust funds from your account?

If you are an emancipated minor, you may have access to some or all of your trust funds as follows:

(a) For judgment per capita funds: you may not make withdrawals from your account until you have reached the age specified in the judgment. Exceptions are only granted upon the approval of an application made under Public Law 97–458. See 25 CFR 1.2.

(b) Tribal per capita funds: access to these funds will be determined by tribal resolution.

(c) Other trust funds: You may be able to have supervised access to some or all of your funds, but the BIA must approve all requests for withdrawals from your account. You must work with the BIA to develop a distribution plan to access the funds in your account. In no instance will the BIA allow an emancipated minor to make unsupervised withdrawals.

(d) For funds from other federal agencies (*e.g.,* SSA, SSI, VA), you may be able to receive funds directly, but you must contact and make arrangements with the other federal agency. Direct receipt of funds from another federal agency will not change the supervised status of an emancipated minor's trust account.

Subpart D—IIM Accounts: Estate Accounts

§ 115.500 When is an estate account established?

An estate account is established when we receive notice of an account holder's death.

§ 115.501 How long will an estate account remain open?

An estate account will remain open until the funds have been distributed in accordance with the distribution and/or probate order.

§ 115.502 Who inherits the money in an IIM account when an account holder dies?

At the end of all probate procedures, funds remaining in a decedent's estate account will be distributed from the decedent's estate account and paid directly to or deposited into an IIM account of the decedent's heirs, beneficiaries, or other persons or entities entitled by law to receive the funds, where applicable. See 25 CFR part 15.

§ 115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?

(a) If you are responsible for making the funeral arrangements of a decedent who had an IIM account and you have an immediate need for emergency assistance to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to $1,000 from the decedent's IIM account if the decedent's IIM account has more than $2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to $1,000 that are necessary for the burial services.

(d) We will make payments directly to the providers of the service(s).

§ 115.504 If you have a life estate interest in income-producing trust assets, how will you receive the income?

If you have a life estate interest in income-producing trust assets, which is earning income, OTFM will open an IIM-life estate account for you and funds will be distributed after BIA has certified ownership of the trust funds.

Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

§ 115.600 If BIA decides to restrict your IIM account under § 115.102 or § 115.104, what procedures must the BIA follow?

If under § 115.102 or § 115.104, the BIA has decided to limit your access to your IIM account (*i.e.,* decided to supervise the IIM account), or if the BIA has decided to pay creditors with funds from your IIM account, including creditors with judgments from Courts of Indian Offenses for which preliminary procedures are prescribed in 25 CFR 11.208, the BIA must notify you or your guardian, as applicable, to provide you or your guardian, as applicable, with an opportunity to challenge the BIA's decision to restrict your IIM account as specified in subpart E.

§ 115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?

(a) The BIA may restrict your IIM account through supervision if the BIA:

(1) Receives an order from a court of competent jurisdiction that you are non-compos mentis; or

(2) Receives an order or judgment from a court of competent jurisdiction that you are an adult in need of assistance because you are ''incapable of

managing or administering property, including your financial affairs;'' or

(3) Determines through an administrative process that you are an adult in need of assistance based on a finding by a licensed medical or mental health professional that you are ''incapable of managing or administering property, including your financial affairs;'' or

(4) Receives information from another federal agency that you are under a legal disability and that the agency has appointed a representative payee to receive federal benefits on your behalf.

(b) The BIA may restrict your IIM account through an encumbrance if the BIA:

(1) Receives an order from a court of competent jurisdiction awarding child support from your IIM account; or

(2) Receives from a third party:

(i) A copy of the original contract between you and the third party in which you used your IIM funds as security/collateral for the transaction;

(ii) A copy of the document showing that the BIA approved in advance the use of your IIM funds as security/collateral for the contract;

(iii) Proof of your default on the contract according to the terms of the contract; and

(iv) A copy of the original assignment of IIM income as security/collateral for the contract that is signed and dated by you and is notarized;

(3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code;

(4) Is provided documentation showing that BIA or OTFM caused an administrative error which resulted in a deposit into your IIM account, or a disbursement to you, or to a third party on your behalf; or

(5) Is provided with proof of debts owed to the United States pursuant to § 115.104 of this part.

§ 115.602 How will the BIA notify you or your guardian, as applicable, of its decision to restrict your IIM account?

The BIA will notify you or your guardian, as applicable, of its decision to restrict your IIM account by:

(a) United States certified mail to your address of record;

(b) Personal delivery to you or your guardian, as applicable, or to your address of record;

(c) Publication for four consecutive weeks in your tribal newspaper if your whereabouts are unknown and in the local newspaper serving your last known address of record; or

(d) United States certified mail to you in care of the warden, if you are incarcerated. The BIA may send a copy of the notification to your attorney, if known.

§ 115.603 What happens if BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason?

If BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason, the BIA will remove the restriction on your account, which was placed five days after the notice was mailed, and will publish a notice in accordance with § 115.602(c) and § 115.605(b).

§ 115.604 When will BIA authorize OTFM to place a restriction on your IIM account?

BIA will authorize OTFM to place a restriction on your IIM account after providing OTFM with supporting documentation (i.e., receipts, notice of publication, etc.) of the following:

(a) Five (5) days after the date BIA mails you or your guardian, as applicable, notice of its decision to restrict your account by United States certified mail to your address of record;

(b) One (1) day after BIA has made personal delivery to you or your guardian, as applicable, or to your address of record of its notice of the BIA's decision to restrict your account; or

(c) Five (5) days after the fourth publication of the public notice of BIA's decision to restrict your account.

§ 115.605 What information will the BIA include in its notice of the decision to restrict your IIM account?

(a) When the BIA provides notice of its decision to restrict your IIM account by certified mail or personal delivery to you or your guardian, as applicable, the notice must contain:

(1) The name on the IIM account;

(2) The reason for the restriction;

(3) The amount to be encumbered, if applicable;

(4) A statement that your IIM account will be restricted 5 days after the date the notice was sent United States certified mail to your address of record;

(5) An explanation that you have 40 days from the date the notice was sent United States certified mail to request a hearing to challenge BIA's decision to restrict your IIM account;

(6) An explanation of how to request a hearing;

(7) A statement that the BIA will conduct the hearing and that you are assured a fair hearing;

(8) A copy of the fair hearing guidelines;

(9) A statement that you may contact the BIA to authorize immediate payment from your IIM account to pay the claim, if applicable;

(10) The address and phone number of the BIA office that made the decision to restrict your IIM account and provided the notice; and

(11) Other information as may be determined appropriate by the BIA.

(b) When the BIA provides public notice of its decision to restrict your account, the only information the public notice will include is:

(1) The name on the account;

(2) The date of first publication of the public notice;

(3) A statement that the BIA has decided to place a restriction on your IIM account;

(4) A statement that the public notice will be published once a week for four consecutive weeks;

(5) A statement that the BIA will place a restriction on your account five (5) days after the date of the fourth publication of the public notice;

(6) A statement that your opportunity to request a hearing to challenge BIA's decision to restrict your account will expire 30 days after the date of the fourth publication of the public notice; and

(7) An address and telephone number of the BIA office publishing the notice to request further information and instructions on how to request a hearing.

§ 115.606 What happens if you do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period?

If you or your guardian, as applicable, do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period, BIA's decision to restrict your IIM account will become final. BIA will follow the procedures outlined in § 115.616 through § 115.618, and § 115.620, as applicable.

§ 115.607 How do you request a hearing to challenge the BIA's decision to restrict your IIM account?

You or your guardian, as applicable, must request a hearing to challenge the BIA's decision to restrict your IIM account from the BIA office that made the decision and notified you of the restriction. Your request must:

(a) Be in writing;

(b) Specifically request a hearing to challenge the restriction; and

(c) Be hand delivered to the BIA office or postmarked within:

(i) 40 days of the date that BIA's notice was sent United States certified

mail or personally delivered to the address of record, or

(ii) 30 days of the date of the final publication of the public notice.

§ 115.608 If you request a hearing to challenge BIA's decision to restrict your IIM account, when will BIA conduct the hearing?

BIA will conduct a hearing within ten (10) working days from its receipt of a written request from you or your guardian, as applicable, for a hearing to challenge the decision to restrict your IIM account.

§ 115.609 Will you be allowed to present testimony and/or evidence at the hearing?

Yes, you or your guardian, as applicable, will be provided the opportunity to present testimony and/or evidence as to the reasons the BIA should not restrict your IIM account, including information showing how an encumbrance may create an undue financial hardship, if applicable. You may not challenge a court order or judgment in this proceeding. However, if you have appealed an order or judgment from a court of competent jurisdiction, you or your guardian, as applicable, may present evidence of your appeal and the BIA hearing will be postponed until there is a final order from the court. The restriction on your IIM account will remain in place until after the hearing is concluded.

§ 115.610 Will you be allowed to present witnesses during a hearing?

Yes, you or your guardian, as applicable, may present witnesses during a hearing. You are responsible for any and all expenses which may be associated with presenting witnesses.

§ 115.611 Will you be allowed to question opposing witnesses during a hearing?

Yes, you or your guardian, as applicable, may question all opposing witnesses testifying during your hearing. You may also present witnesses to challenge opposing witness testimony.

§ 115.612 May you be represented by an attorney during your hearing?

Yes, you may have an attorney or other person represent you during your hearing. However, you are responsible for any and all expenses associated with having an attorney or other person represent you.

§ 115.613 Will the BIA record the hearing?

Yes, the BIA will record the hearing.

§ 115.614 Why is the BIA hearing recorded?

The BIA hearing will be recorded so that it will be available for review if the hearing process is appealed under § 115.107. The BIA hearing record must be preserved as a trust record.

§ 115.615 How long after the hearing will BIA make its final decision?

BIA will make its final decision within 10 business days of the end of the hearing.

§ 115.616 What information will be included in BIA's final decision?

BIA's final written decision to the parties involved in the proceeding will include:

(a) BIA's decision to remove or retain the restriction on the IIM account;

(b) A detailed justification for the supervision or encumbrance of the IIM account, where applicable;

(c) The amount(s) to be paid, the name and address of a third party to whom payment will be made, and the time period for repayment established under 617(a) of this part, where applicable;

(d) Any provision to allow for distributions to the account holder because of an undue financial hardship created by the encumbrance, if applicable; and

(e) Any other information the hearing officer deems necessary.

§ 115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?

BIA will provide OTFM with a copy of the distribution plan, after the BIA decides to:

(a) Supervise your IIM account. BIA social services staff will consult with you and/or your guardian to develop a distribution plan. Upon BIA approval, the distribution plan will be valid for one year.

(b) Encumber your IIM account. BIA will review your account balance and your future IIM income to develop a distribution plan that establishes the amount(s) to be paid and the dates payment(s) will be made to the specified party. Payments may need to be made over the course of one or more years if the amount owed to the specified party is greater than your current IIM account balance.

§ 115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?

If we decide at the conclusion of the notice and hearing process to encumber your account because of an administrative error which resulted in funds that you do not own being deposited into your IIM account or distributed to you or to a third party on your behalf, we will consult with you or your guardian, as applicable, to determine how the funds will be repaid.

§ 115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?

Yes, if the BIA decides after your hearing to continue the restriction on your IIM account, you or your guardian, as applicable, have the right to appeal the decision under the procedures proscribed in § 115.107.

§ 115.620 If you decide to appeal the BIA's final decision pursuant to § 115.107, will the BIA restrict your IIM account during the appeal?

Yes, if under § 115.107 you or your guardian, as applicable, decide to appeal the BIA's final decision to:

(a) Supervise your IIM account, your IIM account will remain restricted during the appeal period.

(b) Encumber your IIM account, your IIM account will remain restricted up to the amount at issue during the appeal period. If your account balance is greater than the amount encumbered, those funds will be available to you upon request to and by approval of the Secretary.

Subpart F—Trust Fund Accounts: General Information

§ 115.700 Why is money held in trust for tribes and individual Indians?

Congress has passed a number of laws that require the Secretary to establish and administer trust fund accounts for Indian tribes and certain individual Indians who have an interest(s) in trust lands, trust resources, or trust assets.

§ 115.701 What types of accounts are maintained for Indian trust funds?

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The illustration below provides information on each of these trust accounts.

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Types of Trust Fund Accounts			Descriptions
Individual Indian Money (IIM) Accounts	Unrestricted IIM accounts		There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder.
	Restricted IIM accounts:	Administratively Restricted	A temporary hold is placed on an account by OTFM where an address of record for an account holder is unknown or where more documentation is needed to make a distribution from an account.
		Supervised	A restriction is placed on the account by the BIA and funds from these accounts may only be withdrawn under a BIA approved distribution plan. The following account holders will have supervised accounts: • minors, • emancipated minors, • adults who are non-compos mentis, • adults in need of assistance; and/or • adults under legal disability as defined in this part.
		Encumbered	A restriction is placed on the account by the BIA until money owed from an the account is paid to a specified party. The account holder may withdraw any money available in the account that is above the amount owed to specified parties.
	IIM Estate accounts		An account for a deceased IIM account holder.
Tribal Accounts			Generally, an account for a federally recognized tribe.
Special Deposit Accounts			An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owners.

SOURCES	TRUST ACCOUNTS				
	Tribal	Individual Indian Money (IIM)			
		Unrestricted IIM Accounts	Restricted IIM Accounts		
			Administratively restricted	Supervised	Encumbered
Payments from the United States as a Result of —					
Federal laws requiring funds to be deposited in trust accounts.	✓	✓	✓	✓	✓
Settlement of a claim related to trust assets that requires the funds to be deposited in trust accounts	✓	✓	✓	✓	✓
A final order from a United States court for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Unobligated or unspent forestry funds specifically appropriated for the benefit of such Indian tribe	✓				
Designation of the BIA as the representative payee (by another federal agency) to receive certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, on behalf of an individual Indian because there is no legal guardian for that individual			✓	✓	
Payments resulting from —					
Money directly derived from the title conveyance (e.g. sale, probate, condemnation) or use of trust lands or restricted fee lands or trust resources, including any late payment penalties, when paid directly to the Secretary on behalf of the account holder	✓	✓	✓	✓	✓
Penalties for trespass on trust lands or restricted fee lands	✓	✓	✓	✓	✓

Default or breach of the terms of a contract for the sale or use of trust lands, restricted fee lands, or trust resources arising from cash performance or surety bonds, or other source(s)	✓	✓	✓	✓	✓
A final order from a court of competent jurisdiction for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Deposits from an Indian Tribe —					
Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act)	✓				
Where a tribe under 25 U.S.C. 450f et seq. has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual	✓	✓	✓	✓	✓
Legislative settlement funds or judgment funds withdrawn, but not spent, for a specific project. Documentation showing source of funds is required.	✓				
Deposits from other sources --					
Interest earned on trust fund deposits	✓	✓	✓	✓	✓
Disbursements of tribal trust funds held by OTFM to tribal members as per capita payments	✓			✓	
As permitted by law (25 U.S.C. § 3109) to be deposited into an Indian forest land assistance account	✓				

Funds derived directly from trust lands, restricted fee lands, or trust resources that are presented to the Secretary, on behalf of the tribe or individual Indian owner(s) of the trust asset, by the payor after being mailed to the owner(s) as required by contract (i.e., direct pay) and returned by mail to the payor as undeliverable	✓	✓	✓		✓

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§ 115.703 May we accept for deposit into a trust account money not specified in § 115.702?

No, we will not accept funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

§ 115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in § 115.702?

No, we will not accept retirement checks/payments or pension fund checks/payments or any funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

§ 115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?

We will accept money awarded or assessed by a court of competent jurisdiction for a cause of action directly related to trust assets to be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

§ 115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?

When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, we must receive the funds awarded as stipulated in the court order and a copy of the court's order.

§ 115.707 Will the Secretary accept administrative fees for deposit into a trust account?

No. The Secretary will not accept administrative fees for deposit into a trust account because administrative fees are not trust funds. However, administrative fees may be deposited into a non-interest bearing, non-trust account with the BIA.

§ 115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?

Trust funds received by the Secretary on behalf of a tribe or individual Indians will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository.

§ 115.709 Will an annual audit be conducted on trust funds?

Yes, in accordance with the Trust Reform Act an annual audit will be conducted on trust funds. Each tribe and IIM account holder will be notified when the Secretary has conducted an annual audit on a fiscal year basis of all the trust funds held by the United States for the benefit of tribes and individual Indians. This notice will be provided in the first quarterly statement of performance following the publication of the audit.

Investments and Interests

§ 115.710 Does money in a trust account earn interest?

Yes, all money deposited in a trust account is invested and earns interest or yield returns, or both.

§ 115.711 How is money in a trust account invested?

OTFM manages trust fund investments and its investment decisions are governed by federal statute. See 25 U.S.C. §§ 161(a) and 162a.

§ 115.712 What is the interest rate earned on money in a trust account?

The rate of interest on a trust account changes based on how the money is invested and how those investments perform.

§ 115.713 When does money in a trust account start earning interest?

Funds must remain on deposit at least one business day before interest is earned. Interest earnings of less than one cent are not credited to any account.

Subpart G—Tribal Accounts

§ 115.800 When does OTFM open a tribal account?

A tribal account is opened when OTFM receives income from the sources described in § 115.702.

§ 115.801 How often will a tribe receive information about its trust account(s)?

The OTFM is required to provide each tribe with a statement of performance quarterly, within or no later than 20 business days after the close of every quarterly statement period.

§ 115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?

Yes, a tribe may contact OTFM at any time to:

(a) Request information about account transactions and balances;

(b) Make arrangements to access account information electronically; or

(c) Receive a monthly statement.

§ 115.803 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the trust funds deposited and held in a trust account; the beginning balance; the gains and losses; receipts and disbursements; and the ending account balance of the quarterly statement period.

§ 115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?

No, under the Trust Reform Act we are only responsible for accounting for those trust funds received into, and maintained by, the Department's trust funds management system.

§ 115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?

If a contract for the sale or use of trust assets specifies that payments are to be made directly to a tribe, we will not accept these trust funds into a tribal trust account. Where a tribe under 25 U.S.C. 450f *et seq.* has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual [the owner of the trust assets], the tribe must follow § 115.708 for the deposit of the trust funds into the trust account.

§ 115.806 How will the BIA assist in the administration of tribal judgment fund accounts?

(a) If the tribe requests assistance or if Congress directs the Secretary to provide assistance, BIA will provide technical assistance on developing a judgment use and distribution plan to a tribe.

(b) BIA will review all tribal requests for distribution of tribal judgment funds to ensure that each request complies with any requirements associated with the use of that money found in statutory language, congressional directives, court orders, court-approved settlements, settlement agreements, use and distribution plans, or bond or loan payments.

Investing and Managing Tribal Trust Funds

§ 115.807 Will OTFM consult with tribes about investments of tribal trust funds?

Upon the request of a tribe, OTFM will consult with the tribe annually to develop investment strategies to accommodate the cash flow needs of the tribe.

§ 115.808 Could trust fund investments made by OTFM lose money?

The value of trust fund investments made by OTFM will vary depending on the type of investment and, including but not limited to, the following:

(a) Current interest rates;

(b) Whether the security/investment is held to its maturity; and

(c) Original purchase price.

However, as long as the purchase price of the security/investment is made at or below face value and the security/investment is held until maturity or payoff, the security/investment will not lose principal invested funds.

§ 115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?

Tribes may recommend certain investments to OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. §§ 161a and 162a. The OTFM will make the final investment decision based on prudent investment practices.

§ 115.810 May a tribe directly invest and manage its trust funds?

A tribe may apply to withdraw its trust funds from OTFM for investment and management by the tribe. The tribe's request to withdraw funds must be in accordance with the requirements of the Trust Reform Act and 25 CFR part 1200, subpart B, unless otherwise specified by statutory language or the controlling document which governs the use of the trust funds.

§ 115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?

Tribal trust funds withdrawn under the Trust Reform Act may be returned to OTFM under the following conditions:

(a) A tribe must make a written request to OTFM to redeposit all or part of the withdrawn trust funds;

(b) No tribal trust funds may be redeposited to a tribal trust account during the first six months after being withdrawn, except with the approval of the Secretary;

(c) Tribal trust funds may only be returned to OTFM a maximum of twice a year, except with the approval of the Secretary; and

(d) A tribe must return withdrawn trust funds in accordance with the requirements of the Trust Reform Act in 25 CFR, part 1200, subpart C.

§ 115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?

If a tribe's use of trust funds is limited by statutory language or other federal law(s) and a tribe uses those trust funds in direct violation of those laws, absent an approved modification which allows for the expenditures, we will require the tribe to reimburse its trust fund account.

§ 115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?

OTFM will only disburse the available balance of the trust funds in a tribal trust account in accordance with a use and distribution plan, if applicable, and will not overdraw a tribal trust account. If a tribe's trust funds are invested in securities that have not matured, OTFM will only sell the asset to make cash available to the tribe if:

(a) There are no restrictions against the sale, and

(b) A tribe provides OTFM with a tribal resolution stating that:

(1) The security must be sold;

(2) The tribe acknowledges that they may incur a penalty when the security is sold; and

(3) The tribe acknowledges that the security may lose value if it is sold prior to maturity.

§ 115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?

A tribe may redeposit funds not used for a particular purpose or project if:

(a) The funds were withdrawn in accordance with:

(1) The terms of Trust Reform Act;

(2) The terms of the legislative settlement; or

(3) The terms of a judgment use and distribution plan; and

(b) The tribe can provide documentation showing the source of the funds to be redeposited.

Withdrawing Tribal Trust Funds

§ 115.815 How does a tribe request trust funds from a tribal trust account?

To request trust funds from a tribal trust account, a tribe may:

(a) Make a written request to the BIA or the OTFM that is signed by the proper authorizing official(s), list the amount of trust funds to be withdrawn, provide any additional documentation or information required by law to withdraw certain trust funds, and must include a tribal resolution approving the withdrawal of the specified amount of trust funds; or

(b) Contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

§ 115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?

(a) Action on a tribe's request for a withdrawal of trust funds may be delayed or denied if:

(1) The tribe did not submit all the necessary documentation;

(2) The tribe's request is not signed by the proper authorizing official(s);

(3) OTFM does not have documentation from the tribe certifying its recognized, authorizing officials;

(4) The tribe's request is in conflict with statutory language or the controlling document governing the use of the trust funds; or

(5) The BIA or OTFM requires clarification regarding the tribe's request.

(b) If action on a tribe's request to withdraw trust funds will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within ten (10) working days of the date of a request made under § 115.815(a);

(2) Notify the tribe under the time frames established in 25 CFR part 1200 for requests made under the Trust Reform Act; and

(3) Provide technical assistance to the tribe to address any problems.

§ 115.817 How does OTFM disburse money to a tribe?

Upon receipt of all necessary documentation, OTFM will process the request for disbursement and send the tribe the requested amount of trust funds within one business day. Whenever possible, trust funds will be disbursed electronically to an account in a financial institution designated by the tribe. If there are circumstances that preclude electronic payments, OTFM will mail a check.

Unclaimed Per Capita Funds

§ 115.818 What happens if an Indian adult does not cash his or her per capita check?

(a) If an Indian adult does not cash his or her per capita check within twelve (12) months of the date the check was issued, the check will be canceled and the trust funds will be deposited into a ''returned per capita account'' where the funds will be maintained until we receive a request for disbursement by the Indian adult or for disposition by a tribe pursuant to § 115.820.

(b) If an Indian adult's per capita check is returned to us as undeliverable, the trust funds will be immediately deposited into a ''returned per capita account'' where the funds will be maintained until we receive a request for disbursement by the individual or for disposition by a tribe pursuant to § 115.820.

§ 115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?

The OTFM will notify a tribe of the names of the individuals whose per capita checks were returned as undeliverable or not cashed within twelve (12) months of issuance and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the per capita funds.

§ 115.820 May OTFM transfer money in a returned per capita account to a tribal account?

Funds in a returned per capita account will not automatically be returned to a tribe. However, a tribe may apply under 25 U.S.C. 164 and Public Law 87–283, 75 Stat. 584 (1961), to have the unclaimed per capita funds transferred to its account for the tribe's use after six years have passed from the date of distribution.

Subpart H—Special Deposit Accounts

§ 115.900 Who receives the interest earned on trust funds in a special deposit account?

Generally, any interest earned on trust funds in a special deposit account will follow the principal (i.e., the tribe or individual who owns the trust funds in the special deposit account will receive the interest earned).

§ 115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?

OTFM will disburse the trust funds from a special deposit account and deposit the trust funds in the owner's trust account following the BIA certification of the ownership of the funds and OTFM's receipt of such certification.

§ 115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?

No, administrative or land conveyance fees paid as federal reimbursements may not be deposited with OTFM, which includes special deposit accounts. These fees must be deposited in the Federal Financial System.

§ 115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?

No, cash bonds may not be deposited with OTFM, which includes the special deposit accounts at OTFM. Cash bonds held by the Secretary are to be deposited in non-interest bearing accounts until the term of the bonds expire.

§ 115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?

No, any money received prior to Secretarial approval of conveyance or contract instrument involving trust assets must be deposited into a non-interest bearing, non-trust account. After the Secretary approves the conveyance or contract instrument involving trust assets, the money designated by the conveyance or contract instrument will be deposited into a trust fund account.

Subpart I—Records

§ 115.1000 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 this part, including the operation of a trust program pursuant to 25 U.S.C. 450f *et seq.*; 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.

§ 115.1001 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 115.1000(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 § 115.1000(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, the tribe or tribal organization may be prevented 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 162—LEASES AND PERMITS

4. Part 162 is revised to read as follows:

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?

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 477, 635, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733; 44 U.S.C. 3101 *et seq.*

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 166—GRAZING PERMITS

5. Part 166 is revised to read as follows:

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?

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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 non-trust 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?
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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

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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?
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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?

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166.409 How is my grazing rental payment determined?
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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.*)

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.	
(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.

Dated: December 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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