

## SUBCHAPTER H—LAND AND WATER

### PART 150—LAND RECORDS AND TITLE DOCUMENTS

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

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

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

#### § 150.1 Purpose and scope.

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

#### § 150.2 Definitions.

As used in this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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the existence of encumbrances to the land.

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

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

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

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

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

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

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

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

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

(d) Billings, Montana Office provides title services for Indian land located

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under the jurisdiction of the Billings Area Office.

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

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

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

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

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

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

### § 150.6 Recordation of title documents.

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

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

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

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

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

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

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

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

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

(2) Land Titles and Records Offices shall notify the Superintendent when

modifications are required by Administrative Law Judges for other types of probate errors. Corrective action is then initiated in accordance with 43 CFR part 4, subpart D.

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

### § 150.8 Title status reports.

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

### § 150.9 Land status maps.

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

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

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

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

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

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

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains. Here goes new 151

## PART 151—ACQUISITION OF TITLE TO LAND IN TRUST

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AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 18 U.S.C. 1001; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 467, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

SOURCE: 66 FR 3458, Jan. 16, 2001, unless otherwise noted.

### Subpart A—Purpose, Definitions, General

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

The purpose of this part is to describe the authorities, policies, and procedures that we use to decide whether to accept title to land in the name of the United States to be held in trust for the benefit of an individual Indian or a tribe.

#### § 151.2 How are key terms defined in this part?

*Alienation* means a conveyance or transfer of title to property.

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

*Complete Application* means an application that contains all the documentation, analysis and information required by § 151.5(f).

*Discretionary acquisitions of title* means those acquisitions of trust title

which Congress has authorized, but not required us to accept administratively.

*Encumbrance* means a limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.

*Fee simple land* means land held absolute and clear of any condition or restriction, and where the owner has unconditional power of disposition.

*Governing tribe* means the tribe having governmental jurisdiction over the land being acquired.

*Individual Indian* means a person who:

(1) Is a member of a federally recognized tribe; or

(2) Was physically residing on a federally recognized Indian reservation as of June 1, 1934, and is a descendant of an enrolled member of a federally recognized tribe; or

(3) Possesses a total of one-half degree or more Indian blood of a federally recognized tribe.

*Land* means real property or any title interest therein, as defined by the statute that authorizes the land acquisition.

*Legislative transfer of title* means the direct transfer of title to land into trust status for the benefit of an individual Indian or Indian tribe by Congress through legislation. The regulations in this part do not apply to legislative transfers of title.

*Mandatory acceptance of title* means a conveyance of trust title which Congress has required the Secretary to accept if certain specified conditions over which the Secretary has no control are met.

*Reservation* means, for purposes of this part, that area of land which has been set aside or which has been acknowledged as having been set aside by the United States for the use of the tribe, the exterior boundaries of which are more particularly defined in a final treaty, Federal agreement, Executive or secretarial order, Executive or secretarial proclamation, United States patent, Federal statute, or final judicial or administrative determination, provided that:

(1) In the State of Oklahoma, *reservation* means that area of land constituting the former reservation of the tribe. *Former reservation* means lands

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that are within the jurisdictional area of an Oklahoma Indian tribe and are within the boundaries of the last reservation established by final treaty, Federal agreement, Executive or secretarial order, Executive or secretarial proclamation, United States patent, Federal statute, or final judicial or administrative determination; and

(2) For Pueblo Indian tribes in the State of New Mexico, *reservation* means lands within the exterior boundaries of lands granted or confirmed to or acquired by the Pueblo as reported by the Pueblo Lands Board under section 2 of the Act of June 7, 1924, ch. 331, 43 Stat. 636, notwithstanding any finding of extinguishment of title, plus any other lands reserved, set aside, or held in trust by the United States for the use of the Pueblo or its members.

*Restricted fee 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 in the conveyance instrument pursuant to federal law.

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

*Tribal Land Acquisition Area (TLAA)* means an area of land approved by the Secretary and designated by a tribe that

- (1) Does not have a reservation; or
- (2) Does not have trust land; or
- (3) Has a trust land base which is incapable of being developed in a manner that promotes tribal self-determination, economic development and Indian housing, and within which the tribe plans to acquire land over a specified period of time.

*Tribe* means any Indian tribe, nation, band, pueblo, town, community, rancheria, colony, or other group of Indians, which is recognized by the Secretary as eligible for the special programs and services provided by the Bureau of Indian Affairs, and listed in the FEDERAL REGISTER under Public Law 103-454, act of Nov. 2, 1994 (108 Stat. 4791; 25 U.S.C. 479a (1994)).

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

*Undivided fractional interest* means an interest of co-owners which is in the entire property, that is not divided out from the whole parcel. (Example: If you own 1/4 interest in 160 acres, you do not own 40 acres. You own 1/4 interest in the whole 160 acres because your 1/4 interest has not been divided out from the whole 160 acres.)

*We/Us/Our* means the Secretary of the Interior or an authorized representative.

#### § 151.3 To what types of transactions does this part apply?

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all fee simple land-to-trust, fee simple land-to-restricted fee or land exchanges involving fee simple land.

(b) This part does not apply to the following transactions:

- (1) Trust-to-trust;
- (2) Restricted-fee to restricted-fee;
- (3) Transfer of title to trust and restricted land through inheritance, devise or escheat;
- (4) Legislative transfer of title into trust status; or
- (5) Federal agency transfers of title.

(c) We will not accept title to land in trust in the State of Alaska, except for the Metlakatla Indian Community of the Annette Island reserve of Alaska or its members.

#### § 151.4 How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?

Individual Indians and tribes must send us a written request asking that we accept title and place the land into trust.

- (a) The request must:
- (1) Identify the applicant (including the applicant's tribal affiliation);
  - (2) Include the legal description of the land to be acquired; and
  - (3) Include all information which shows that the proposed acquisition meets the applicable requirements in this regulation.

(b) The request does not need to be in any special form. However, we strongly urge the applicant to address each section of this part that is relevant to the type of acquisition (*e.g.*, on- or off-reservation, discretionary or mandatory),

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in the order it appears here. Constructing the request in this way will enable us to review the request more efficiently.

(c) We may also ask for additional information to aid us in reaching a decision.

### § 151.5 How does BIA process the request?

(a) After we receive the request, we will notify the State, county, and municipal governments having regulatory jurisdiction over the land. We will send all notices under this section by certified mail, return receipt requested. The notice will contain the information described in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(1) If the request is for on-reservation lands or lands inside an approved TLAA, the notice we send under this section will:

- (i) Include the name of the applicant;
- (ii) Describe the lands proposed to be taken in trust;
- (iii) State the proposed use of the land; and
- (iv) Invite the State and local governments from the State in which the land is located to comment in writing within 30 days from date of receipt of the notice on the proposed acquisition.

(2) If the request is for land outside a reservation and outside a TLAA, the notice we send under this section will:

- (i) Include the name of the applicant;
- (ii) Describe the lands proposed to be taken in trust;
- (iii) Describe the proposed use of the land; and
- (iv) Invite the State and local governments from the State in which the land is located to comment in writing within 60 days from the date of receipt of notice on the acquisition's potential effects on the State and local governments, including on their regulatory jurisdiction, real property taxes, and special assessments.

(b) After the comment period has ended, we will send to the applicant copies of any comments made by State and local governments on the applicant's request. We will give the applicant a reasonable time in which to reply to the comments.

(c) Subject to restrictions on disclosure required by the Freedom of Infor-

mation Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905) the request will be available for review at the local BIA agency or area office having administrative jurisdiction over the land.

(d) We will consider all the documentation that the applicant submits.

(e) A complete application consists of the following:

(1) The applicant's request that the land be taken into trust, as follows:

(i) If the applicant is an Indian tribe, the written request must be a properly prepared and executed tribal resolution requesting trust status, or

(ii) If the applicant is an individual Indian, the written request must be a signed letter requesting trust status.

(2) Documentation that the applicant has addressed all the applicable information requirements in this section;

(3) A map depicting the location of the land to be acquired, and either:

(i) A legal description of the land, including a statement of the estate being acquired, *e.g.* all surface and mineral rights, surface rights only, surface rights and a portion of the mineral rights, etc., or

(ii) A survey if the land cannot be described by an aliquot legal description. The survey must be completed by a land surveyor registered in the State in which the land is located when the land being acquired is fee simple land,

- (4) Hazardous level I survey,
- (5) Environmental documentation,
- (6) Title evidence,
- (7) Impact notification letters, including all associated responses,
- (8) Statement from the applicant that any existing rights of way, easements or encumbrances will not interfere with applicant's intended use of the land, and

(9) Any additional information we have requested, in writing, if warranted by the specific application.

(f) After BIA is in possession of a complete application, we will:

(1) Notify the applicant, in writing, that the application is complete,

(2) Issue a decision on an application within 120 working days after issuance of the notice of a complete application.

**§ 151.6 How does BIA proceed after making a decision on a request?**

(a) Within 120 days of our having a complete application package, we will send the applicant a certified letter describing our decision to accept or deny a request. We will also send a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request. The notice to interested parties will explain that they have a right to appeal our decision under part 2 of this title.

(b) If our decision is to deny the request, we will take no further action.

(c) If our decision is to approve the request, after the exhaustion of administrative remedies, we will:

(1) Complete a preliminary title examination. For both discretionary and mandatory acquisitions, after we examine the title evidence, we will notify the applicant of any liens, encumbrances, or infirmities. If the liens, encumbrances, or infirmities make title to the land unmarketable, we will require the applicant to eliminate the liens, encumbrances, or infirmities before we act on the application.

(2) Publish in the FEDERAL REGISTER, or in a newspaper of general circulation serving the affected area, a notice of the decision to take land into trust under this part. The notice will state that we have made a final decision to take land in trust and that we will accept title in the name of the United States no sooner than 30 days after the notice is published;

(3) Respond to any judicial appeals that may be filed; and

(4) After sufficient opportunity for judicial relief has been provided, accept trust title to the land by issuing or approving an appropriate instrument of conveyance. If we determine to accept trust title to land in a case before all judicial remedies have been exhausted, we will give the party/parties opposing the acquisition at least five days notice before we take any action.

**§ 151.7 When does land attain trust status?**

After the Secretary has published a notice of intent to take the land into trust pursuant to § 151.6(c)(2), the time period for appeal has run, and all title

objections have been cleared, we will approve or issue the appropriate instrument of conveyance. Only after these steps have been completed will the land attain trust status. The approved deed will then be recorded in the county where located, title evidence will be updated, a final title opinion will be issued and the deed will be recorded in the appropriate Bureau of Indian Affairs Land Titles and Records Office under part 150 of this chapter.

**§ 151.8 Will BIA accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?**

We will not accept and hold in trust for an individual Indian or a tribe an undivided fractional interest in land, except under one of the following conditions:

(a) The individual Indian or tribe already owns an undivided fractional restricted or trust interest in the land, and is acquiring the additional interest(s) to consolidate ownership.

(b) The individual Indian or tribe acquires the undivided fractional interest as the result of a gift under § 152.25(d) of this chapter and the conveyance does not result in further fractionation of interest in the land.

(c) The individual Indian or tribe is acquiring fee simple interest and there are existing undivided fractional trust or restricted interests in the same land.

(d) The individual Indian or tribe offers and agrees to purchase the remaining undivided fractional trust or restricted interest in the land, at not less than fair market value.

(e) A specific statute grants the individual Indian or tribe the right to purchase an undivided fractional interest in trust or restricted land without offering to purchase all interests.

(f) The owner(s) of a majority of the interests of the remaining undivided trust or restricted fractional interest agree in writing that the individual Indian or tribe may acquire the interest.

(g) A tribe acquires an undivided fractional interest in trust or restricted land under the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.*, under one of the following conditions:



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(1) The land is inside the tribe's reservation, or inside an approved Tribal Land Consolidation Area, or is otherwise subject to the tribe's jurisdiction, and

(2) The tribe acquires the land:

(i) At not less than the fair market value; and

(ii) With the written consent of a majority of the owners of the remaining undivided fractional trust or restricted interest of this land;

(h) The tribe acquires, at not less than the fair market value, part or all of the undivided fractional interests in a parcel of trust or restricted land within the tribe's reservation, or subject to the tribe's jurisdiction and:

(1) Over 50 percent of the owners of the undivided fractional interests consent in writing to the acquisition; or

(2) An individual Indian makes an offer under paragraph (e) of this section;

(i) An individual Indian:

(1) Already owns an undivided fractional interest in the land;

(2) Offers to match a tribal offer to purchase under paragraph (d) of this section; and

(3) Has used and possessed the land for at least 3 years preceding the tribe's offer to purchase.

### Subpart Part B—Discretionary Acquisitions of Title On-Reservation

#### § 151.9 What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land inside a reservation boundary or to land inside an approved TLAA must include:

(a) A complete description, or a copy, of the federal statute that authorizes the United States to accept the land in trust and any limitations contained in the authority.

(b) An explanation of why the individual Indian or tribe needs land to be in trust and how the land will be used.

(c) If the applicant is a tribe, an explanation of whether the tribe:

(1) Already owns an undivided fractional trust or restricted interest in the land; and

(2) Maintains jurisdiction over the land.

(d) If the applicant is an individual Indian, an explanation of:

(1) Whether the applicant already owns an undivided fractional trust or restricted interest in the land;

(2) The amount of land that the applicant already owns and the status of the land (fee, restricted, or trust); and

(3) Whether the applicant needs assistance in handling real estate affairs. For example, tell us if the applicant is a minor or has been declared legally incompetent.

(e) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U. S. Department of Justice. Copies of the standards are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004.

(f) Documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, write to the Department of the Interior, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 4513-MIB, Washington, DC 20240). Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

#### § 151.10 What criteria will BIA use to evaluate a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

Upon receipt of the information required under § 151.9 and upon a determination that the application is complete:

(a) We will approve the application and accept title to land in trust inside a reservation or inside an approved

TLAA if we determine that the application facilitates tribal self-determination, economic development, Indian housing, land consolidation or natural resources protection; except that

(b) Notwithstanding a determination in paragraph (a) of this section, we may not approve the application and accept transfer of title into trust for land inside a reservation or inside an approved TLAA if the approval of the acquisition will result in severe negative impact to the environment or severe harm to the local government. Evidence of such harm must be clear and demonstrable and supported in the record.

**§ 151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?**

An individual Indian or a tribe, including individual Indians and tribes in Oklahoma, may acquire land in trust on another tribe's reservation, or inside another tribe's approved TLAA, if the recognized tribe's governing body consents in writing. No consent is required if:

(a) An individual Indian or tribe already owns an undivided fractional trust or restricted interest in the parcel of land to be acquired; or

(b) The proposed acquisition is inside a reservation or an approved TLAA that is shared by two or more tribes, and the acquisition is for one of these tribes, or one of these tribes' members.

**Subpart C—Discretionary Acquisitions of Title Off-Reservation**

**§ 151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?**

A request from an individual Indian or a tribe asking that the United States accept title to land outside a reservation boundary and outside an approved TLAA, must include:

(a) A complete description, or a copy of, the statutory authority that authorizes the United States to accept land in trust and any limitations contained in the authority;

(b) An explanation of the need of the individual Indian or tribe for land in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved. The request must explain:

(1) Why the present land base is not appropriate or adequate for the activity contemplated in the request;

(2) Why the applicant needs the land to be in trust for the proposed use; and

(3) How trust status will benefit the applicant's economic and/or social conditions.

(c) A description of how the applicant will use the land. This description must include an explanation of:

(1) The past uses of the land;

(2) The present use of the land;

(3) The anticipated future uses of the land;

(4) The cultural or historical interest in the land;

(5) The objectives that the individual Indian or tribe hopes to attain; and

(6) If the acquisition is for housing:

(i) The projected number of units to be built; and

(ii) The number of members who will benefit.

(7) If the applicant is acquiring the land for business purposes, the tribe must provide a business plan that specifies the anticipated economic benefits of the proposed use.

(d) As complete a description as is possible of the following:

(1) The location of the land relative to State boundaries;

(2) The distance of the land from the boundaries of the tribe's reservation;

(3) The distance of the land from the Bureau's nearest agency or area office;

(4) The location of roads and rights-of-way that provide access to the land; and

(5) The location of land in relation to the tribe's other trust lands.

(e) A description of the effect on the State and its political subdivisions of removing the land from tax rolls. Describe any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local government(s);

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(2) The amount of annual revenue lost from special assessments to the local government(s), if any;

(3) The amount of annual revenue lost from mineral receipts to the local government(s), if any; and

(4) The local government's ability to provide public safety services for the land.

(f) A description of any jurisdictional and land use infrastructure issues that might arise. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Any tribal zoning ordinances.

(2) Law enforcement and cross-deputizing, including:

(i) Who currently provides law enforcement services for the land;

(ii) If the applicant is a tribe, whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Any additional resources required to provide adequate law enforcement and how they will be funded.

(3) Safety factors, including:

(i) Who supplies fire protection service for the land;

(ii) Who supplies emergency medical service for the land; and

(iii) Whether the land is in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) A description of existing access to the land;

(ii) Description and quantification of increased traffic in the area anticipated from the proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The land is served by a city sewerage system;

(ii) The land is served by an some other type of sewage system that is adequate to meet applicable standards;

(iii) Trash pickup service or another method of trash disposal is available for the land;

(iv) The city or another facility supplies services to the land;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the applicant tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to the land; and

(ii) The source of heating for any structures located on or to be located on the land, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there are any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the applicant has made any provisions to compensate the State or local governments for revenue lost because of the removal of the land from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

(g) Whether there is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U.S. Department of Justice. The evidence will be examined to determine if the applicant has marketable title. Copies of the standards are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004.

(h) The documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, write to the Department of Interior, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 4513-MIB, Washington, DC 20240). Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

(i) If the request is for an individual Indian, documentation demonstrating

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that the applicant's request meets one of the criteria described in § 151.13.

#### **§ 151.13 Can an individual Indian acquire land outside his or her own reservation?**

Except as provided in paragraphs (a) and (b) of this section, we will not accept title to land in trust outside an individual Indian's reservation. We may approve acquisitions of land outside an individual Indian's reservation if:

(a) The individual Indian already owns an undivided fractional trust or restricted interest in the property being acquired; or

(b) The individual Indian has sold trust or restricted interest in land and the money received from the sale is reinvested in other land selected and purchased with these funds, or the individual Indian is purchasing land with funds obtained as a result of a sale of trust or restricted land under 25 U.S.C. 409a.

#### **§ 151.14 What criteria will BIA use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?**

Upon receipt of the information required under § 151.12 and upon a determination that the application is complete:

(a) We will approve the application to accept land into trust outside a reservation or outside an approved TLAA only if the application shows that the acquisition is necessary to:

(1) Facilitate tribal self-determination, economic development, Indian housing, land consolidation or natural resource protection; and

(2) We determine that the acquisition provides meaningful benefits to the Tribe that outweigh any demonstrable harm to the local community.

(b) Notwithstanding a determination in paragraph (a) of this section that the acquisition is necessary to facilitate tribal self-determination and that the benefits of the acquisition to the tribe outweigh any harm to the local community, we may disapprove an application to accept land into trust outside a reservation or outside an approved TLAA if the acquisition will result in:

(1) Severe negative impacts to the environment, or

(2) Significant harm to the local community. Evidence of such harm must be clear and demonstrable and supported in the application record; or

(3) The inability of the Bureau of Indian Affairs to adequately handle the additional law enforcement and other responsibilities that would result from the acquisition of the land into trust status.

(c) When making a determination under paragraph (a) or (b) of this section to approve or deny an application, we will consider the location of the land relative to the state boundaries, and its distance from the boundaries of the tribe's reservation and whether that distance is reasonable based on the following:

(1) If the land is in a different state than the tribe's reservation, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny

(2) As the distance between the tribe's reservation or approved TLAA and the land to be acquired increases, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny

(3) As the distance between the tribe's reservation or approved TLAA and the land to be acquired increases, the concerns raised by the state and local governments will be given greater weight.

### **Subpart D—Mandatory Acceptance of Title**

#### **§ 151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will BIA process the request?**

(a) To help us determine whether we are mandated by legislation to accept trust title to a specific tract of land, we require submission of the following documentation:

(1) A complete description, or a copy of, the statutory authority that directs the Secretary to place the land in trust, and any limitations contained in that authority;

(2) Title insurance or an abstract of title that meets the *Standards for the*

*Preparation of Title Evidence in Land Acquisitions by the United States*, issued by the U. S. Department of Justice (copies are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004); and

(3) Any additional information that we may request.

(b) If we determine that the transfer of title into trust status is mandatory, we will publish that determination along with a notice of intent to take the land in trust in the FEDERAL REGISTER or in a newspaper of general circulation serving the affected area.

**§ 151.16 Can our determination that a transfer of title into trust status is mandatory be appealed?**

The Department's determination that a transfer of title into trust status is or is not mandatory may be appealed according to requirements set forth in part 2 of this title.

**Subpart E—Tribal Land Acquisition Areas**

**§ 151.17 What is a Tribal Land Acquisition Area?**

A TLAA is an area of land approved by the Secretary and designated by a tribe within which the tribe plans to acquire land over a 25-year period of time. If the Secretary approves the TLAA under this part, the tribe can acquire parcels of land within the TLAA during that 25-year period under the on-reservation provisions of this part.

**§ 151.18 What tribes are eligible to apply for approval of a Tribal Land Acquisition Area?**

Tribes which may apply for approval of a TLAA are those tribes which:

- (a) Do not have a reservation,
- (b) Do not have trust land, or
- (c) Have a trust land base which is incapable of being developed in a manner that promotes tribal self-determination, economic development and/or Indian housing.

**§ 151.19 What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?**

A request for Secretarial approval of a TLAA must be made in writing, although we do not require that it take any special form. However, we strongly urge the applicant to address each applicable section of this part in the order it appears here. Constructing the application in this way will help us review the request more efficiently. To be complete, a request for Secretarial approval of a TLAA must identify the applicant tribe, and must include:

(a) A complete description, or a copy, of the federal statute(s) that authorize the Secretary to accept land in trust on behalf of the tribe, and any limitations contained in that authority.

(b) Copies of tribal documents relating to the establishment of the TLAA and the acquisition of land within it, including:

(1) A copy of the tribe's constitution and by-laws, corporate charter, resolution, or excerpts from those documents that identify and grant tribal officials the authority to acquire tribal lands on behalf of the tribe;

(2) A copy of a tribal resolution designating the TLAA, including a legal description of the lands located within it; and (3)

(3) A copy of a tribal resolution requesting that the Secretary approve the proposed TLAA.

(c) A narrative summary that describes the purposes and goals for acquiring lands in trust within the TLAA, including general information about whether the lands are to be used for residential, governmental, educational, economic development, or other purposes.

(d) A narrative of the tribe's history that explains:

(1) When the tribe was federally recognized, and whether it was through legislation, treaty, or the Bureau of Indian Affairs' Federal Acknowledgment Process; and

(2) If applicable, how the tribe became dispossessed of its former reservation lands.

(e) A description of the TLAA, including:

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(1) A legal description of the lands within the TLAA;

(2) Information about whether the lands are within the tribe's former reservation or aboriginal homelands;

(3) Information about whether the lands are Federal lands, State lands, or private lands;

(4) Information about whether the lands overlap with another tribe's jurisdictional area;

(5) Information about the significance of the land to the tribe, including whether the land has any particular historical, cultural, religious, or other value to the tribe; and

(6) Information about the distance of the TLAA from the Bureau's nearest agency or area office.

(f) A description of the location of roads and rights-of-way, or of additional rights-of-way that may be needed to provide access to lands located within the TLAA.

(g) A description of the reasonably anticipated overall effect on the State and its political subdivisions of removing lands located within the TLAA from tax rolls, and a description of any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local governments for lands located within the TLAA;

(2) The amount of annual revenue which would be lost from special assessments to the local governments, if any;

(3) The amount of annual revenue lost from mineral receipts to the local governments, if any; and

(4) The local governments' ability to provide public safety services for lands located within the TLAA.

(h) A description of any overall jurisdictional and land use infrastructure issues that might arise if the lands within the TLAA is taken into trust. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Applicable tribal zoning ordinances.

(2) Law enforcement and cross-deputizing, including:

(i) Who currently provides law enforcement services for the land;

(ii) Whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Whether additional resources would be needed to provide adequate law enforcement.

(3) Safety factors, including:

(i) Who supplies fire protection service for lands located within the TLAA;

(ii) Who supplies emergency medical service for lands located within the TLAA; and

(iii) Information about whether lands located within the TLAA are in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) A description of current access to the land;

(ii) Describes and quantifies anticipated increased traffic in the area from proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The lands located within the TLAA are on a city sewage system;

(ii) The lands located within the TLAA are served by an adequate sewage system that meets applicable standards;

(iii) Trash pickup service or another method of trash disposal is available for lands located within the TLAA;

(iv) The city or another facility supplies sanitation services to the lands located within the Tribe Land Acquisition Area;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to lands located within the TLAA; and

(ii) The source of heating for lands located within the TLAA, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there exist any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the tribe has made any provisions to compensate the State and local governments for revenue lost because of the removal of the lands from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

**§ 151.20 How is a tribal request for Secretarial approval processed?**

When we receive a request for Secretarial approval of a TLAA, we will review the supporting documentation to determine if the request meets the requirements of this part. If the request is complete, we will:

(a) Provide notice of the request for Secretarial approval to the Governor's Office, to appropriate local government officials, and to appropriate officials of tribes located within a 50-mile radius of the boundaries of the proposed TLAA. Recipients of the notice will be provided 60 days from the date of receipt in which to comment on the proposed TLAA and the request supporting it. Other interested parties may also submit comments during the 60-day consultation period.

(b) After the close of the comment period, based on the criteria described in § 151.21, we will decide whether to approve the TLAA. Our decision on whether to approve the TLAA will be communicated in the form of a certified letter to the applicant. We also will provide notice of our decision to interested parties by sending a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request for approval.

(c) If we decide not to approve the TLAA, we will take no further action.

(d) If we decide to approve the TLAA, we will:

(1) Publish in the FEDERAL REGISTER, or in a newspaper of general circulation serving the affected area, a notice of the decision to approve the TLAA; and

(2) Thereafter, for a period of 25 years, review requests to accept trust title land located within the TLAA as "on-reservation" acquisitions under

the applicable on-reservation provisions in this part.

**§ 151. 21 What criteria will BIA use to decide whether to approve a proposed Tribal Land Acquisition Area?**

In general, because tribes without reservations are significantly disadvantaged, both in terms of cultural preservation and in terms of being ineligible for federal land-based programmatic funding and technical assistance, there is a presumption in favor of the tribe's need for at least some trust land. However, in determining whether to approve establishment of a TLAA, we will consider the individual circumstances of each applicant tribe, surrounding community, and affected land base. There are some standard criteria which will help direct our decision-making process. These standard criteria include:

(a) The request must be complete and contain all supporting documents;

(b) The statutory basis upon which the tribe proposes creation of the TLAA. If the tribe is the subject of a statute directing the Secretary to take some unspecified land into trust for the tribe's benefit, the tribe will enjoy a greater presumption in favor of approval of its proposed TLAA. (For example, there is statutory language such as "the Secretary shall take land into trust within the tribe's service area," or "the Secretary shall take land into trust within X and Y counties.")

(c) The size of the proposed TLAA in relation to the size of the tribe's membership: we will look for a reasonable connection between the amount of land the tribe wishes to take into trust, and the basic trust needs (housing, health, employment opportunities) of the tribe's membership.

(d) The relationship of the tribe to the lands located within the TLAA: we will give greater weight to a request for approval of a TLAA that encompasses lands to which the tribe has established a strong cultural, historical, and/or legal connection.

(e) The ability of the tribe and the local non-Indian community to adjust to the jurisdictional changes that will

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occur if the lands within the TLAA are taken into trust, including:

(1) That there are adequate arrangements for provision of police and fire protection and other emergency response for persons living within the TLAA (whether living on trust or non-trust property);

(2) That there are adequate arrangements for provision of other municipal-type services, such as garbage removal, water, sewage;

(3) That adverse impacts on local governments and communities are reasonable compared to the benefits flowing to the applicant.

### **§ 151.22 Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?**

A tribe may include land inside the reservation boundaries or within an approved TLAA of another tribe, if:

(a) The tribe's governing body consents in writing;

(b) The tribe already owns undivided fractional trust or restricted interests in the tracts of land identified in its TLAA; or

(c) The tracts of land to be included in the TLAA are inside a reservation or an approved TLAA that is shared by two or more tribes, and the plan is for one of these tribes.

### **§ 151.23 If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?**

No. However, the tribe will have to apply to have individual parcels taken into trust under the off-reservation provisions of this part.

### **§ 151.24 If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?**

No. Lands taken into trust within a TLAA will enjoy "Indian country" status as that term has been defined in relevant federal statutes and case law. However, those lands do not attain "reservation" status by virtue of the TLAA having been approved by the Secretary. Reservation status can only be attained if:

(a) The tribe has applied to the Secretary under 25 U.S.C. 467; or

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(b) There is a federal statute specifically designating the land as a reservation.

### **§ 151.25 Can a Tribal Land Acquisition Area be modified after approval?**

Yes. However, the changes must be submitted with a request for approval in compliance with the criteria in this part and must be approved by the Secretary.

## **Subpart F—False Statements, Recordkeeping, Information Collection**

### **§ 151.26 What is the penalty for making false statements in connection with a request that BIA place land into trust?**

Anyone who knowingly and willfully makes a false statement in connection with a trust title acquisition request may be subject to criminal prosecution under the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

### **§ 151.27 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; 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.

### **§ 151.28 How must a record associated with this part be preserved?**

(a) Any organization, including tribes and tribal organizations, that have records identified in §151.26(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 §151.26(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.

EFFECTIVE DATE NOTE: At 66 FR 3458, Jan. 16, 2001, part 151 was revised effective Feb. 15, 2001. At 66 FR 8899, Feb. 5, 2001, the effective date was delayed until Mar. 17, 2001. At 66 FR 10815, Feb. 20, 2001, the delayed effective date was corrected to Apr. 16, 2001. For the convenience of the user, the superseded text is set forth as follows:

## PART 151—LAND ACQUISITIONS

Sec.

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

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

608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

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

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

### § 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations. These regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members.

### § 151.2 Definitions.

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

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

(c) *Individual Indian* means:

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

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

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

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

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

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

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

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

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

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

#### § 151.3 Land acquisition policy.

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

(a) Subject to the provisions contained in the acts of Congress which authorize land ac-

quisitions, land may be acquired for a tribe in trust status:

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

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

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

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status:

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

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

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

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

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

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

#### § 151.6 Exchanges.

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

#### § 151.7 Acquisition of fractional interests.

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

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

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

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

(d) There is a specific law which grants to the particular buyer the right to purchase an

undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

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

**§ 151.8 Tribal consent for nonmember acquisitions.**

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

**§ 151.9 Requests for approval of acquisitions.**

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

**§ 151.10 On-reservation acquisitions.**

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
- (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that in-

dividual and the degree to which he needs assistance in handling his affairs;

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

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

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

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

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

**§ 151.11 Off-reservation acquisitions.**

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

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

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

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

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

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

**§ 151.12 Action on requests.**

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

(b) Following completion of the Title Examination provided in §151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the FEDERAL REGISTER, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.

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

**§ 151.13 Title examination.**

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

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

**§ 151.14 Formalization of acceptance.**

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

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

**§ 151.15 Information collection.**

(a) The information collection requirements contained in §§151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C.

3501 *et seq.* and assigned clearance number 1076-0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

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

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

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

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152.34 Approval of mortgages and deeds of trust.

152.35 Deferred payment sales.

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

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

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

### § 152.1 Definitions.

As used in this part:

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

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

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

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

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

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

### § 152.2 Withholding action on application.

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

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

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

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

#### § 152.4 Application for patent in fee.

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

#### § 152.5 Issuance of patent in fee.

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

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised

of his right to appeal pursuant to the provisions of part 2 of this chapter.

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

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

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

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

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

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

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance

or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

**§ 152.7 Application for certificate of competency.**

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 152.9, who holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

**§ 152.8 Issuance of certificate of competency.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone

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the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

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

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

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

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate: *Provided*, That the Secretary may make such provisions as he deems necessary to insure payment



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of money loaned to any such Indian by the Federal Government or by an Indian tribe; *And provided further*, That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

### SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

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

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

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

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

#### **§ 152.19 Sale by fiduciaries.**

Guardians, conservators, or other fiduciaries appointed by State courts, or

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

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

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

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

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

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

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary.

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Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

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

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

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

### § 152.24 Appraisal.

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

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

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

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

(1) When the sale is to the United States, States, or political subdivisions

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thereof, or such other sale as may be for a public purpose;

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

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

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

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

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

### § 152.26 Advertisement.

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

(b) The notice of sale will include:

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

(2) Where and how bids shall be submitted;

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

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

**§ 152.27 Procedure of sale.**

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

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

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

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

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

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

**§ 152.28 Action at close of bidding.**

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

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

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

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

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

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

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

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

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### § 152.30 Bidding by employees.

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

### § 152.31 Cost of conveyance; payment.

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

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

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

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

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

### § 152.32 Irrigation fee; payment.

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

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

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

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

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

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

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

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

## PARTITIONS IN KIND OF INHERITED ALLOTMENTS

### § 152.33 Partition.

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

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

### MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

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

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

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

#### § 152.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of

the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

## PART 153—DETERMINATION OF COMPETENCY: CROW INDIANS

### Sec.

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

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

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

#### § 153.1 Purpose of regulations.

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

#### § 153.2 Application and examination.

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

#### § 153.3 Application form.

The application form shall include, among other things:

- (a) The name of the applicant;
- (b) His age, residence, degree of Indian blood, and education;

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

(d) His present occupation, if any;

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

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

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

#### § 153.4 Factors determining competency.

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

#### § 153.5 Children of competent Indians.

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

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#### § 153.6 Appeals.

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

### PART 154—OSAGE ROLL, CERTIFICATE OF COMPETENCY

Sec.

154.1 Definitions.

154.2 Preparation of competency roll.

154.3 Determination of age and quantum of Indian blood.

154.4 Notification; disagreement and decision.

154.5 Issuance of certificate of competency.

154.6 Costs of recording certificates of competency.

154.7 Delivery of cash and securities.

AUTHORITY: 62 Stat. 18; 25 U.S.C. 331 note.

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

#### § 154.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Superintendent" means the superintendent of the Osage Agency.

(d) "Person" means an unallotted member of the Osage Tribe of less than one-half Indian blood who has not received a certificate of competency.

#### § 154.2 Preparation of competency roll.

The superintendent shall cause a roll to be compiled of all persons who have attained the age of 21 years, and shall add thereto the names of minors as they attain the age of 21 years. The roll shall include the names, last known address, date of birth, and the total quantum of Osage blood and non-Osage Indian blood of each person listed thereon.

#### § 154.3 Determination of age and quantum of Indian blood.

(a) The date of birth as shown by the census records of the Osage Agency

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shall be accepted as prima facie evidence in determining the age of a person.

(b) The total quantum of Indian blood of a person shall be computed and determined as follows:

(1) When the parents of a person are enrolled members, or when one parent is an enrolled member and the other parent is a descendant of an enrolled member, or when both parents are descendants of enrolled members, or when one parent is an enrolled member of descendant of an enrolled member of the Osage Tribe, and the other parent is of non-Indian blood, the Osage Agency register of Indian families for the year ending December 31, 1901, shall be accepted as prima facie evidence of the quantum of Indian blood.

(2) When one parent of a person is an enrolled member, or the descendant of an enrolled member of the Osage Tribe, and the other parent is of non-Osage blood, the Osage Agency register of Indian families for the year ending December 31, 1901, shall be accepted as prima facie evidence in determining the quantum of Osage Indian blood.

(3) When one parent of a person is of non-Osage Indian blood, the certification of the superintendent or other officer in charge of the Indian Agency having jurisdiction over the affairs of the tribe of which the non-Osage Indian parent is a member or descendant of a member, as to such parent's quantum of Indian blood, shall be accepted as prima facie evidence in determining the quantum of non-Osage Indian blood.

(4) When the non-Osage parent of a person is alleged to be of Indian blood, and the superintendent or other officer in charge of the Indian agency having jurisdiction over the affairs of the tribe of which such parent is an alleged member or descendant of a member thereof, is unable to certify as to the quantum of Indian blood of such parent, affidavits as to such parent's quantum of Indian blood, when properly executed by two qualified individuals, may be accepted.

### § 154.4 Notification; disagreement and decision.

When the superintendent shall have determined that a person, 21 years or

over, is of less than one-half Indian blood, he shall notify such person of his finding and inform him that if objection is not received within 20 days from the date of notification, a certificate of competency will be issued. If the person claims to be of one-half or more Indian blood and that a certificate of competency should not be issued, he should submit to the superintendent two affidavits or other evidence in support of his claim. The claim, affidavits or other evidence of the person as to his quantum of blood shall be submitted to the Commissioner of Indian Affairs for a ruling before the certificate of competency is issued.

### § 154.5 Issuance of certificate of competency.

A certificate of competency shall be issued by the superintendent on Form 5-182<sup>1</sup> to each person heretofore or hereafter attaining the age of 21 years and who has been determined to be of less than one-half Indian blood. Such certificate shall be recorded with the county clerk of Osage County, Oklahoma, before delivering the same to the person entitled thereto.

### § 154.6 Costs of recording certificates of competency.

The superintendent may expend the surplus funds of a person to make direct payments of the cost of recording a certificate of competency. If the person to whom a certificate of competency is issued has no surplus funds, the cost of recording the same shall be paid from Osage tribal funds.

### § 154.7 Delivery of cash and securities.

After issuance and recordation of a certificate of competency as authorized by the regulations in this part, the superintendent shall deliver to the individual named therein, or the legal guardian thereof, the original copy of the certificate of competency, together with all cash, stocks and bonds credited to the account of such individual upon the books of the Osage Agency, and obtain a receipt therefor.

<sup>1</sup>Filed with the original document. Copies may be obtained upon request at the Bureau of Indian Affairs, Department of the Interior, Washington, DC.

## PART 156—REALLOTMENT OF LANDS TO UNALLOTTED INDIAN CHILDREN<sup>2</sup>

Sec.

156.1 Relinquishment of original patent.

156.2 Relinquishment when original patent has been lost or destroyed.

AUTHORITY: Sec. 3, 36 Stat. 856; 25 U.S.C. 408.

CROSS REFERENCES: For Bureau of Land Management regulations pertaining to allotments to Indians and Eskimos, see 43 CFR parts 2530 and 2560. For Bureau of Land Management regulations pertaining to restored and ceded Indian lands, see 43 CFR part 1400.

### § 156.1 Relinquishment of original patent.

To effect a reallocation under section 3 of the Act of June 25, 1910 (36 Stat. 856; 25 U.S.C. 408), the Indian owner shall endorse on the original patent a relinquishment of all lands described therein and explain the purpose of the relinquishment. The relinquishment shall name the child or children to be reallocated and follow with descriptions by legal subdivisions of the land. If a part of the allotment is being retained by the Indian owner, the relinquishment and application for reallocation may describe only the tract to be reallocated. The relinquishment must be signed by the original allottee or owner of the land involved and be acknowledged before a superintendent of an Indian agency or an officer authorized to administer oaths. The signatures of those who cannot write must be by thumb mark and be witnessed.

[22 FR 10564, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 156.2 Relinquishment when original patent has been lost or destroyed.

When the original patent has been lost or destroyed, the relinquishment and application for reallocation may be submitted in the form of a letter, which must be accompanied by an affidavit showing the loss or destruction of the original patent. If no patent has

<sup>2</sup>The reallocation provisions herein dealt with are not applicable on reservations subject to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, as amended; 25 U.S.C. 461-479).

been issued, that fact should be set out in the letter.

[22 FR 10564, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

## PART 158—OSAGE LANDS

Sec.

158.51 Definitions.

158.52 Application for change in designation of homestead.

158.53 Order to change designation of homestead.

158.54 Exchanges of restrictive lands.

158.55 Institution of partition proceedings.

158.56 Partition records.

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

158.58 Disposition of proceeds of partition sales.

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

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

### § 158.51 Definitions.

When used in this part:

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

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

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

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

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

The application of an Osage allottee, or his legal guardian, may be approved by the Secretary of the Interior, or his



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authorized representative, and an order issued to change designation of homestead, if it is found that the applicant owns an equal area of surplus land. The expense of recording the order shall be borne by the applicant. The order to change designation shall be made on the form "Order to Change Designation of Homestead."

**§ 158.54 Exchanges of restrictive lands.**

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

**§ 158.55 Institution of partition proceedings.**

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

(b) When it appears to the best interest of the Indians to do so, the Secretary's, or his authorized representative's, authorization to institute partition proceedings may require that title

to the lands be quieted in the partition action in order that the deeds issued pursuant to the proceedings shall convey good and merchantable title to the grantee therein. (See section 6, 37 Stat. 87.)

**§ 158.56 Partition records.**

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

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

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

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

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

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

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

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 160 and §§134.4 and 152.21 of this chapter. For general regulations pertaining to the issuance of patents in fee, see part 152 of this chapter.

### § 159.1 Conditions of contract.

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

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

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

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

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

<sup>1</sup>Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

ment to be executed by the prospective purchaser accompanied this circular.

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

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

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

Sec.

160.1 Liens.

160.2 Instructions.

160.3 Leases to include description of lands.

160.4 Prompt payment of irrigation charges by lessees.

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

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

### § 160.1 Liens.

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

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

### § 160.2 Instructions.

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

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

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

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

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

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

## PART 162—LEASES AND PERMITS

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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.*

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

### Subpart A—General Provisions

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

- (a) The purposes of this part are to:
- (1) Identify the conditions and authorities under which certain interests in Indian land and Government land may be leased;
  - (2) Describe the manner in which various types of leases may be obtained;
  - (3) Identify terms and conditions that may be required in various types of leases;
  - (4) Describe the policies and procedures that will be applied in the administration and enforcement of various types of leases; and
  - (5) Identify special requirements that apply to leases made under special acts of Congress that apply only to certain Indian reservations.
- (b) This part includes six subparts, including separate, self-contained subparts relating to Agricultural Leases (Subpart B), Residential Leases (Subpart C, reserved), Business Leases (Subpart D, reserved), and Non-Agricultural Leases (Subpart F), respectively. Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases

covered by subpart E are also subject to the general provisions in subparts A through F, respectively, except to the extent those general provisions are inconsistent with any of the special provisions in subpart E or any special act of Congress under which those leases are made.

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

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

For purposes of this part:

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

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

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

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

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

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

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

*Day* means a calendar day.

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

*Fair annual rental* means the amount of rental income that a leased tract of Indian land would most probably com-

mand 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 encum-

brance, 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

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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 to particular tribes;

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

thorize 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.

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(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.

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### **§ 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

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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

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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

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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

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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.

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### § 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

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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.

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**§ 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

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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 regula-

tions 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

## § 162.600

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.

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(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.

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(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

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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

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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

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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

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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.

The tenant will pay * * *	For * * *
(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,

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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



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pursue any additional remedies available under applicable law.

**PART 163—GENERAL FORESTRY REGULATIONS**

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AUTHORITY: 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 415, 466; and 3101-3120.

SOURCE: 60 FR 52260, Oct. 5, 1995, unless otherwise noted.

**Subpart A—General Provisions**

**§ 163.1 Definitions.**

*Advance deposits* means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

*Advance payments* means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

*Alaska Native* means native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

*ANCSA corporation* means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

*Approval* means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

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*Approving officer* means the officer approving instruments of sale for forest products or his/her authorized representative.

*Authorized representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

*Authorized tribal representative* means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

*Beneficial owner* means an individual or entity who holds an ownership interest in Indian land.

*Bid deposit* means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated volume contracts or an installment payment in predetermined volume contracts.

*Commercial forest land* means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

*Expenditure plan* means a written agreement between an Indian tribe and the Secretary documenting tribal commitment to undertake specified forest land management activities within general time frames.

*Forest or forest land* means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

*Forest land management activities* means all activities performed in the management of Indian forest land including:

(a) All aspects of program administration and executive direction such as:

(1) Development and maintenance of policy and operational procedures, program oversight, and evaluation;

(2) Securing of legal assistance and handling of legal matters;

(3) Budget, finance, and personnel management; and

(4) Development and maintenance of necessary data bases and program reports.

(b) All aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans where such plans exist.

(c) Forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment.

(d) Protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire breaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements.

(e) Protection against insects and disease, including:

(1) All aspects of detection and evaluation;

(2) Preparation of project proposals containing project descriptions, environmental assessments and statements, and cost-benefit analyses necessary to secure funding;

(3) Field suppression operations and reporting.

(f) Assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance and report, demand letter, and testimony preparation.

(g) All aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents, including:

(1) Cruising, product marketing, silvicultural prescription, appraisal and harvest supervision;

(2) Forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products;

(3) Archeological, historical, environmental and other land management reviews, clearances, and analyses;

(4) Advertising, executing, and supervising contracts;

(5) Marking and scaling of timber; and

(6) Collecting, recording and distributing receipts from sales.

(h) Provision of financial assistance for the education of Indians and Alaska Natives enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses.

(i) Participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands.

(j) Improvement and maintenance of extended season primary and secondary Indian forest land road systems.

(k) Research activities to improve the basis for determining appropriate management measures to apply to Indian forest land.

*Forest management deduction* means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

*Forest management plan* means the principal document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: Standards setting forth the funding and staffing requirements necessary to carry out each

management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

*Forest products* means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

*Forestry-related field or forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to §163.40(a)(1).

*Forest resources* means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

*Forester intern* means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to §163.40(b).

*Indian* means a member of an Indian tribe.

*Indian enterprise* means an enterprise which is designated as such by the Secretary or tribe.

*Indian forest land* means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

*Indian land* means land title which is held by: The United States in trust for

an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

*Indian tribe* or *tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

*Installment payments* means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract value based on purchaser bid. Payments made are normally not refundable.

*Integrated resource management plan* means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

*Noncommercial forest land* means forest land that is available for extensive management, but is incapable of producing sustainable forest products within the general rotation period. Such land may be economically harvested, but the site quality does not warrant significant investment to enhance future crops.

*Productive forest land* means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

*Reservation* means an Indian reservation established pursuant to treaties, Acts of Congress, or Executive Orders and public domain Indian allotments, Alaska Native allotments, rancherias, and former Indian reservations in Oklahoma.

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

*Stumpage rate* means the stumpage value per unit of measure for a forest product.

*Stumpage value* means the value of a forest product prior to extraction from Indian forest land.

*Sustained yield* means the yield of forest products that a forest can produce continuously at a given intensity of management.

*Timberland* means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

*Trespass* means the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.

*Tribal forest enterprise* means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

*Unproductive forest land* means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

*Woodland* means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

### § 163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) et seq.

### § 163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

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(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

### § 163.4 Secretarial recognition of tribal laws.

Subject to the Secretary's trust responsibilities, and unless otherwise prohibited by Federal statutory law,

the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(a) Assistance in the enforcement of such laws;

(b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(c) Upon the request of an Indian tribe, the appearance in tribal forums.

## Subpart B—Forest Management and Operations

### § 163.10 Management of Indian forest land.

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3 of this part.

### § 163.11 Forest management planning and sustained yield management.

(a) To further the objectives identified in § 163.3 of this part, an appropriate forest management plan shall be prepared and revised as needed for all Indian forest lands. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out through participation in the development and implementation of integrated resource management plans

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which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a stand-alone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between net growth and harvest at the earliest practical time.

### § 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless provisions for natural and/or artificial reforestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally appropriate, based on ecological principles, to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3 of this part.

### § 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with indi-

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vidual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the beneficial Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.22. However, the Secretary may issue special instructions for payment by methods other than those in § 163.22 of this part; and

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

### § 163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized by tribal resolution or resolution of recognized tribal government, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial Indian owner(s).

(b) On individually owned Indian forest land not formally designated for retention in its natural state, the Secretary may, after consultation, sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage

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value exceeding \$15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in § 163.20 of this part.

(d) With the approval of the Secretary, authorized beneficial Indian owners who have been duly apprised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value.

(e) Except as provided in § 163.14(d) of this part, in all such sales, the forest products shall be appraised and sold at stumpage rates not less than those established by the Secretary.

### § 163.15 Advertisement of sales.

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26 of this part, sales of forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the forest products offered does not exceed \$15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds \$15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed \$50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds \$50,000 but not \$250,000, for not less than 30 days; and if the estimated stumpage value exceeds \$250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emer-

gencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

### § 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

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### § 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than \$100,000 and in any event not less than \$1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is \$100,000 to \$250,000 but in any event not less than \$10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds \$250,000 but in any event not less than \$12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 of this part within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

### § 163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

### § 163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding \$15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

### § 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the



tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

#### § 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of

forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to this part in §163.13 or in timber cutting permits issued pursuant to §163.26 of this part.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed \$15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds \$15,000 but is not over \$150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than \$3,000.

(3) In sales in which the estimated stumpage value exceeds \$150,000, but is not over \$350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than \$22,500.

(4) In sales in which the estimated stumpage value exceeds \$350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than \$35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act as trustee under terms of an appropriate trust;

(3) Negotiable U.S. Government securities supported by an appropriate trust instrument; or

(4) An irrevocable letter of credit.

#### § 163.22 Payment for forest products.

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to §163.13 of this part, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that

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the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to §163.25 of this part, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advance deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advance payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

### § 163.23 Advance payment for timber products.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is

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cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in §163.23(a) of this part.

### § 163.24 Duration of timber contracts.

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

### § 163.25 Forest management deductions.

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than \$5,001.

(d) Except as provided in §163.25(e) of this part, the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary may increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land

management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes allocation of tribal funds for Indian forest land management activities. Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) Forest management deductions shall be handled in the same manner as described under §163.25(f)(1) of this part if the expenditure plan approved by an Indian tribe and the Secretary provides for the conduct of forest land management activities on Indian forest lands located outside the boundaries of an Indian reservation.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance

with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within 120 days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books, or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in §163.25(f) of this part, only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury miscellaneous receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

**§ 163.26 Forest product harvesting permits.**

(a) Except as provided in §§163.13 and 163.27 of this part, removal of forest products that are not under formal contract, pursuant to §163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the beneficial Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in §163.20 of this part. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

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(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed \$5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in § 163.25 of this part, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed \$25,000. For the purpose of issuance of paid permits, individual shall mean an individual or any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to § 163.25 of this part. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by § 163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary that he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

### § 163.27 Free-use harvesting without permits.

With the consent of the beneficial Indian owners and the Secretary, Indians may harvest designated types of forest products from Indian forest land with-

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out a permit or contract, and without charge. Forest products harvested under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

### § 163.28 Fire management measures.

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary is authorized to conduct a wildfire prevention program to reduce the number of person-caused fires and prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

**§ 163.29 Trespass.**

(a) Trespassers will be liable for civil penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in Tribal Court.* For trespass actions brought in tribal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this §163.29 of this part. All other aspects of a tribal trespass prosecution brought under these regulations will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless otherwise prescribed under federal law. Absent applicable tribal or federal law, the measure of damages shall be that prescribed by the law of the state in which the trespass was committed.

(2) *Cases in Federal Court.* For trespass actions brought in Federal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this §163.29. In the absence of applicable federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law, the law of the state in which it was committed.

(3) Civil penalties for trespass include, but are not limited to:

(i) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product as defined in §163.1 of this part. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under §163.29(a) of this part. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest

stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the reservation in which the trespass took place.

(d) Civil penalties and other damages collected under these regulations, except for penalties and damages provided for in §§163.29(a)(3) (ii) and (iii) of this part, shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative pursuant to §163.29(j) of this part has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under these regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through administrative appeal pursuant to part 2 of title 25, and shall provide the name and the address of the official with whom the appeal may be filed. Alternately, an official may exercise concurrent tribal seizure authority

under these regulations using applicable tribal law. In such case, the Notice of Seizure shall identify the tribal law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to §163.29(k) of this part responsible for the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

(1) That such products could be Indian trust property involved in a trespass; and

(2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or tribe.

(g) A representative of the Secretary or authorized tribal representative pursuant to §163.29(j) of this part will

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promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:

(1) That a determination has been made that a trespass has occurred;

(2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in civil and/or criminal action by the United States or the tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by a tribe exercising its concurrent jurisdiction pursuant to §163.29(j) of this part.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce 25 U.S.C. 3106 and this section against any person.

(1) The Secretary shall acknowledge said concurrent civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction over trespass cases as set forth in §163.29(j)(1) of this part, the Secretary

and tribe's authorized representatives will be jointly responsible to coordinate prosecution of trespass actions. The Secretary shall, upon timely request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the authorized forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases. Where an Indian tribe has acquired concurrent civil jurisdiction, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the tribal court or forum.

(3) The Secretary may rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this regulation if the Secretary or a court of competent jurisdiction determines that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If it is determined that said rescission is justified, the Secretary shall provide written Notice of the rescission, including the findings justifying the rescission and the steps needed to remedy the violations causing the rescission, to the chief judge of the tribal judiciary or other authorized tribal official should there be no chief judge. If said steps are not taken within 60 days, the Secretary's rescission of concurrent civil jurisdiction shall become final. The affected tribe(s) may appeal a Notice of Rescission under part 2 of title 25.

(4) Nothing shall be construed to prohibit or in any way diminish the authority of a tribe to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

**§ 163.30 Revocable road use and construction permits for removal of commercial forest products.**

(a) In accordance with 25 U.S.C. 415 as amended, the Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or those with an interest therein are unknown so long as the majority of owner(s) of interests whose whereabouts are known, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any land owner; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), that cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, under 25 CFR part 169, or conflict with provisions of that part.

**§ 163.31 Insect and disease control.**

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary

shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

**§ 163.32 Forest development.**

Forest development pertains to forest land management activities undertaken to improve the sustainable productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to re-establish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

**§ 163.33 Administrative appeals.**

Any challenge to action under 25 CFR part 163 taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

(a) Not stay any action unless otherwise directed by the Secretary; and

(b) Define “interested party” for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision.



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### § 163.34 Environmental compliance.

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and tribal laws and regulations.

### § 163.35 Indian forest land assistance account.

(a) At the request of a tribe's authorized representatives, the Secretary may establish tribal-specific forest land assistance accounts within the trust fund system.

(b) Deposits shall be credited either to forest transportation or to general forest land management accounts.

(c) Deposits into the accounts may include:

(1) Funds from non-federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of § 163.35(c)(3) of this part; unobligated forestry appropriations shall consist of balances that remain unobligated at the end of the fiscal year(s) for which funds are appropriated for the benefit of an Indian tribe.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) The Secretary may, where circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest

land assistance accounts and shall provide the audit results of to the tribe(s).

### § 163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation (as defined under § 163.36(b)(1)-(3)) with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes that has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program

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and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

- (1) Document that a tribal forestry program exists or that there is an intent to establish such a program;
- (2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and
- (3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

- (1) Level one funding assistance shall be equivalent to a Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs;
- (2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs; and
- (3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

- (1) A funding level qualification value shall be determined for each eligible applicant using the formula below. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one

(1) or greater shall qualify for level one assistance.

*Funding Level Qualification Formula*

$$\left[ \frac{.5 \times CA}{\text{Tot. CA}} + \frac{.5 \times AAC}{\text{Tot. AAC}} \right] \times 1000$$

where:

- CA=applicant's total commercial Indian forest land acres;
- Tot. CA=national total commercial Indian forest land acres;
- AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and
- Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under §163.36(d) of this part are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under §163.36(d) of this part are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

- (1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;
- (2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and
- (3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

**§ 163.37 Forest management research.**

The Secretary, with the consent of the authorized Indian representatives' is authorized to perform forestry research activities to improve the basis for determining appropriate land management activities to apply to Indian forest land.

**Subpart C—Forestry Education,  
Education Assistance, Recruitment and Training**

**§ 163.40 Indian and Alaska Native forestry education assistance.**

(a) *Establishment and evaluation of the forestry education assistance programs.*

(1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. This committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure that there are adequate Indian and Alaska Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.* (1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

(i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;

(ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related

field which could include courses on indigenous culture; and

(iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in § 163.40(b)(3) of this part may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

(i) Be eligible for Indian preference as defined in 25 CFR part 5, subchapter A;

(ii) Possess a high school diploma or its recognized equivalent;

(iii) Be able to successfully complete the intern program within a three year maximum time period; and

(iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semiannually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by § 163.40(b)(3)(iv) of this

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part may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at a bachelor degree granting institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to §163.40(a)(1) of this part will evaluate annually the performance of forester intern program participants against requirements enumerated in §163.40(b)(6) of this part to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.* (1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b).

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in 5 CFR 213.3202;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants bachelor degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at the bachelor degree-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in §163.40(c)(3) of this part without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.* (1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry,

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to establish and grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to this part in §163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one half academic years of general, undergraduate course work leading to a degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the bachelor degree granting institution.

(6) Pregraduate scholarships are available for a maximum of three academic years and may be awarded to in-

dividuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a bachelor degree in a forestry or forestry-related curriculum; and

(ii) Be accepted into a forestry or forestry-related bachelor degree-granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to this part in §163.40(a)(1), for which funding is available.

(e) *Forestry education outreach.* (1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness that could include modern technologies as well as native indigenous forestry technologies;

(iii) Involve students in projects and activities oriented to forestry related professions early so students realize the need to complete required precollege courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to §163.40(a)(1) of this part.

(f) *Postgraduate studies.* (1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporations so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by §163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to §163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with §163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with §163.42(b) of this part.

**§ 163.41 Postgraduation recruitment, continuing education and training programs.**

(a) *Postgraduation recruitment program.* (1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry-related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with §163.42(a) of this part. Obligated service required under this program will be one year for every \$5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with §163.42(b) of this part.

(b) *Postgraduate intergovernmental internships.* (1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of

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agencies of the Department of the Interior.

(2) Foresters or forestry-related personnel from other Department of the Interior agencies may apply through proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an inter-agency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to 25 percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

### (c) *Continuing education and training.*

(1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training, including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

### **§ 163.42 Obligated service and breach of contract.**

(a) *Obligated service.* (1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90-day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin

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the day after all program education requirements have been completed, with the exception of the forester intern program, which includes the special provisions outlined in §163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferment of obligated service to pursue postgraduate or postdoctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferments granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for waiver. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for waiver.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement and who does not accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) *Forester intern program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Cor-

poration, shall not be included in this total.

(2) *Cooperative education program*—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) *Scholarship program*—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) *Postgraduation recruitment program*—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) *Postgraduate studies program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.* Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.

**Subpart D—Alaska Native  
Technical Assistance Program**

**§ 163.60 Purpose and scope.**

(a) The Secretary shall provide a technical assistance program to ANCSA corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA corporation forest land,



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and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

### § 163.61 Evaluation committee.

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

### § 163.62 Annual funding needs assessment and rating.

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

### § 163.63 Contract, grant, or agreement application and award process.

(a) At such time that the budget for ANCSA corporation technical assist-

ance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

(1) Preparing the technical parts of the contract, grant, or agreement application; and

(2) Obtaining technical assistance from other Federal agencies.

## Subpart E—Cooperative Agreements

### § 163.70 Purpose of agreements.

(a) To facilitate administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

(1) Engage in cooperative manpower and job training and development programs;

(2) Develop and publish cooperative environmental education and natural resource planning materials; and

(3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefited. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

**§ 163.71 Agreement funding.**

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

**§ 163.72 Supervisory relationship.**

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

**Subpart F—Program Assessment**

**§ 163.80 Periodic assessment report.**

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices under the guidelines established in § 163.81 of this part.

(a) Assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83 of this part, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

**§ 163.81 Assessment guidelines.**

Assessments shall be national in scope and shall include:

(a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;

(b) A survey of the condition of Indian forest land, including health and productivity levels;

(c) An evaluation of the staffing patterns, by management activity, of forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

**§ 163.82 Annual status report.**

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, and the quantity of timber available for sale, offered for sale, and sold, for each Indian tribe.

**§ 163.83 Assistance from the Secretary of Agriculture.**

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a non-reimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80 of this part.

**PART 166—GRAZING PERMITS****Subpart A—Purpose, Scope, and Definitions**

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AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; Sec. 6, 96 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; Sec. 3, 26 Stat. 795, 25 U.S.C. 397; Sec. 1, 28 Stat. 305, 25 U.S.C. 402; Sec. 4, 36 Stat. 856, 25 U.S.C. 403; Sec. 1, 39 Stat. 128, 25 U.S.C. 394; Sec. 1, 41 Stat. 1232, 25 U.S.C. 393; Sec. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; Sec. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011; 44 U.S.C. §3101, *et seq.*)

SOURCE: 66 FR 7126, Jan. 22, 2001, unless otherwise noted.

**Subpart A—Purpose, Scope, and Definitions**

**§ 166.1 What is the purpose and scope of this part?**

- (a) The purpose of this part is to describe the authorities, policies, and procedures the BIA uses to approve, grant, and administer a permit for grazing on tribal land, individually-owned Indian land, or government land.
- (b) If the BIA’s approval is not required for a permit, these regulations will not apply.

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

(d) To the extent that any provisions of this part conflict with Section 213 of the Indian Land Consolidation Act Amendments of 2000, the provisions of that act will govern.

(e) In approving a permit on behalf of the Indian landowners, the BIA will not permit for fee interest owners nor will we collect rent on behalf of fee interest owners. Our permitting of the trust and restricted interests of the Indian landowners will not be conditioned on a permit having been obtained from any fee interest owners. However, where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a permit of the remainder interests of the Indian landowners only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners. Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be permitted under these regulations, unless the permit is for less than one year in duration. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the permit must be paid to the holder of the life estate under part 179 of this title.

**§ 166.2 Can the BIA waive the application of these regulations?**

Yes. In any case in which these regulations conflict with the objectives of the agricultural resource management plan provided for in §166.311 of this part, or with a tribal law, the BIA may waive the application of such regulations unless the waiver would constitute a violation of a federal statute or judicial decision or would conflict with the BIA’s general trust responsibility under federal law.

**§ 166.3 May decisions under this part be appealed?**

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

**§ 166.4 What terms do I need to know?**

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

*Agency* means the agency or field office or any other designated office in the Bureau of Indian Affairs (BIA) having jurisdiction over trust or restricted property or money.

*Agricultural product* means:

(1) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(2) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;

(3) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(4) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

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

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

*Allocation* means the apportionment of grazing privileges without competition to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

*Animal Unit Month (AUM)* means the amount of forage required to sustain

one cow or one cow with one calf for one month.

*Approving/approval* means the action taken by the BIA to approve a permit.

*Assign/assignment* means an agreement between a permittee and an assignee, whereby the assignee acquires all of the permittee's rights, and assumes all of the permittee's obligations under a permit.

*Assignee* means the person to whom the permit rights for use of Indian land are assigned.

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

*Bond* means security for the performance of certain permit obligations, as furnished by the permittee, 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 re-

quirements 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

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(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:

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(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.

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(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 of 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.

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**§ 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 permittee 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 per-

mittee 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:

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(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

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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.

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**§ 166.401**

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

**§ 166.402**

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(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

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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 permittee fails to provide such documentation, we will follow the procedures identified in § 166.419 of this part to collect the money on behalf of

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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 permittee'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 (%)

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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.



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**§ 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

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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;

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(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:

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(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

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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.

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**§ 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

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(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 aca-

demically 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;



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(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 su-

ervisor 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 agen-

cy’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

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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 deci-

sion 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.

(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.

**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

**§ 166.1001 How must a records associated with this part be preserved?**

(a) Any organization, including tribes and tribal organizations, that have records identified in §166.1000(a) of this part must preserve the records in accordance with approved Departmental records retention procedures under the

Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in §166.1000(b) of this part for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

## PART 167—NAVAJO GRAZING REGULATIONS

- Sec.
- 167.1 Authority.
  - 167.2 General regulations.
  - 167.3 Objectives.
  - 167.4 Regulations; scope; exceptions.
  - 167.5 Land management districts.
  - 167.6 Carrying capacities.
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  - 167.11 Tenure of grazing permits.
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  - 167.14 Movement of livestock.
  - 167.15 Control of livestock disease and introduction of livestock.
  - 167.16 Fences.
  - 167.17 Construction near permanent livestock water developments.

AUTHORITY: R.S. 465, 2117, as amended, sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, as amended; 25 U.S.C. 9, 179, 397, 345, 402.

SOURCE: 22 FR 10578, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### §167.1 Authority.

It is within the authority of the Secretary of the Interior to protect Indian tribal lands against waste. Subject to regulations of this part, the right ex-

ists for Indian tribes to authorize the granting of permits upon their tribal lands and to prescribe by appropriate tribal action the conditions under which their lands may be used.

### §167.2 General regulations.

Part 166 of this subchapter authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on Indian lands under conditions set forth therein. In accordance with this authority and that of the Navajo Tribal Council, the Central Grazing Committee and the District Grazing Committees, the grazing of livestock on the Navajo Reservation shall be governed by the regulations in this part.

### §167.3 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the Navajo Reservation, and the building up of those resources where they have deteriorated.

(b) The protection of the interests of the Navajo Indians from the encroachment of unduly aggressive and anti-social individuals who may or may not be members of the Navajo Tribe.

(c) The adjustment of livestock numbers to the carrying capacity of the range in such a manner that the livestock economy of the Navajo Tribe will be preserved.

(d) To secure increasing responsibility and participation of the Navajo people, including tribal participation in all basic policy decisions, in the sound management of one of the Tribe's greatest assets, its grazing lands, and to foster a better relationship and a clearer understanding between the Navajo people and the Federal Government in carrying out the grazing regulations.

(e) The improvement of livestock through proper breeding practices and the maintenance of a sound culling policy. Buck and bull pastures may be established and maintained either on or off the reservation through District Grazing Committee and Central Grazing Committee action.

**§ 167.4 Regulations; scope; exceptions.**

The grazing regulations in this part apply to all lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe and all the trust lands hereafter added to the Navajo Reservation. The regulations in this part do not apply to any of the area described in the Executive order of December 16, 1882, to individually owned allotted lands within the Navajo Reservation nor to tribal purchases, allotted or privately owned Navajo Indian lands outside the exterior boundaries of the Navajo Reservation.

[34 FR 14599, Sept. 19, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 167.5 Land management districts.**

The Commissioner of Indian Affairs has established and will retain the present land management districts within the Navajo Indian Reservation, based on the social and economic requirements of the Navajo Indians and the necessity of rehabilitating the grazing lands. District boundary changes may be made when deemed necessary and advisable by the District Grazing Committees, Central Grazing Committee and Tribal Council, with approval by the Superintendent, Area Director, and the Commissioner of Indian Affairs.

**§ 167.6 Carrying capacities.**

(a) The Commissioner of Indian Affairs on June 26, 1943, promulgated the authorized carrying capacity for each land management district of the Navajo Reservation.

(b) Recommended adjustments in carrying capacities shall be referred by the Superintendent to District Grazing Committee, Central Grazing Committee, and the Navajo Tribal Council for review and recommendations prior to presentation to the Area Director and the Commissioner of Indian Affairs for approval.

(c) Upon the request of the District Grazing Committee, Central Grazing Committee and Navajo Tribal Council to the Superintendent; recommendations for future adjustments to the established carrying capacities shall be made by Range Technicians based on

the best information available through annual utilization studies and range condition studies analyzed along with numbers of livestock and precipitation data. The recommendations of the Range Technicians shall be submitted to the Superintendent, the Area Director and the Commissioner of Indian Affairs.

(d) Carrying capacities shall be stated in terms of sheep units yearlong, in the ratio of horses, mules, and burros 1 to 5; cattle 1 to 4; goats 1 to 1. The latter figure in each case denotes sheep units. Sheep, goats, cattle, horses, mules, and burros one year of age or older shall be counted against the carrying capacity.

**§ 167.7 Records.**

The District Grazing Committee, the Superintendent, and his authorized representatives shall keep accurate records of all grazing permits and ownership of all livestock. Master files shall be maintained by the Superintendent or his authorized representatives.

(a) The District Grazing Committee shall be responsible for and assist in organizing the sheep and goat dipping and horse and cattle branding program and obtaining the annual livestock count.

(b) In order to obtain true records of ownership the permittee shall personally appear at the dipping vat or tallying point designated by the Grazing Committee with his or her sheep and goats and at branding and tallying points for cattle and horses. Should the permittee be unable to appear personally he or she shall designate a representative to act for and in his or her behalf. The sheep and goats will be dipped and the cattle and horses will be branded and recorded in the name of the permittee.

(c) The Superintendent shall prepare and keep current a register containing the names of all permittees using the range, the number of each class of stock by age classes grazed annually and the periods during which grazing shall be permitted in each part thereof. An annual stock census will be taken to insure that the carrying capacity is not exceeded. All classes of livestock twelve months of age or over will be

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counted against range use and permitted number, except that yearling colts will not be counted against permitted numbers on all permits with less than six horses. (Cross Reference § 167.9.)

### § 167.8 Grazing rights.

(a) The Superintendent shall determine grazing rights of bona fide livestock owners based on recommendations of District Grazing Committees. Grazing rights shall be recognized for those permittees having ownership records as established in accordance with § 167.7 or who have acquired grazing rights by marriage, inheritance, purchase or division of permits. Whenever the permitted number of sheep units within a district is less than the carrying capacity, new permits to the carrying capacity limit may be granted as provided in § 167.9.

(b) All enrolled members of the Navajo Tribe over 18 years of age are eligible to acquire and hold grazing permits. Minors under 18 years of age can get possession of grazing permits only through inheritance or gift, and in each case Trustees must be appointed by the Tribal Courts to manage the permits and livestock of such minors until they become 18 years of age and can hold grazing permits in their own right.

(c) No person can hold a grazing permit in more than one district on the Navajo Reservation.

(d) Determination of rights to grazing permits involved in cases of divorce, separation, threatened family disruption, and permits of deceased permittees shall be the responsibility of the Navajo Court of Indian Offenses under existing laws, rules, and regulations.

### § 167.9 Grazing permits.

(a) All livestock grazed on the Navajo Reservation must be covered by an authorized grazing permit issued by the Superintendent based upon the recommendations of the District Grazing Committee. All such grazing permits will be automatically renewed annually until terminated. District Grazing Committees shall act on all grazing permit changes resulting from negotiability within their respective Districts.

The number of livestock that may be grazed under each permit shall be the number originally permitted plus or minus any changes as indicated by Transfer Agreements and Court Judgment Orders.

(b) Any permittee who has five or more horses on his current permit will be required to apply any acquired sheep units in classes of stock other than horses. If the purchaser wishes more than his present number of horses, he must have his needs evaluated by the District Grazing Committee. Yearling colts will be counted against permitted number on all permits with six or more horses. Yearling colts will not be counted against permitted number on all permits with less than six horses. In hardship cases the District Grazing Committee may reissue horses removed from grazing permits through negotiability to permit holders who are without sufficient horses on their present permits to meet minimum needs.

(c) No permittee shall be authorized to graze more than ten head of horses or to accumulate a total of over 350 sheep units.

(d) Upon recommendation of the District Grazing Committee and with the approval of the Superintendent, grazing permits may be transferred from one permittee to another in accordance with instructions provided by the Advisory Committee of the Navajo Tribal Council, or may be inherited; provided that the permitted holdings of any individual permittee shall not exceed 350 sheep units or the equivalent thereof. Should inheritance or other acquisition of permits increase the holdings of any permittee to more than 350 sheep units, said permittee shall dispose of all livestock in excess of 350 sheep units not later than November 15 following date of inheritance or other acquisition, and that portion of his or her permit in excess of 350 sheep units within one year from date of inheritance.

(e) By request of a permittee to sublet all or a part of his or her regular grazing permit to a member of his family or to any person who would receive such permit by inheritance, such subletting of permits may be authorized by the District Grazing Committee and

the Superintendent or his authorized representative.

**§ 167.10 Special grazing permits.**

The problem of special grazing permits shall be settled by the Bureau of Indian Affairs working in cooperation with the Tribal Council, or any Committee designated by it, with a view to terminating these permits at a suitable date and with the least hardship to the Indians concerned.

**§ 167.11 Tenure of grazing permits.**

(a) All active regular grazing permits shall be for one year and shall be automatically renewed annually until terminated. Any Navajo eligible to hold a grazing permit as defined in § 167.8 may become a livestock operator by obtaining an active grazing permit through negotiability or inheritance or both.

(b) In many Districts, and portions of all districts, unused grazing permits or portions of grazing permits are beneficial in aiding range recovery. Each District Grazing Committee will handle each matter of unused grazing permit or portions of grazing permits on individual merits. Where ample forage is available operators will be encouraged to fill their permits with livestock or dispose of their unused permits through negotiability. In those areas where forage is in need of rehabilitation permittees will not be encouraged to stock to their permitted numbers until the range has sufficiently recovered to justify the grazing of additional livestock.

**§ 167.12 Grazing fees.**

Grazing fees shall not be charged at this time.<sup>1</sup>

<sup>1</sup>Grazing Committees were organized in May 1953. These committees have not had ample time to fully acquaint themselves or the stockmen in their respective districts with all of the various items of range administration and range management. Also the drought of several years has not broken. The Navajo Tribe therefore requests that the matter of establishing regulations regarding the adoption of grazing fees be deferred until such a time as a full understanding of the advantages of fees can be had by the majority of the stockmen in all Districts. The assessment of grazing fees will not aid materially in obtaining proper range use. At this time it

**§ 167.13 Trespass.**

The owner of any livestock grazing in trespass in Navajo Tribal ranges shall be subject to action by the Navajo Court of Indian Offenses as provided in part 11 of this chapter, however, upon recommendations of the District Grazing Committee, first offenses may be referred to the Central Grazing Committee and the Superintendent or his authorized representative for proper settlement out of court. The following acts are considered as trespass:

(a) Any person who sells an entire permit must dispose of all his livestock or be in trespass. Any person selling a portion of his permit must not run more stock than covered by his remaining permit, or be subject to immediate trespass.

(b) All persons running livestock in excess of their permitted number must by April 25, 1959, either obtain permits to cover their total livestock numbers or reduce to their permitted number, or be in trespass. Additional time may be granted in unusual individual cases as determined and approved by the District Grazing Committee, General Grazing Committee, and the Superintendent or his authorized representative.

(c) Failure to comply with the provisions in § 167.9, shall be considered as trespass.

(d) Any person who willfully allows his livestock to drift from one district to another shall be subject to trespass action. The grazing of livestock in customary use areas extending over District Boundary lines, when such customary use areas are defined and agreed upon by the District Grazing Committees involved, shall not be considered as willful trespass.

(e) The owner of any livestock who violates the customary or established use units of other permittees shall be subject to trespass action.

[22 FR 10578, Dec. 24, 1957, as amended at 24 FR 1178, Feb. 17, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

is more important that other sections of these grazing regulations be adopted and enforced. Resolution of Navajo Tribal Council No. CJ-22-54 of June 9, 1954.

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**§ 167.14 Movement of livestock.**

Annually, prior to the normal lamb buying season, the Central Grazing Committee after consultation with District Grazing Committees shall issue regulations covering the buying period and the procedures and methods to be used in moving livestock to market. All movements of livestock other than trucking from buying areas to loading or shipping points must be authorized by Trailing Permits issued by the District Grazing Committees on the approved forms. Failure to comply with this section and with annual lamb buying regulations will be considered as trespass.

**§ 167.15 Control of livestock disease and introduction of livestock.**

(a) The District Grazing Committees with the approval of the Superintendent shall require livestock to be dipped, vaccinated, inspected and be restricted in movement when necessary to prevent the introduction and spread of contagious or infectious disease in the economic interest of the Navajo stock owners. Upon the recommendation of the District Grazing Committee livestock shall be dipped annually when such dipping is necessary to prevent the spread of contagious diseases. These annual dippings shall be completed on or before September 1st each year. Livestock, however, may be dipped at other times when necessary. The Superintendent or his authorized representative and the District Grazing Committee may also require the rounding up of cattle, horses, mules, etc., in each District for the purpose of inspection for disease, vaccinating, branding and other related operations.

(b) No livestock shall be brought onto the Reservation without a permit issued by the Superintendent or his authorized representative following inspection, in order to safeguard Indian livestock from infections and contagious disease and to insure the introduction of good quality sires and breeding stock.

(c) Any unusual disease conditions beyond the control measures provided herein shall be immediately reported by the District Grazing Committee to the Chairman of the Navajo Tribal Council and the Superintendent who

shall attempt to obtain specialists and provide emergency funds to control and suppress the disease.

**§ 167.16 Fences.**

Favorable recommendation from the District Grazing Committee and a written authorization from the Superintendent or his authorized representative must be secured before any fences may be constructed in non-agricultural areas. The District Grazing Committee shall recommend to the Superintendent the removal of unauthorized existing fences, or fences enclosing demonstration areas no longer used as such, if it is determined that such fences interfere with proper range management or an equitable distribution of range privileges. All enclosures fenced for the purpose of protecting agricultural land shall be kept to a size commensurate with the needs for protection of agricultural land and must be enclosed by legal four strand barbed wire fence or the equivalent.

**§ 167.17 Construction near permanent livestock water developments.**

(a) The District Grazing Committee shall regulate the construction of all dwellings, corrals and other structures within one-half mile of Government or Navajo Tribal developed permanent livestock waters such as springs, wells, and charcos or deep reservoirs.

(b) A written authorization from the District Grazing Committee must be secured before any dwellings, corrals, or other structures may be constructed within one-half mile of Government or Navajo Tribal developed springs, wells and charcos or deep reservoirs.

(c) No sewage disposal system shall be authorized to be built which will drain into springs or stream channels in such a manner that it would cause contamination of waters being used for livestock or human consumption.

**PART 168—GRAZING REGULATIONS FOR THE HOPI PARTITIONED LANDS AREA**

- Sec.
- 168.1 Definitions.
- 168.2 Authority.
- 168.3 Purpose.
- 168.4 Establishment of range units.



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- 168.5 Grazing capacity.
- 168.6 Grazing on range units authorized by permit.
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- 168.8 Grazing fees.
- 168.9 Assignment, modification and cancellation of permits.
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- 168.11 Range improvements; ownership; new construction.
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- 168.14 Livestock trespass.
- 168.15 Control of livestock diseases and parasites.
- 168.16 Impoundment and disposal of unauthorized livestock.
- 168.17 Concurrence procedures.
- 168.18 Appeals.
- 168.19 Information collection.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 640d-8, and 640d-18.

SOURCE: 47 FR 39817, Sept. 10, 1982, unless otherwise noted.

### § 168.1 Definitions.

As used in this part, terms shall have the meanings set forth in this section.

(a) *Secretary* means the Secretary of Interior or his designee;

(b) *Area Director* means the officer in charge of the Phoenix Bureau of Indian Affairs Area Office (or his successor; and/or his authorized representative) to whom has been delegated the authority of the Assistant Secretary—Indian Affairs to act in all matters pertaining to lands partitioned to the Hopi Tribe under its jurisdiction, within the boundaries of the former Joint Use Area.

(c) *Superintendent* means the Superintendent, Hopi Agency or his designee.

(d) *Tribal Government* means the Hopi Tribal Council, or its duly designated representative.

(e) *Project Officer* means the former Special Project Officer of the Bureau of Indian Affairs, Administrative Office, Flagstaff, Arizona 86001, who had been delegated the authority of the Commissioner of Indian Affairs to act in matters respecting the former Joint Use Area.

(f) *Former Joint Use Area* means the area established by the United States District Court for the District of Arizona in the case entitled *Healing v. Jones*, 210 F. Supp. 125 (1962), which is inside the Executive order area (Execu-

tive order of December 16, 1882) but outside Land Management District 6 and which was partitioned by the judgment of partition dated April 18, 1979.

(g) *Hopi Partition Area* means that portion of the Former Joint Use Area which has been added to the Hopi Tribe's reservation.

(h) *Range Unit* means a tract of range land designated as a management unit for administration of grazing.

(i) *Range improvements* means fences, stockwater devices, corrals, trails and other similar devices or practices which are applied to the land to enhance range productivity or usability.

(j) *Permit* means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term as used herein shall include written authorizations issued to enable the crossing or trailing of domestic livestock across specified tracts or range units.

(k) *Interim permit* means a permit granted to members of the Navajo tribe residing on Hopi Partitioned Lands who meet the qualifications of §168.6(b) in accordance with Pub. L. 93-531 as amended.

(l) *Animal unit* (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: sheep and goats, one ewe, doe, buck or ram equals 0.25 A.U.; one sheep unit year long (SUYL) equals 0.25 Animal Unit year long; horses and mules, one horse, mule, donkey or burro equals 1.25 A.U.

(m) *Tribe* means the Hopi Tribe including all villages and clans.

(n) *Allocate* means to apportion grazing, including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

(o) *Person awaiting relocation* means a resident of the Hopi Partitioned Area who meets each of the following criteria:

(1) Is listed on the Bureau of Indian Affairs enumeration (as defined in (q) below);

(2) Has a livestock inventory listed with the project Officer (see (r) below);

(3) Is awaiting relocation under the Settlement Act; and

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(4) Was grazing livestock on the date of the entry of the Judgment of Partition, April 18, 1979.

(p) *Carrying capacity* means the maximum stocking rate possible without inducing damage to vegetation or related resources.

(q) *BIA enumeration* means the list of persons living on and improvements located within the former Joint Use Area obtained by interviews by the Project Officer's staff.

(r) *Livestock inventory* means the original list as amended (developed by the Project Officer in 1976-77) of livestock owned by persons having customary grazing use in the former Joint Use Area.

(s) *Settlement Act* means the Act of December 22, 1974, 88 Stat. 1712, as amended.

(t) *Life tenant* means a person who has applied for and been granted a life estate lease pursuant to section 30 of the Settlement Act, 25 U.S.C. 640d-28.

### § 168.2 Authority.

It is within the general authority of the Secretary to protect Indian trust lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Also, under the Navajo-Hopi Settlement Act as amended, 25 U.S.C. 640d-8 and 18, the Secretary is authorized and directed to:

(a) Reduce livestock grazing within the former Joint Use Area to carrying capacity,

(b) Restore the grazing range potential of the resource to maximum grazing extent feasible,

(c) Survey, monument and fence the partition boundary,

(d) Protect the rights and property of individuals awaiting relocation or authorized to reside on life estates, and

(e) To administer conservation practices, including grazing control and range restoration activities on the Hopi Partitioned Lands.

### § 168.3 Purpose.

These regulations are issued to implement the Secretary's responsibilities mandated by the Settlement Act and subsequent U.S. District Court Judgment filed May 4, 1982, in the case, *Hopi Tribe v. Watt*, Civ. No. 81-272

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PCT-EHC. This portion of the regulations apply only to lands partitioned to the Hopi Tribe within the former Joint Use Area.

### § 168.4 Establishment of range units.

The Area Director will use Soil and Range Inventory data to establish range units on the Hopi Partitioned Area to provide for a surface land management program to restore the land to its full grazing potential and maintain that potential to the maximum extent feasible. The establishment of range units on Hopi Partitioned Lands is subject to the concurrence of the Hopi Tribe in accordance with § 168.17 of these regulations.

### § 168.5 Grazing capacity.

(a) The Area Director shall prescribe the maximum number of each kind of livestock which may be grazed on land under his jurisdiction without inducing damage to vegetation or related resources on each range unit and the season or seasons of use to achieve the objectives of the land recovery program required by the Settlement Act.

(b) The Area Director shall review the stocking rate upon which the grazing permits are issued on a continuing basis and adjust that rate as conditions warrant.

### § 168.6 Grazing on range units authorized by permit.

Grazing use on range units is authorized only by permits granted under paragraph (a) or (b) of this section.

(a) *Grazing permits to Hopi tribal members on their partitioned lands.* The Area Director shall assign grazing privileges to the Hopi Tribe for lands within Hopi Partitioned Lands. The tribal government will then allocate use to their tribal members for permit periods not to exceed five years. Grazing use by Hopi tribal enterprises may be authorized. The Area Director will issue permits based on the determination of the Hopi tribal government.

(b) *Interim Grazing Permit for persons awaiting relocation.* Navajo Tribal members who have maintained both a permanent residence on Hopi Partitioned lands; a livestock inventory since enumeration; and meet all the criteria listed in § 168.1(o), shall be eligible for

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an interim grazing allocation on Hopi Partitioned Lands under the following terms and conditions:

(1) The Area Director shall first verify that an applicant meets the criteria of the definition in §168.1(o) and will issue all permits.

(2) The permitted number shall not exceed either (i) 10 SUYL (See §168.1(1)) for each eligible family member, or (ii) the grazing applicant's livestock inventory reduced by voluntary sales as adjusted by reproduction, in accordance with procedures developed by the Project Officer based upon the study by Stubblefield and Camfield, 1975 page 5. The determination of the person to whom permits will be issued and the number of livestock to be permitted will be based on information provided by the permit applicant and an assessment of the number of dependents residing in the immediate household.

(3) The permit shall authorize grazing for a specific number and kind of animal(s) in a specified range unit. Interim grazing permits will not be issued in excess of one-half the authorized carrying capacity of the Hopi Partition area.

(4) Subject to the provisions of §168.9(b), permits shall expire when the person awaiting relocation is relocated pursuant to the Settlement Act. No interim permit will be issued for a term greater than one year. Permits may be reissued upon application and redetermination of eligibility. All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99-190. When a Navajo permit holder discontinues grazing livestock or reduces the number being grazed whether by reason of his relocating or for any other reason, his grazing permit will be cancelled or reduced and no permit will be issued in lieu thereof. The total number of authorized animal units grazed by the Navajo permit holders awaiting relocation will be reduced by the number of animal units authorized under the cancelled or reduced permit.

[47 FR 39817, Sept. 10, 1982, as amended at 51 FR 23052, June 25, 1986]

### § 168.7 Kind of livestock.

Unless determined otherwise by the Area Director for conservation purposes,

the Hopi Tribe may determine, subject to the authorized carrying capacity, the kind of livestock that may be grazed by their tribal members on the range units within the Hopi Partitioned Land area.

### § 168.8 Grazing fees.

(a) The rental value of all uses of Hopi Partitioned lands by persons who are not members of the Hopi Tribe, including eligible holders of interim permits, will be determined, and assessed by the Area Director and paid in accordance with 25 U.S.C. 640d-15.

(b) The Hopi Tribe has established an annual grazing fee to be assessed all range users on Hopi Partitioned Lands. The annual Hopi grazing fee shall be paid in full in advance of the annual effective date of the permit, prior to the issuance of a grazing permit. All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99-190. Failure of the permittee to make payment in full in advance will be cause to deny issuance of the grazing permit.

[47 FR 39817, Sept. 10, 1982, as amended at 51 FR 23052, June 25, 1986]

### § 168.9 Assignment, modification and cancellation of permits.

(a) Grazing permits to Hopi tribal members shall not be reassigned, sub-permitted or transferred without the approval of the permit issuer(s).

(b) The Area Director may revoke or withdraw all or any part of any grazing permit in Hopi Partitioned Lands by cancellation or modification on 30 days written notice of a violation of the permit or special conditions affecting the land or the safety of the livestock thereon, as may result from flood, disaster, drought, contagious diseases, etc. Except in the case of extreme necessity, cancellation or modification shall be effected on the next annual anniversary date of the grazing permit following the date of notice. Revocation or withdrawal of all or any of the grazing permit by cancellation or modification as provided herein is effective on the date the notice of cancellation or modification is received and shall be appealable under 25 CFR part 2.

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### § 168.10 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Conservation management plans necessary to accomplish this will be made a part of the grazing permit by stipulation.

### § 168.11 Range improvements; ownership; new construction.

Except as provided by the Relocation Act, range improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct or remove improvements must be obtained from the Hopi Tribe.

### § 168.12 Special permit requirements and provisions.

All grazing permits shall contain the following provisions:

(a) Because the lands covered by the permit are in trust status, all of the permittees' obligations on the permit and the obligations of his sureties are to the United States as well as to the beneficial owners of the lands.

(b) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(c) The permit authorizes only the grazing of livestock.

### § 168.13 Fences.

Fencing will be erected by the Federal Government around the perimeter of the 1882 Executive Order Area, Land Management District 6, and on the boundary of the former Joint Use Area partitioned to each tribe by the Judgment of Partition of April 18, 1979. Fencing of other areas in the former Joint Use Area will be required for a range recovery program in accordance with the range units established under § 168.4. Such fencing shall be erected at Government expense and ownership shall be clearly identified by appropriate posting on the fencing. Intentional destruction of Federal property will be treated as a violation of 18 U.S.C. 1164.

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### § 168.14 Livestock trespass.

The owner of any livestock grazing in trespass on the Hopi Partitioned Lands Area is liable to a civil penalty of \$1 per head per day for each animal in trespass, together with the replacement value of the forage consumed and a reasonable value for damages to property injured or destroyed. The Superintendent may take appropriate action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the Tribe. The following acts are prohibited:

(a) The grazing upon or driving across any of the Hopi Partitioned Lands of any livestock without an approved grazing or crossing permit;

(b) Allowing livestock to drift and graze on lands without an approved permit;

(c) The grazing of livestock upon lands within an area closed to grazing of that class of livestock;

(d) The grazing of livestock by permittees upon any land withdrawn from use for grazing purpose to protect it from damage, after the receipt of notice from the Area Director; and

(e) Grazing livestock in excess of those numbers and kinds authorized on a livestock grazing permit approved by the Area Director.

### § 168.15 Control of livestock diseases and parasites.

Whenever livestock within the Hopi Partitioned Lands become infected with contagious or infectious diseases or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable laws.

### § 168.16 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the Hopi Partitioned Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Superintendent as provided herein.

(a) When the Area Director determines that unauthorized livestock use is occurring and has definite knowledge of the kind of unauthorized livestock,

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and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound unauthorized livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Area Director determines that unauthorized livestock use is occurring but does not have complete knowledge of the number and class of livestock or if the name and address of the owner thereof are unknown, such livestock will be impounded anytime 15 days after the date of a General Notice of Intent to Impound unauthorized livestock is first published in the local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the Hopi Partitioned Lands which are owned by persons given notice under paragraph (a) of this section, and any unauthorized livestock in areas for which a notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the twelve-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock a notice of sale of impounded livestock will be published in the local newspaper, posted at the nearest chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least 5 days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder, provided his bid is at or above the minimum amount set by the

Superintendent based upon U.S.D.A.'s current Agricultural Statistic's Report for Arizona. If a bid at or above the minimum is not received the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the superintendent shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock;

(2) In payment of any penalties or damages assessed pursuant to §168.14 of this part which penalties or damages shall be credited to the Hopi tribe as provided in said section;

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above not claimed with one year from the date of sale, will be credited to the Hopi Tribe.

**§ 168.17 Concurrence procedures.**

(a) *Definitions.* As used in this section, terms shall have the meaning set forth as follows:

(1) *Concurrence* means agreement by the Area Director and the Hopi Tribe, speaking through the Chairman of the Tribe (or his designee).

(2) *Non-concurrence* means disagreement between the Area Director and the Hopi Tribe, speaking through the Chairman of the Hopi Tribe (or his designee), or a failure of the Hopi Tribe to respond to a proposal by the Area Director in a timely manner.

(3) *Timely manner* means a period of thirty days, unless this period is shortened by the existence of an emergency. Upon request by the Tribal Council, the Area Director may extend the 30 day period. In instances where this period applies to the Area Director, he may extend the period by so notifying the Tribe.

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(4) *An emergency* is a condition that the Area Director finds threatens the rights and property of life tenants and persons awaiting relocation or one that the Area Director finds is causing the condition of the range land to deteriorate.

(5) *Conservation practice* is a program consisting of a series of acts in conformance with the Bureau's range management policies and procedures which maintains or seeks to achieve the grazing potential of range lands on a continuing basis.

(6) *Range restoration activities* is a program consisting of a series of range management acts, including but not limited to procedures which increase range forage production, reduce erosion, improve range usability and reduce stocking by issuing grazing permits to persons residing on Hopi partitioned lands at rates which maximize the carrying capacity of the range lands on a continuing basis.

(7) *Grazing control* is a program consisting of a series of range management acts, including but not limited to procedures by which grazing permits are issued to persons residing on Hopi partitioned lands, which limit the grazing on range lands to its carrying capacity.

(b) The Area Director will seek the participation of the Hopi Tribe in his investigation, formulation and planning of conservation practices for Hopi partitioned lands. The Area Director will submit, in writing, the proposed plan to the Hopi Tribe.

(c) Upon receipt of the Area Director's proposed conservation practices, the Hopi Tribe will deliver, in writing, to the Area Director its concurrence or non-concurrence on all of the proposed conservation practices in a timely manner. The Area Director will continue to seek Hopi Tribal participation during the review process.

(d) Concurrence of the Hopi Tribe will be sought on all conservation practices, range restoration activities, and grazing control programs on the Hopi Partitioned Lands.

(1) If the Area Director and the Hopi Tribe concur on all or part of the proposed conservation practices in writing in a timely manner, those practices concurred upon may be immediately implemented.

(2) If the Hopi Tribe does not concur on all or part of the proposed conservation practices in a timely manner, the Area Director will submit in writing to the Hopi Tribe a declaration of non-concurrence. The Area Director will then notify the Hopi Tribe in writing of a formal hearing to be held not sooner than 15 days from the date of the non-concurrence declaration.

(i) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. Minutes of the hearing will be taken. Following the hearing, the Area Director may amend, alter or otherwise change his proposed conservation practices. Except as provided in §168.17(d)(1) of this section, if following the hearing, the Area Director altered or amends portions of his proposed plan of action, he will submit those individual altered or amended portions of the plan to the Tribe in a timely manner for their concurrence.

(ii) In the event the Tribe fails or refuses to give its concurrence to the proposal at the hearing, then the implementation of such proposal may only be undertaken in those situations where the Area Director expressly determines in a written order, based upon findings of fact, that the proposed action is necessary to protect the rights and property of life tenants and/or persons awaiting relocation.

**§ 168.18 Appeals.**

Appeals from decisions issued under this part will be in accordance with procedures in 25 CFR part 2.

**§ 168.19 Information collection.**

The information collection requirement(s) contained in this regulation have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0027. The information is being collected in order to ascertain eligibility for the issuance of a grazing permit. Response is mandatory in order to obtain a permit.

**PART 169—RIGHTS-OF-WAY OVER INDIAN LANDS**

Sec.  
169.1 Definitions.

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AUTHORITY: 5 U.S.C. 301; 62 Stat. 17 (25 U.S.C. 323—328), and other acts cited in the text.

SOURCE: 33 FR 19803, Dec. 27, 1968, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 169.1 Definitions.

As used in this part 169:

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority. Before proceeding under these regulations anyone desiring a right-of-way should inquire at the Indian Agency, Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary for the purposes of this part 169.

(b) *Individually owned land* means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

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

(d) *Tribal land* means land or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(e) *Government owned land* means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definitions set out in paragraphs (b) and (d) of this section.

### § 169.2 Purpose and scope of regulations.

(a) Except as otherwise provided in § 1.2 of this chapter, the regulations in this part 169 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land and Government owned land may be granted.

(b) Appeals from administrative action taken under the regulations in this part 169 shall be made in accordance with part 2 of this chapter.

(c) The regulations contained in this part 169 do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works which shall constitute a part of any project for which a license is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. (16 U.S.C. 797(e)). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license

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issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(e)).

#### § 169.3 Consent of landowners to grants of right-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over and across individually owned lands without the consent of the individual Indian owners when

(1) The individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant;

(3) The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant;

(4) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof;

(5) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substan-

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tial injury to the land or any owner thereof.

[36 FR 14183, July 31, 1971. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### § 169.4 Permission to survey.

Anyone desiring to obtain permission to survey for a right-of-way across individually owned, tribal or Government owned land must file a written application therefor with the Secretary. The application shall adequately describe the proposed project, including the purpose and general location, and it shall be accompanied by the written consents required by §169.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover twice the estimated damages which may be sustained as a result of the survey. With the approval of the Secretary, a surety bond may be substituted in lieu of a check or money order accompanying an application, provided the company issuing the surety bond is licensed to do business in the State where the land to be surveyed is located. The application shall contain an agreement to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees. When the applicant is an agency or instrumentality of the Federal or a State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than



that in which the application was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this part 169, the Secretary may grant the applicant written permission to survey.

**§ 169.5 Application for right-of-way.**

Written application identifying the specific use requested shall be filed in duplicate with the Secretary. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by satisfactory evidence of the good faith and financial responsibility of the applicant. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the applicant was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the

Secretary an application accompanied by the evidence required by this section, a reference to the date and place of such filing will be sufficient. Except as otherwise provided in this section, the application shall be accompanied by a duly executed stipulation, in duplicate, expressly agreeing to the following:

(a) To construct and maintain the right-of-way in a workmanlike manner.

(b) To pay promptly all damages and compensation, in addition to the deposit made pursuant to § 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.

(c) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.

(e) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(f) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.

(g) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

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(i) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition.

(j) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

When the applicant is the U.S. Government or a State Government or an instrumentality thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement that the applicant agree to any stipulations so prohibited.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

## § 169.6 Maps.

(a) Each application for a right-of-way shall be accompanied by maps of definite location consisting of an original on tracing linen or other permanent and reproducible material and two reproductions thereof. The field notes shall accompany the application, as provided in §169.7. The width of the right-of-way shall be clearly shown on the maps.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary and when an increase in scale cannot be avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient handling and filing.

(d) The maps shall show the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and

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ranges in which the lands crossed by the right-of-way are situated.

## § 169.7 Field notes.

Field notes of the survey shall appear along the line indicating the right-of-way on the maps, unless the maps would be too crowded thereby to be easily legible, in which event the field notes may be filed separately on tracing linen in such form that they may be folded readily for filing. Where field notes are placed on separate tracing linen, it will be necessary to place on the maps only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the maps or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

## § 169.8 Public survey.

(a) The terminal of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the maps, in the engineer's affidavit, and in the certificate. The notes and all data for the computation of the traverse must be given.

## § 169.9 Connection with natural objects.

When the distance to an established corner of the public survey is more

than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The maps must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the maps must state the connections.

**§ 169.10 Township and section lines.**

Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The maps shall show these distances and the station numbers at the points of intersections. The field notes shall show these distances and the station numbers.

**§ 169.11 Affidavit and certificate.**

(a) There shall be subscribed on the maps of definite location an affidavit executed by the engineer who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and maps and both designating by termini and length in miles and decimals, the line of route for which the right-of-way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or State government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the State or county engineer or other authorized State or county officer accepting the right-of-way and stating that he is satisfied as to the accuracy of the survey and maps.

**§ 169.12 Consideration for right-of-way grants.**

Except when waived in writing by the landowners or their representatives as defined in §169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate.

The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

[45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 169.13 Other damages.**

In addition to the consideration for a grant of right-of-way provided for by the provisions of §169.12, the applicant for a right-of-way will be required to pay all damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

**§ 169.14 Deposit and disbursement of consideration and damages.**

At the time of filing an application for right-of-way, the applicant must deposit with the Secretary the total estimated consideration and damages, which shall include consideration for the right-of-way, severance damages, damages caused during the survey, and estimated damages to result from construction less any deposit previously made under §169.4. In no case shall the amount deposited as consideration for the right-of-way over any parcel be less than the amount specified in the consent covering that parcel. If in reviewing the application, the Secretary determines that the amounts deposited are inadequate to compensate the owners, the applicant shall increase the deposit to an amount determined by the Secretary to be adequate. The amounts so deposited shall be held in a "special deposit" account for distribution to or for the account of the landowners and authorized users and occupants of the land. Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have been sustained. Amounts deposited to cover consideration for the right-of-way and severance damages shall be disbursed upon the granting of the right-of-way. Any part of the deposit which is not required for disbursement as aforesaid shall be refunded to the applicant promptly following receipt of the affidavit of completion of construction filed pursuant to §169.16.

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### § 169.15 Action on application.

Upon satisfactory compliance with the regulations in this part 169, the Secretary is authorized to grant the right-of-way by issuance of a conveyance instrument in the form approved by the Secretary. Such instrument shall incorporate all conditions or restrictions set out in the consents obtained pursuant to §169.3. A copy of such instrument shall be promptly delivered to the applicant and thereafter the applicant may proceed with the construction work. Maps of definite location may be attached to and incorporated into the conveyance document by reference. In the discretion of the Secretary, one conveyance document may be issued covering all of the tracts of land traversed by the right-of-way, or separate conveyances may be made covering one or several tracts included in the application. A duplicate original copy of the conveyance instrument, permanent and reproducible maps, a copy of the application and stipulations, together with any other pertinent documents shall be transmitted by the Secretary to the office of record for land documents affecting the land covered by the right-of-way, where they will be recorded and filed.

### § 169.16 Affidavit of completion.

Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Secretary an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Secretary shall transmit one copy of the affidavit to the office of record mentioned in §169.15. Failure to file an affidavit in accordance with this section shall subject the right-of-way to cancellation in accordance with § 169.20.

### § 169.17 Change of location.

If any change from the location described in the conveyance instrument is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to consent, approval, the ascertainment of damages, and the payment thereof, in all respects as in the case of the original location. Be-

fore a revised conveyance instrument is issued, the applicant shall execute such instruments deemed necessary by the Secretary extinguishing the right-of-way at the original location. Such instruments shall be transmitted by the Secretary to the office of record mentioned in §169.15 for recording and filing.

### § 169.18 Tenure of approved right-of-way grants.

All rights-of-way granted under the regulations in this part 169 shall be in the nature of easements for the periods stated in the conveyance instrument. Except as otherwise determined by the Secretary and stated in the conveyance instrument, rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), for railroads, telephone lines, telegraph lines, public roads and highways, access roads to homesite properties, public sanitary and storm sewer lines including sewage disposal and treatment plants, water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals), oil, gas, and public utility water pipelines (including pumping stations and appurtenant facilities), electric power projects, generating plants, switchyards, electric transmission and distribution lines (including poles, towers, and appurtenant facilities), and for service roads and trails essential to any of the aforesaid use purposes, may be without limitation as to term of years; whereas, rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as determined by the Secretary and stated in the conveyance instrument.

[37 FR 12937, June 30, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.19 Renewal of right-of-way grants.

On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath

setting out this fact, and the Secretary, with the consent required by §169.3, may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in §169.12. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

**§ 169.20 Termination of right-of-way grants.**

All rights-of-way granted under the regulations in this part may be terminated in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with §169.5(j) for any of the following causes:

- (a) Failure to comply with any term or condition of the grant or the applicable regulations;
- (b) A nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted;
- (c) An abandonment of the right-of-way.

If within the 30-day notice period the grantee fails to correct the basis for termination, the Secretary shall issue an appropriate instrument terminating the right-of-way. Such instrument shall be transmitted by the Secretary to the office of record mentioned in §169.15 for recording and filing.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 169.21 Condemnation actions involving individually owned lands.**

The facts relating to any condemnation action to obtain a right-of-way over individually owned lands shall be reported immediately by officials of the Bureau of Indian Affairs having knowledge of such facts to appropriate officials of the Interior Department so that action may be taken to safeguard the interests of the Indians.

**§ 169.22 Service lines.**

(a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of individually owned land and the applicant before any work by the applicant

may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 14.5 kv. or less except lines to serve irrigation pumps and commercial and industrial uses which shall be limited to a voltage not to exceed 34.5 kv. A service line shall be for the sole purpose of supplying the individual owner or authorized occupant or user of land, including schools and churches, with telephone, water, electric power, gas, and other utilities for use by such owner, occupant, or user of the land on the premises.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken for the construction of a service line across tribal land. A service line shall be for the sole purpose of supplying an occupant or user of tribal land with any of the utilities specified in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected, unless the contract under which the occupant or user of the land obtained his rights specifically authorizes such occupant or user to enter into service agreements for utilities without further tribal consent.

(c) In order to encourage the use of telephone, water, electric power, gas and other utilities and to facilitate the extension of these modern conveniences to sparsely settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization when required.

(d) An executed copy of the agreement, together with a plat or diagram,

and in the case of tribal land, an authenticated copy of the tribal authorization, when required, shall be filed with the Secretary within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placing of such improvements and subject such party to the payment of damages caused by his unauthorized act.

#### § 169.23 Railroads.

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312-318); the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma, for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines. Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in § 169.8 and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(f) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(g) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government officials in charge, of the right-of-way by canals, ditches, and other projects.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of

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the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use the land for such purposes for a continuous period of 2 years.

### § 169.24 Railroads in Oklahoma.

(a) The Act of February 28, 1902 (32 Stat. 43), authorizes right-of-way grants across tribal and individually owned land in Oklahoma. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, railroad rights-of-way in Oklahoma granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) One copy on tracing linen of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately as provided in § 169.21.

### § 169.25 Oil and gas pipelines.

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), authorizes right-of-way grants for oil and gas pipelines across tribal, individually owned and Government-owned land. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes

under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) Rights-of-way, granted under aforesaid Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites shall not extend beyond a term of 20 years and may be extended for another period of not to exceed 20 years following the procedures set out in § 169.19 of this part.

(c) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(d) The size of the proposed pipeline must be shown in the application, on the maps, and in the engineer's affidavit and applicant's certificate. The application and maps shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the grantee of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Secretary and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Secretary.

(e) Applicants for oil or gas pipeline rights-of-way may apply for additional land for pumping stations or tank sites. The maps shall show clearly the location of all structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall

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execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and that the structures for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(f) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Secretary a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(g) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

### **§ 169.26 Telephone and telegraph lines; radio, television, and other communications facilities.**

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land for telephone and telegraph lines and offices, for poles and lines for communication purposes, and for radio, television, and

other forms of communication transmitting, relay, and receiving structures and facilities. Rights-of-way granted under these acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323—328), shall also be subject to the provisions of this section.

(b) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(c) No right-of-way shall be granted for a width in excess of 50 feet on each side of the centerline, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the centerline.

(d) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) Rights-of-way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio and television, and other forms of communication transmitting, relay, and receiving structures and facilities shall be limited to an area not to exceed 400 feet by 400 feet.

### **§ 169.27 Power projects.**

(a) The Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), authorizes right-of-way grants across tribal,



individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323—328) shall also be subject to the provisions of this section.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher involving Government-owned lands shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the Secretary, upon notification to the effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

(c) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(d) Rights-of-way for power lines shall be limited to those widths which can be justified and in no event shall exceed a width of 200 feet on each side of the centerline.

(e) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any proj-

ect transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(f) An applicant for a right-of-way for a transmission line across Government-owned lands having a voltage of 66 kV or more must, in addition to the stipulation required by §169.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating

whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between

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the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in §169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

[33 FR 19803, Dec. 27, 1968, as amended at 38 FR 14680, June 4, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 169.28 Public highways.

(a) The appropriate State or local authorities may apply under the regulations in this part 169 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this part 169, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in part 265 of this chapter.

## PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

### CONSTRUCTION AND MAINTENANCE OF ROADS

#### Sec.

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AUTHORITY: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i)); 23 U.S.C. 101(a), 208, 308), unless otherwise noted.

SOURCE: Sections 170.1 to 170.9, 39 FR 27132, July 25, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### CONSTRUCTION AND MAINTENANCE OF ROADS

#### § 170.1 Purpose.

The regulations in this part govern the planning, design, construction, maintenance and general administration of certain Indian reservation roads and bridges.

#### § 170.2 Definitions.

As used in this part:

(a) *Commissioner* means the Commissioner of Indian Affairs.

(b) *Superintendent* means the Agency Superintendent at all locations, with

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the exception that at the Navajo Reservation this term shall mean the Area Director or his designated representative for public hearings on arterial roads which cross Agency boundaries of jurisdiction.

(c) *State* means a State or territory or political subdivision thereof.

(d) *Indian Reservation Roads and Bridges* means roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups or communities in which Indians and Alaskan Natives reside, whom the Commissioner has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. (23 U.S.C. 101(a))

(e) *Indian and Alaskan Native villages, groups, or communities in which Indian or Alaska Natives reside* means villages, groups or communities or portions of villages, groups, or communities in which the majority of the residents are Indians or Alaska Natives.

(f) *Federal-Aid Indian Road System* means those Indian reservation roads and bridges for which financial aid for construction is available only from specific appropriations of Federal funds therefor and which are designated by the Bureau of Indian Affairs and the Federal Highway Administration. This term does not include roads or bridges on Indian reservations for which financial aid for construction and improvement is available to a State under the Federal-Aid Highway Act. (45 Stat. 750)

(g) *Construction* means supervising, inspecting, actual building, and all expenses incidental to the construction and improvement of roads and bridges including the elimination of roadway hazards and the acquisition of rights-of-way.

(h) *Maintenance* means the act of preserving the entire roadway, including surface, shoulders, roadsides, structures, and the necessary traffic control devices as nearly as possible in the as-built condition and to provide services for the satisfactory and safe use of such roads.

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#### § 170.3 Construction and improvement.

Subject to the availability of appropriations for Indian reservation roads and bridges and any other contribution of State or Indian tribal lands, the Commissioner shall plan, survey, design and construct roads on the Federal-Aid Indian Road System to provide an adequate system of road facilities serving Indian lands.

#### § 170.4 Approval of road construction activities.

The Secretary of Transportation or his authorized representative shall approve the location, type, and design of all projects on the Federal-Aid Indian Road System before any construction expenditures are made. All such construction shall be under the general supervision of the Secretary of Transportation or his authorized representative.

(23 U.S.C. 208)

#### § 170.4a Selection of road construction projects.

The Commissioner, who is responsible for the planning, surveys and design, shall keep the appropriate local tribal officials informed of all technical information relating to the project alternatives of proposed road developments. The Commissioner shall recommend to the tribe those proposed road projects having the greatest need as determined by the comprehensive transportation analysis. Tribes shall then establish annual priorities for road construction projects. Subject to the approval of the Commissioner, the annual selection of road projects for construction shall be performed by tribes. Funds available for the construction of roads on the Federal-Aid Indian Road System shall not be used for the capital improvement to privately-owned property. (39 Stat. 355)

#### § 170.4b What formula will BIA use to distribute the remaining 25 percent of fiscal year 2001 Indian Reservation Roads program funds?

On March 29, 2001 we will distribute the remaining 25 percent of fiscal year 2001 IRR program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105-178. We will distribute the funds to Indian Reservation Roads

projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. Of this remaining 25 percent of fiscal year 2001 IRR program funds, \$19.53 million is available for immediate distribution to provide for up to \$35,000 for each tribe for administrative capacity building and other eligible transportation activities based on approved contracts, agreements, or requests for such funds by the deadline of May 15, 2001.

[66 FR 17078, Mar. 29, 2001]

EFFECTIVE DATE NOTE: At 66 FR 17078, Mar. 29, 2001, § 170.4b was revised, effective Mar. 29, 2001, through Sept. 30, 2001.

#### § 170.5 Right-of-way.

(a) The procedure for obtaining permission to survey and for granting any necessary right-of-way are governed by part 169 of this chapter. Tribal consent as required under § 169.3(a) may be made by public dedication where proper tribal authority exists. Before any work is undertaken for the construction of road projects, the Commissioner shall obtain the written consent of the Indian landowners. Where an Indian has an interest in tribal land by virtue of a land use assignment, such consent shall be obtained from both the landholder of the assignment and the Indian tribe. Right-of-way easements are to be on a form approved by the Commissioner.

(b) If it appears that the road might be transferred to the tribe, the county or the State within 10 years, then before such construction is undertaken, right-of-way easements for the project shall be obtained in favor of the United States, its successors and assigns, with the right to construct, maintain, and repair improvements thereon and thereover, for such purposes and with the further right in the United States, its successors and assigns, to transfer the right-of-way easements by assignment, grant or otherwise.

#### § 170.5a Employment of Indians.

The Bureau of Indian Affairs road program shall be administered in such a way as to provide training and employment of Indians. The Commissioner may contract with tribes and Indian-owned construction companies, or the Commissioner may purchase materials, obtain equipment and employ Indian labor in the construction and maintenance of roads.

(36 Stat. 861; 78 Stat. 241, 253; 78 Stat. 257; 25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 208(c))

#### § 170.6 Maintenance of Indian roads.

The administration and maintenance of Indian reservation roads and bridges is basically a function of the local Government. Subject to the availability of funds, the Commissioner shall maintain, or cause to be maintained, those approved roads on the Federal-Aid Indian Road System. The Commissioner may also maintain roads not on the Federal-Aid Indian Road System if such roads meet the definition of "Indian reservation road and bridges" and are approved for maintenance by the Commissioner. No funds authorized under 23 U.S.C. 208 are available for the maintenance of roads.

#### § 170.6a Contributions from tribes.

The Commissioner may enter into agreements with an Indian tribe for a contribution from its tribal funds for the construction or maintenance of roads governed by regulations of this part. However, the tribe must be able to make such contributions without undue impairment of the necessary tribal functions.

#### § 170.7 Cooperation with States.

The Commissioner may enter into an agreement with the State for cooperation in the construction and the maintenance of certain Indian reservation roads and bridges, especially at those locations where road projects serve non-Indian land as well as Indian land.

(23 U.S.C. 208(d); 23 U.S.C.308(a))

#### § 170.8 Use of roads.

(a) Free public use is required on roads eligible for construction and maintenance with Federal funds under

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this part. When required for public safety, fire prevention or suppression, or fish or game protection, or to prevent damage to unstable roadbed, the Commissioner may restrict the use of them or may close them to public use.

(b) The Commissioner shall conduct engineering and traffic analysis in accordance with established traffic engineering practices and determine the necessary maximum speed limit, maximum vehicular weight limit and other needed regulatory signs for roads which he maintains. The Commissioner shall make recommendations to local Government officials, who are authorized to enact and enforce ordinances on Indian lands, of his determination of the needed regulatory signs. Such regulatory signs as are authorized by established ordinances shall be erected by the Commissioner. At locations under the jurisdiction of the Court of Indian Offenses the Commissioner shall erect such regulatory signs as he determines are needed.

### § 170.9 Roadless and wild areas.

Roads passable to motor transportation shall not be constructed under the regulations in this part within the boundaries of the roadless and wild areas established in part 265 of this chapter.

#### PUBLIC HEARINGS ON ROAD PROJECTS

AUTHORITY: 45 Stat. 750; 25 U.S.C. 318a. Interpret or apply sec. 6, 49 Stat. 1521, as amended; 25 U.S.C. 318b.

SOURCE: Sections 170.10 to 170.19, 39 FR 12733, Apr. 8, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 170.10 Purpose and objectives.

The regulations in this subpart govern the calling and conducting of public hearings on Bureau of Indian Affairs road projects beginning with road projects scheduled to begin construction in Fiscal Year 1975, and thereafter. In order to promote coordination and comprehensive planning of construction activities on Indian reservations, the objectives for conducting public hearings on proposed road projects are to:

(a) Inform interested persons of the road proposals which affect them and

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allow such persons to express their views at those stages of a project's development when the flexibility to respond to these views still exists.

(b) Insure that road locations and designs are consistent with the reservations' objectives and with applicable Federal regulations.

### § 170.11 Criteria.

A public hearing shall be held for each project that:

(a) Is a new route being constructed,

(b) Would significantly change the layout or function of connecting or related roads or streets,

(c) Would have an adverse effect upon adjacent real property, or

(d) Is expected to be of a controversial nature.

### § 170.12 Need for public hearing determined.

The Superintendent will call a meeting of representatives from the tribe, the Bureau of Indian Affairs, and other appropriate agencies to determine for each road project if a public hearing is needed. The determination will be based on the criteria given in §170.11. More than one public hearing may be held for a project if necessary.

### § 170.13 Notice of road construction projects.

When no public hearing is scheduled for a road construction project, notice of the road construction project must be given at least 90 days before the date construction is scheduled to begin. Such notice should give the project name and location, the type of improvement planned, the date construction is scheduled to start, and the name and address of the office where more information can be obtained. The notice should be posted or published as determined by the Superintendent.

### § 170.14 Notice of public hearing.

Notice will be given to inform the local public of the scheduled hearing. The notice should give the date, time, and place of the scheduled hearing; the project location; the proposed work to be done; the place where the preliminary plans may be reviewed; and the place where more information on the project can be obtained. The notice

should be posted or published as determined by the Superintendent. Notice should be given at least 15 days before the scheduled date of the public hearing and again, at least 5 days before the hearing date.

**§ 170.15 Record of hearing proceedings.**

A record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

**§ 170.16 Conducting the public hearing.**

(a) The Superintendent will appoint a tribal or Bureau of Indian Affairs official to preside at the public hearing and to maintain a medium for free and open discussion designed to reach early and amicable resolution of issues.

(b) The Superintendent shall be responsible for maintaining a record of the hearing and shall make arrangements for appropriate officials to be present at the hearing to be responsive to questions which may arise.

(c) The purpose of the hearing and an agenda of items to be discussed should be presented at the beginning of the hearing. It should be made clear at the hearing that the tribal chairman or his designated roads committee are the officials responsible for setting reservation road priorities and considering the merits of one road project over another. Sufficient maps and project plans will be available at the hearing for public review. The hearing audience should be informed of the Bureau's road construction and right-of-way acquisition procedures on reservations. If the project will require relocating residences or businesses, information on relocation services and authorized payments will be given.

**§ 170.17 Written statements.**

Written statements may be submitted as well as oral statements made at the public hearing. Written statements may also be submitted during the 5 days following the hearing.

**§ 170.18 Hearing statement.**

If significant issues develop at the public hearing which remain unresolved, the Superintendent will issue a

hearing statement summarizing the results of the public hearing and his determination as to the further action to be taken in connection with the proposed project. The hearing statement shall be issued within 20 days of the date of the public hearing. The hearing statement will be posted at the place where the hearing was held, and shall be sent to interested persons upon request. The hearing statement will outline procedures whereby the determination may be appealed.

**§ 170.19 Appeals.**

Any determination concerning the proposed road project may be appealed in accordance with the procedures set forth in part 2 of this title.

**PART 171—OPERATION AND MAINTENANCE**

Sec.

- 171.1 Administration.
- 171.2 Irrigation season.
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- 171.4 Farm units.
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- 171.6 Distribution and apportionment of water.
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- 171.9 Structures.
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- 171.19 Operation and maintenance assessments.
- 171.20 Water users' ledgers.
- 171.21 Health and sanitation.
- 171.22 Complaints.
- 171.23 Disputes.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Sec. 171.4(b) also issued under 34 Stat. 1024, 38 Stat. 583, and 68 Stat. 1026. Secs. 171.4(a), 171.4(c), 171.16(b), and 171.17(f) also issued under sec. 11, 39 Stat. 142.

SOURCE: 42 FR 30362, June 14, 1977, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 171.1 Administration.**

(a) The Agency Superintendent, Project Engineer or such official as authorized by the Area Director is the Officer-in-Charge of those Indian Irrigation Projects or units operated or subject to administration by the Bureau of Indian Affairs, whether or not each project or unit is specifically mentioned in this part. The Officer-in-Charge is fully authorized to administer, carry out, and enforce these regulations either directly or through employees designated by him. Such enforcement includes the refusal to deliver water.

(b) The Officer-in-Charge is authorized to apply to irrigation subsistence units or garden tracts only those regulations in this part which in his judgment would be applicable in view of the size of the units and the circumstances under which they are operated.

(c) The Officer-in-Charge is responsible for performing such work and taking any action which in his judgment is necessary for the proper operation, maintenance and administration of the irrigation project or unit. In making such judgments, the Officer-in-Charge consults with water users and their representatives, and with tribal council representatives, and seeks advice on matters of program priorities and operational policies. The Officer-in-Charge will be guided by the basic requirement that the operation will be so administered as to provide the maximum possible benefits from the project's or unit's constructed facilities. The operations will insure safe, economical, beneficial, and equitable use of the water supply and optimum water conservation.

(d) The Secretary of the Interior reserves the right to exercise at any time all rights, powers, and privileges given him by law, and contracts with irrigation districts within Indian Irrigation Projects. Close cooperation between the Indian tribal councils, the project water users and the Officer-in-Charge is necessary and will be to the advantage of the entire project.

(e) The Area Director, or his delegated representative, is authorized to fix as well as to announce, by notice published in the FEDERAL REGISTER, the annual operation and maintenance assessment rates for the irrigation

projects or units within his area of responsibility. In addition to the rates, the notices will include such information as is pertinent to the assessment, payment, and collections of the charges including penalties and duty of water.

(f) The rates will be based on a carefully prepared estimate of the cost of the normal operation and maintenance of the project. Normal operation and maintenance is defined for this purpose as the average per acre cost of all activities involved in delivering irrigation water and maintaining the facilities.

(g) San Carlos Irrigation Project, Arizona. The administration, rights obligations and responsibilities for the operation and maintenance of this project are set forth in the Repayment Contract dated June 8, 1931 as supplemented or amended, between the San Carlos Irrigation and Drainage District and the United States as authorized by the Act of June 7, 1924 (43 Stat. 475-476) and the Secretarial Order of June 15, 1938, title "Order Defining Joint, District and Indian Works of the San Carlos Federal Irrigation Project: Turning over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District." The regulations appearing in this subchapter apply only to the Indian lands works and in the San Carlos Irrigation Project unless specified otherwise, and should not be interpreted or construed as amending or modifying the District Contract or the Secretarial Order.

[42 FR 30362, June 14, 1977, as amended at 43 FR 8799, Mar. 3, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 171.2 Irrigation season.**

The irrigation season, when water shall be available for irrigation, will be established by the Officer-in-Charge.

**§ 171.3 Domestic and stock water.**

Domestic or stock water will not be carried in the project's or unit's irrigation system when in the judgment of the Officer-in-Charge such practice will:

(a) Interfere with the operation and maintenance of the system.



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(b) Be detrimental to or endanger the canal, lateral system and/or related structures.

(c) Adversely affect the stored water supply for irrigation.

### § 171.4 Farm units.

For the purpose of delivery of water and the administration of the project or unit, a farm unit is defined as follows:

(a) For the Blackfeet, Crow, Fort Belknap, and Fort Peck Irrigation Projects, Montana, and the Colville Irrigation Project, Washington.

(1) Forty (40) or more contiguous acres of land in single ownership with the exception that those original Indian allotments containing less than 40 irrigable acres of the same subdivision of the public land survey shall also be considered farm units.

(2) Forty (40) or more contiguous acres of Indian-owned land under lease to one party.

(3) Forty (40) contiguous acres in multiple ownership within the same forty (40) acre subdivision of the public land survey.

(b) For the Fort Hall Irrigation Project, Idaho:

(1) Twenty (20) or more contiguous acres of land in single ownership covered by one or more water rights contracts.

(2) Twenty (20) or more contiguous acres of Indian-owned land under lease to one party or being farmed by one Indian.

(3) Ten (10) or more contiguous acres of subdivided land in multiple ownership.

(c) For the Flathead Irrigation Project, Montana: A contiguous area of land in single ownership containing not less than one forty (40) acre subdivision of the public land survey, or the original allotment as established by the Secretary of the Interior and as recorded or amended in the records of the Bureau of Land Management. In the case of leased land, it is defined as a contiguous area under a single lease. For Bureau of Land Management regulations pertaining to Flathead Project, see 43 CFR 2211.8, Flathead Irrigation District, Montana.

(d) For the Wapato Irrigation Project (all units), Washington:

(1) Eighty (80) or more contiguous acres in single ownership at the time of the establishment of the delivery system, or when subsequent changes of ownership result in larger tracts under single ownership and the owner requests that this land be treated as a farm unit, whether covered by one or more water right contracts.

(2) Eighty (80) or more contiguous acres of Indian-owned land under lease to one person or being farmed by one Indian.

(3) Eighty (80) contiguous acres in multiple ownership: *Provided*, That such acreage shall be within the same eight (80) acre subdivision of the U.S. public land survey.

(4) In all cases where an original Indian allotment consisted of less than eighty (80) contiguous acres, such original Indian allotment, whether (i) under single or multiple ownership and/or covered by one or more water right contracts, (ii) under lease to the same or different lessees, or (iii) farmed by one or more Indians, shall be treated as a farm unit.

(e) For all other projects or units: An original allotment, homestead, an assignment of unallotted tribal lands, or a contiguous, development lease area.

### § 171.5 Delivery points.

(a) Project operators will deliver irrigation water to one point on the boundary of each farm unit within the irrigation project. The Officer-in-Charge may establish additional delivery points when in his judgment it is impractical for the landowner to irrigate his farm unit from the one delivery point for such reasons as topography, isolation, or cost. When irrigation water is supplied from wells, the delivery point may be established at the well head. Where portions of a farm unit lie at an elevation too high to be watered by gravity flow from the normal elevation of water in the project distribution system, no change will be made in the water level elevation of the project system so as to place water on such land. Where such land has been included in the project, the landowner may install and operate pumping equipment at his own expense to raise the water to such included land from a point designated by the Officer-in-

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Charge and in accordance with his specifications. If the landowner so installs pumping equipment and pays the construction and maintenance charges, the project will deliver the same amount of water per acre for this land as the project delivers at the delivery point for other lands on the project.

(b) If a farm unit for which a project delivery point has been established is subsequently subdivided into smaller units by the owner or owners of the farm unit, the following provisions apply:

(1) A plat or map of the subdivision must be recorded and a copy filed with the Officer-in-Charge. The plat or map must show how the irrigation water is to be delivered to the irrigable acres in the subdivision.

(2) No further extensions or alterations in the project's system will be provided officials to serve the subdivided units, except as agreed to by the Officer-in-Charge and at the landowner's expense.

(3) Any additional construction necessary to deliver irrigation water to these units must be mutually worked out between the original owner of the farm units and the new owners of the subdivided unit at their expense.

(4) The project will not bear any responsibility for the operation and maintenance of such internal systems, or the division of irrigation water after it is delivered to the established project delivery points.

(c) Where project points of delivery have been established for farm units which are to be combined under lease or ownership into a singular farm unit to be irrigated by means of a sprinkler or more efficient system, the Officer-in-Charge may approve the removal or relocation of project delivery facilities. Such reorganization shall be at the expense of the landowners or lessees in conformance with established project standards and a time schedule which will not disrupt water delivery service to others on the system.

(d) Where a reorganization has been approved and established as in §171.5(c), any reversion requiring reestablishment of removed or relocated project delivery facilities must be approved by the Officer-in-Charge and conform to established project stand-

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ards and time schedules which will not disrupt water delivery service to other water users on the system. All expenses incurred shall be the responsibility of the landowners or lessees.

### § 171.6 Distribution and apportionment of water.

(a) The Officer-in-Charge will establish the method of and procedures for the delivery and distribution of the available irrigation water supply. He will endeavor to apportion the water at all times on a fair and equitable basis between all project water users entitled to the receipt of irrigation water.

(b) Any person who interferes with the flow of water in or from the project's storage, carriage or lateral systems or opens or closes or in any other way changes the position of a headgate or any other water control structure without specific authority from the Officer-in-Charge or his designated representative will be subject to prosecution. Cutting a canal or lateral bank for the purpose of diverting water or placing an obstruction in such facilities in order to change the flow of water through a headgate will be considered a violation of this section.

(c) San Carlos Irrigation Project, Arizona—(1) The portion of the project's common water supply available for the Indian lands will be distributed subject to beneficial use in equal per acre amounts to each acre under irrigation and cultivation, insofar as possible.

(2) All water users (Indian and non-Indian) will be notified at the beginning of the irrigation season of the amount of stored and pumped water available. An apportionment of this water will be recommended by the Officer-in-Charge of the irrigation project to the approval of the Area Director. Subsequent apportionments may be made if and when additional water is available.

(3) If it is determined by the Officer-in-Charge that there is water in excess of demands and available storage facilities, he will promptly notify all water users that such water is available. This water shall not be charged against the water apportionment of the land on which it is used.

(d) Uintah Irrigation Project, Utah—(1) Water will be delivered to all lands

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under the Lakefork, Uintah and Whiterocks Rivers in accordance with the provisions of the decree of the Federal Court in the cases of the "United States v. Dry Gulch Irrigation Company, et al.," and the "United States v. Cedarview Irrigation Company, et al.," which decrees fix the maximum duty of three (3) acre-feet per acre for the period from March 1 to November 1 of each year. The rate of delivery will be substantially in accordance with the following schedule except that it may be modified by the Officer-in-Charge at such times as changed climatic conditions and the water supply indicate that such modification would be beneficial to the project.

Period	Acres per second-foot	Acre feet per acre
Mar. 1 to 18 .....	None	None
Mar. 19 to 31 .....	1,000	0.023
Apr. 1 to 10 .....	800	.025
Apr. 11 to 20 .....	400	.050
Apr. 21 to 30 .....	200	.099
May 1 to 10 .....	180	.110
May 11 to 20 .....	135	.147
May 21 to 31 .....	95	.229
June 1 to 20 .....	70	.566
June 21 to 31 .....	85	.233
July 1 to 10 .....	90	.220
July 11 to 20 .....	95	.208
July 21 to 31 .....	100	.218
Aug. 1 to 10 .....	133	.147
Aug. 11 to 20 .....	155	.128
Aug. 21 to 31 .....	175	.124
Sept. 1 to 10 .....	195	.101
Sept. 11 to 30 .....	220	.180
Oct. 1 to 10 .....	220	.090
Oct. 11 to 20 .....	300	.066
Oct. 21 to 31 .....	600	.036
Total .....	.....	3,000

(2) The rotation method will be used in distributing the water diverted from the Lakefork, Uintah and Whiterocks Rivers. Rotation schedules will be prepared under direction of the Officer-in-Charge and will be put into effect each season as soon as it is determined what acreage is to be irrigated. A written copy of the water schedule will be delivered to each water user showing the time that his turn starts on each tract and the duration of each turn.

(3) In the event a rotation system is adopted for lands receiving water from the Duchesne River, the same procedure will be used as for the lands under the Lakefork, Uintah and Whiterocks Rivers. The Officer-in-Charge will advise all water users sufficiently in ad-

vance of the time the rotation schedule will go into effect.

(e) Wapato Irrigation Project, Washington—(1) To protect adjoining lands against seepage and erosion by the excess use of water on the bench lands of the Wapato-Satus Unit, the maximum delivery of water to the bench lands shall not exceed 4.5 acre-feet per acre per season.

(2) The rate of delivery to lands of the Satus 2 and Satus 3 subunits shall not exceed one (1) cubic foot per second for each 50 irrigated acres.

(3) The measurement and distribution of water for the lands on the Ahtanum Unit shall take place at the mutually advantageous points on the Ahtanum Main or Lower Canals. The conveyance of the water from these points of distribution to the irrigable acres of the farm units shall be entirely by and at the expense of the individual operators of the farms. However, when several such users join together to use one single channel for the conveyance of their water to the points of final diversion, they shall be jointly responsible for the channel of conveyance and the apportionment of the water to their respective farm units.

**§ 171.7 Application for and record of deliveries of irrigation water.**

(a) Except when rotation schedules have been established and are being followed, water users in requesting the delivery of water will so notify the Officer-in-Charge or his designated representative by such means and with such advance notice as may be required by system operations and as established by the Officer-in-Charge. The request shall indicate the time the water is to be delivered, the period of time it will be used, the rate of flow desired, and where the water will be used.

(b) It is the responsibility of the ditchriders during the irrigation season to maintain records showing the beginning and ending time of each water delivery, the amount of such delivery, and the estimated acreage irrigated. Such records are to be filed at the irrigation project office at the end of the season.

(c) Water users on the Indian portion of the San Carlos Indian Irrigation Project will submit their requests for

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water to the Superintendent, Pima Agency.

### § 171.8 Surface drainage.

(a) The water users will be responsible for all waste water resulting from their irrigation practices and for its conveyance to project canals, drains, wasteways or natural drainage channels. Any expenses involved in doing this will be borne by the water user. Waste water may be emptied into project constructed ditches only at points designated by and in a manner approved by the Officer-in-Charge. In those situations involving two or more landowners and/or water users, it is their responsibility to work out a satisfactory arrangement among themselves for the conveyance of their waste water to project ditches or natural drainage channels.

(b) Waste water shall not be permitted to flow upon or collect in road or project rights-of-way. Failure to comply with this requirement could result in the Officer-in-Charge refusing the further delivery of water.

### § 171.9 Structures.

(a) All structures, including bridges or other crossings, which are necessary as a part of the project's irrigation and drainage system will be installed and maintained by the project.

(b) During the construction of a new irrigation project or the extension of an existing project, bridges, crossings or other structures may be built by the Officer-in-Charge for private use where justified by severance agreements or other practical considerations. Title to these structures may or may not be vested in the United States depending upon the agreement with the landowner. Structures built partially or wholly in lieu of severance damages may be required to be maintained by the landowner even though title remains with the United States.

(c) After a project is completed, additional structures crossing or encroaching on project canal, lateral or drain rights-of-way which are needed for private use may be constructed privately in accordance with plans approved by the Officer-in-Charge or by the project. In either case the cost of installing such structures will not be at the

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project's expense. Such structures will be constructed and maintained under revocable permits on proper forms issued by the Officer-in-Charge of the irrigation project to the party or parties desiring such structures.

(d) If it is determined that a crossing constructed for and by the project is no longer needed for operation and maintenance of the system. It should be removed. However, if a private party, corporation, State, or other Federal entity desires to use the crossing, it may be transferred to such entity by the Officer-in-Charge under a permit which relieves the United States from any further liability or responsibility for the crossing, including its maintenance. The following provisions pertain:

(1) Permits issued in such situations shall stipulate what is granted, and accepted by the permittee on the condition that the repair and maintenance of the structure shall be the duty of the permittee or his successors without cost to the irrigation project.

(2) The permit shall further provide that if any such structure is not regularly used for a period of one year or is not properly maintained, the Officer-in-Charge may notify the person responsible for the structure's maintenance either to remove it or to correct any unsafe conditions within a period of 90 days.

(3) If the structure is not removed or the unsafe condition corrected within the time allowed, it may be removed by the Officer-in-Charge, the cost of such removal to be paid by the party responsible for the maintenance of the structure.

### § 171.10 Fencing.

Fences across project rights-of-way will not be constructed without the approval of the Officer-in-Charge. The granting of such approval shall be dependent upon proper installation so as not interfere with the flow of water or the passage of project operators and equipment. In case an unauthorized fence is installed, the landowner shall be notified to remove it. If it is not removed within a reasonable period of time or satisfactory arrangements made with the Officer-in-Charge, it

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may be removed by project personnel at the landowner's expense.

### § 171.11 Obstructions.

No obstructions of any kind including service or farm ditches, will be permitted upon project rights-of-way. Due notice will be given to an operator or landowner to remove any obstructions. If not removed within a reasonable period of time after notice is given, an obstruction will be removed by project forces at the expense of the operator or landowner.

### § 171.12 Rights-of-way.

(a) Rights-of-way reserved for the project's irrigation system are of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance of the project's canals, laterals, and other irrigation works.

(b) In the construction of new irrigation projects or extension of existing projects, rights-of-way which have not been reserved across Indian lands will be obtained in accordance with part 169 of this chapter.

### § 171.13 Crops and statistical reports.

An annual project crops and statistical report shall be prepared by the Officer-in-Charge. The landowner or farm unit operator shall cooperate in furnishing such information as requested.

### § 171.14 Carriage agreements and water right applications.

(a) *Pine River Indian Irrigation Project, Colorado.* If the Area Director determines that there is sufficient capacity in the project's carriage and/or distribution system in excess of that required by the project he is authorized to enter into carriage agreements with non-project water users to convey non-project water through project facilities for delivery to non-project lands.

(b) *Uintah Indian Irrigation Project, Utah.* If the Superintendent determines that there is sufficient capacity in the irrigation project's carriage and/or distribution system in excess of that required by the project, he is authorized to enter into carriage agreements with non-project water users to convey non-project lands. The Superintendent is also authorized to enter into carriage

agreements with private irrigation or ditch companies for the conveyance of project water through non-project facilities for delivery to isolated Indian lands that cannot be served from project facilities.

(c) *Wapato Irrigation Project, Washington.* The Project Engineer is authorized to execute water right applications submitted by landowners in the project on behalf of the Secretary of the Interior. Such applications should be submitted on the approved Departmental form.

### § 171.15 Leaching water.

(a) The Officer-in-Charge is authorized to furnish irrigation water for leaching purposes without the payment of operation and maintenance charges to any Indian trust land, or patent in fee land covered by a repayment contract, as an aid to improve land within the project that is impregnated by alkali or in the development of new project land.

(b) Delivery of such water will depend upon the availability of water and the preparation of a definite plan of operation by the land operator satisfactory to the Officer-in-Charge. In addition, the operator shall agree to meet such reasonable leaching and cropping activities as shall be prescribed by the Officer-in-Charge.

(c) If prompt and beneficial use of the leaching water is not made by or before July 1 of the season for which it is granted, the Officer-in-Charge may declare the leaching permit forfeited. The normal water charges will be considered as assessed and any delinquency enforced as though no leaching privilege had been granted.

(d) In the case of patent in fee lands no water will be delivered for leaching purposes until the annual construction costs, when assessed, are paid.

### § 171.16 Excess water.

(a) *General.* On those irrigation projects where a water duty or water quota has been established each water user will be notified when his quota of water, as covered by the basic assessment and as announced in the public notice, has been delivered. In such cases, additional irrigation water, if available, may be delivered providing

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the water user so requests it and agrees to pay for the excess water in accordance with the excess water provisions as set forth in the public notice.

(b) *Flathead Indian Irrigation Project, Montana.* (1) After an agreement has been reached by the Commissioners of the irrigation district and the Officer-in-Charge as to the duty of water on individual tracts where water users claim excess requirements above the duty of water established for the project on account of porous or gravelly soils, the Officer-in-Charge is authorized to increase the quantity of water to be delivered to such tracts.

(2) The amount of water delivered in such cases will not exceed four (4) acre feet per assessable acre except in the Moiese Division where the amount shall not exceed six (6) acre feet providing there is sufficient water available in Lower Crow Reservoir without having to draw on the water supply for the Mission Valley Division.

(3) The charge for such water shall be at the same general rate as established for project land not having such a porous or gravelly condition.

**§ 171.17 Delivery of water.**

(a) Irrigation water will not be delivered until the annual operation and maintenance assessments are paid in accordance with the established annual rate schedule as set forth in the public notice issued by the Area Director. Under the following special circumstances, this rule may be waived and water delivered to:

(1) Trust and restricted lands farmed by the Indian owner when the Superintendent has certified that the operator is financially unable to pay the assessment and he has made arrangements to pay such assessments from the proceeds received from the sale of crops or from any other source of income. In such cases the unpaid charges will stand as a first lien against the land until paid but without penalty on account of delinquency.

(2) Non-Indian lands on which there is an approved deferred payment contract executed under the provisions of the Act of June 22, 1936 (49 Stat, 1803).

(3) Land on which an adjustment or cancellation of unpaid assessments has

been recommended and final action is pending.

(b) Water will not be delivered to Indian trust or restricted land that are under lease approved by the Secretary of the Interior or his authorized representative acting under delegated authority until the lessee has paid the annual assessed operation and maintenance charges.

(c) No water will be delivered to Indian trust land under a lease that has been negotiated by an Indian owner until the owner has paid the annual assessed operation and maintenance charges or has made satisfactory arrangements for their payment with the Superintendent who has so notified the Officer-in-Charge.

(d) Water will not be delivered to any lands within an irrigation district which has executed a repayment contract with the United States until all irrigation charges, as assessed, are paid in accordance with the terms and conditions of the contracts and the public notice as issued by the Area Director.

(e) All irrigation districts may make such rules and regulations as they may find necessary in regard to the delivery of the water to water users within the district who are delinquent in their payments to the district of assessed irrigation charges. Such rules and regulations will be adhered to by the Officer-in-Charge when it appears to be in the best interests of the United States and the district to do so.

(f) Water will not be delivered to lands that are subject to construction assessments not paid in accordance with part 134 of this chapter.

(g) *Flathead Indian Irrigation Project, Montana*—(1) *Secretarial Water Right holders.* (i) For all acres recognized by the Secretary of the Interior as entitled to a "Secretarial Water Right", the Officer-in-Charge is authorized to carry such water in the project's carriage and distribution system and deliver it: *Providing*, That landowner holding such a right requests it and his land is so located that the water can be delivered without undue expense to the project. Before this service is provided, the landowner must also agree to pay a minimum of fifty (50) percent of up to a maximum

of one hundred (100) percent of the annual operation and maintenance charges as assessed against project lands in the same general area as his. Under such agreement the project will not be obligated to deliver more than that allowed for each acre of land under the Secretary's private water right findings less a proportionate share of the project's normal losses in transporting the water from the point of entry into the project's system to the point of delivery.

(ii) "Secretarial Water rights" are defined as those rights allocated to Indian allotments by the Assistant Secretary of the Interior by his approval on November 25, 1921, of the findings of the Commission appointed by him to investigate the "private rights" on the Flathead Indian Reservation. Authority: Sec. 9, Act of May 29, 1908 (35 Stat. 449).

(2) *Pump lands—Flathead Irrigation Project.* (i) The Officer-in-Charge is authorized to deliver irrigation water to lands (pump lands) within a project farm unit that are too high to be served from the project's gravity flow system: *Providing*, The holder of legal title to the lands so requests it in writing and agrees to have such land designated by the Secretary of the Interior or his authorized representative as a part of the irrigation project. Land so designated shall be subject to the assessment and payment of the pro rata per acre share of the project's construction, operation and maintenance costs the same as all other lands within the irrigation project in the same general area. In addition, such "pump lands" shall be obligated to pay an additional assessment on an annual basis as determined by the Officer-in-Charge to defray the cost of pumping the water from the Flathead River for those lands in the Mission Valley Division, and from the Little Bitterroot Lake for lands in the Camas Division.

(ii) At the time he submits the request, the landowner must also agree in writing to include the "pump lands" in an existing irrigation district or a district that may be subsequently formed pursuant to the laws of the State of Montana. This will not apply to Indian trust or restricted lands as

such lands cannot be included within an irrigation district.

(iii) A request for the inclusion of "pump lands" into the project will not be considered until the Officer-in-Charge determines that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project lands for which the project was designed and constructed.

(iv) All costs incidental to the pumping and distribution of the delivered water from the project farm unit delivery point to the "pump lands" shall be borne by the landowner.

#### § 171.18 Service or farm ditches.

The service or farm ditches into which water is delivered from project canals or laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to the place of use with a minimum of loss. Water delivery will be refused to such ditches not satisfactorily maintained. Project irrigation water shall be put to beneficial use.

#### § 171.19 Operation and maintenance assessments.

(a) Operation and maintenance assessments will be levied against the acreage within each allotment, farm unit or tribal unit that is designated as assessable and to which irrigation water can be delivered by the project operators from the constructed works whether water is requested or not, unless specified otherwise in this section.

(1) *Colville Indian Irrigation Project, Washington.* Operation and maintenance assessments will be levied against all patent in fee and Indian trust lands to which water can be delivered for irrigation and for which an application for water has been made by the water user and approved by the Superintendent.

(2) *Wapato Irrigation Project—Toppenish-Simcoe Unit, Washington.* Operation and maintenance assessments will be levied against all lands which can be irrigated from the constructed works for which application for water is made annually and approved by the Project Engineer.

(b) Subdivided farm units—(1) *General.* (i) Where farm units, as defined in § 171.4 have been subdivided into smaller units, the Area Director or such official as he may so delegate may, at his discretion, fix a higher operation and maintenance rate for such subdivided acreage than the rate fixed for the acreage in the original farm unit. In such cases the higher rate will also be announced in the annual public notice.

(ii) In the event higher rates are fixed for a subdivided farm unit, the individual owners thereof may obtain for their lands the same rate as fixed for acreages within farm units not so divided by joining in a written contract with the other owners within the subdivided unit. Under such a contract, the various owners will appoint an agent in whom shall be vested full power and authority to enter into a contract with the Area Director, hereafter referred to as the Contracting Officer, or such official as he may so authorize, covering the water rights for the entire area of the several small acreages: *Provided, however,* Such contract must not represent less acreage than that included in the original farm unit unless a smaller unit has been established by project regulation as eligible for a subdivision contract; *And provided further,* That whether the contract involves acreage in one or more farm units, it must represent contiguous acreages.

(iii) The contract between the agent of the owners of the small tracts and the Contracting Officer shall be executed on or before February 1 of the year preceding the next irrigation season. The agent shall at the time of the execution of this contract, on a form approved by the Secretary of the Interior, furnish a certified copy of the contract executed by the several landowners of the subdivided tract appointing the agent to act in their behalf.

(iv) Any owner of a tract within a subdivided unit, with the written consent of the owners of a majority of the acreage, under a contract as set forth in paragraph (b)(1)(iii) of this section, may voluntarily withdraw from the contract by filing a written notice of his intent to withdraw with the Contracting Officer on or before February 1 of the year, such withdrawal is to be ef-

fective, together with the consent of the owners of the majority of the acreage endorsed thereon; *Provided,* That, the remaining acreage is contiguous; such withdrawal does not reduce the remaining acreage under the contract to less than the acreage included in the original farm unit before it was subdivided or less than the minimum acreage established on a project as eligible for a subdivision contract; and all irrigation charges due under said contract have been paid. Upon the receipt of said notice, the Contracting Officer, if the notice meets the requirements as herein provided, shall note his approval thereon and send a copy thereof to the agent of the landowners. Thereafter the land of the withdrawing owner shall no longer be subject to the contract.

(v) If one or more owners under a contract desire to withdraw, and if, by so doing, it would reduce the total remaining contiguous acreage under the contract to less than the total acreage included in the original farm unit, or the minimum eligible acreage established on the project, the contract can be terminated. However, before such a termination can be approved, a written notice from the owners of the majority of the acreage must be filed with the Contracting Officer indicating their consent to and requesting his approval of the termination. The notice must be filed on or before February 1 of the year the termination is to become effective, and must include the payment of any irrigation charges then due under the existing contract. Upon the receipt of the written notice, the contracting Officer shall note his approval thereon provided that the requirements set forth herein are satisfied. A copy of the approved notice will be given to the agent of the landowners concerned.

(2) *Fort Hall Irrigation Project.* The Superintendent, Fort Hall Agency, is authorized to approve contracts as set forth in this section as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 10 acres.

(3) *Wapato Irrigation Project.* The Project Engineer is authorized to approve contracts as set forth in paragraph (b) of this section, as well as



withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 40 acres.

#### § 171.20 Water users' ledgers.

(a) Water users' ledgers will be maintained by the Officer-in-Charge on all irrigation projects or units where irrigation assessments are levied and collected. Separate entries shall be made in the ledger for each farm tract, and bills issued to the owner or owners of record. When payment is received, it will be credited to the proper ledger account.

(b) When Indian trust or restricted land is leased and the Officer-in-Charge has been so advised by the Superintendent, irrigation bills will be submitted to the lessee. Upon receipt of payment, it will be credited to the Indian owner or owners of record in the ledger account.

(c) On those projects where irrigation districts have been formed and have executed repayment contracts, irrigation bills will be rendered to the district. When payment is received, it will be credited to the proper ledger accounts.

#### § 171.21 Health and sanitation.

Use of Government storage reservoirs, canals, laterals or drains for disposal of sewage and trash shall not be permitted under any circumstances. If such conditions occur, and project forces are unable to correct them, the Officer-in-Charge shall request the Area Director to arrange for the necessary legal action.

#### § 171.22 Complaints.

All complaints must be made in writing to the Project Engineer or the Officer-in-Charge of the project.

#### § 171.23 Disputes.

In case of a dispute between a water user and the Project Engineer or Officer-in-Charge of the project concerning the application of the regulations of this part or a decision rendered by such official, the water user within 30 days may appeal to the Area Director. Further appeals may be made to the Commissioner of Indian Affairs pursuant to part 2 of this chapter.

### PART 172—PUEBLO INDIAN LANDS BENEFITED BY IRRIGATION AND DRAINAGE WORKS OF MIDDLE RIO GRANDE CONSERVANCY DISTRICT, NEW MEXICO

AUTHORITY: 45 Stat. 312.

#### § 172.1 Acreage designated.

Pursuant to the provisions of the act of March 13, 1928 (45 Stat. 312) the contract executed between the Middle Rio Grande Conservancy District of New Mexico and the United States under date of December 14, 1928, the official plan approved pursuant thereto, as modified, and the terms of section 24 of a contract between said parties dated September 4, 1936, dealing among other things with the payment of operation and maintenance and betterment assessments by the United States to the District, and section 24 of a similar contract dated April 8, 1938 executed by the representative of the United States, on this date, it is found that a total of 20,242.05 acres of Pueblo Indian lands of the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta is susceptible of economic irrigation and cultivation and is materially benefited by the works constructed by said District. This acreage is designated as follows:

Lands with recognized water rights not subject to operation and maintenance or betterment charges by the District and designated as "now irrigated"—8,847

Lands classified as "newly reclaimed" lands (exclusive of the purchased area)—11,074.4

Lands classified as newly reclaimed lands (the area recently purchased)—320.65

Total irrigable area materially benefited—20,242.05

[22 FR 10641, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

### PART 173—CONCESSIONS, PERMITS AND LEASES ON LANDS WITHDRAWN OR ACQUIRED IN CONNECTION WITH INDIAN IRRIGATION PROJECTS

Sec.

173.0 Scope.

173.1 Terms used.

173.2 Project engineer's authority.

173.3 Enforcement.

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- 173.4 Permits subject to existing and future rights-of-way.
- 173.5 Plans, approval thereof.
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- 173.7 Permits, transferable.
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- 173.11 Supervision of permittees' rates.
- 173.12 Services from project.
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- 173.15 Permittee subject to State law.
- 173.16 Reserved area, Coolidge Dam.
- 173.17 Agricultural and grazing permits and leases.
- 173.18 Term and renewal of permits.
- 173.19 Improvements.
- 173.20 Revocation of permits.
- 173.21 Notice to vacate.
- 173.22 Disposition of revenue.
- 173.23 Organized tribes.

AUTHORITY: 52 Stat. 193; 25 U.S.C. 390.

SOURCE: 22 FR 10642, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 173.0 Scope.

The regulations in this part are promulgated governing the granting of concessions, business, agricultural and grazing leases or permits on reservoir sites, reserves for canals or flowage areas, and other lands withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead and Duck Valley or Western Shoshone irrigation projects.

### § 173.1 Terms used.

When used in this part "Secretary" refers to the Secretary of the Interior; "project" to the Federal Indian irrigation project on which concession, lease or permit is granted, and "project engineer" to the engineer in charge of said project.

### § 173.2 Project engineer's authority.

The project engineer is the official charged with the responsibility for the enforcement of this part. He is vested with the authority to issue temporary concession permits to applicants for periods not to exceed 30 days. All except temporary permits shall become effective when approved by the Secretary.

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### § 173.3 Enforcement.

The project engineer shall enforce these and all project regulations now or hereafter promulgated by the Secretary. Willful violation or failure to comply with the provisions of this part and all proper orders of the project engineer shall be cause for revocation of the permit by the Secretary who shall be the judge of what constitutes such violation. The project engineer may suspend any permit for cause. The project engineer shall, immediately after suspending a permit, submit to the Secretary through the Commissioner of Indian Affairs a detailed report of the case, accompanied by his reasons for the action and his recommendations, for final action by the Secretary.

### § 173.4 Permits subject to existing and future rights-of-way.

Use by the permittee of any land authorized under this part shall be subject to the right of the Secretary to establish trails, roads and other rights-of-way including improvements thereupon or through the premises, and the right to use same by the public. No interference shall be permitted with the continued use of all existing roads, trails and other rights-of-way and improvements thereon.

### § 173.5 Plans, approval thereof.

No building or other structure shall be erected by permittee except in accordance with plans, specifications and locations approved by the project engineer. All premises and appurtenances shall be kept in a sanitary, safe and sightly condition.

### § 173.6 Stock grazing.

Permittees may graze upon lands covered by such permits, such stock as may be required in connection with the purposes for which the permit is issued subject to such restrictions and limitations as may be prescribed by the project engineer.

### § 173.7 Permits, transferable.

Permits may be transferred only with the approval of the Secretary.

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**§ 173.8 Applications.**

All applications for permits must be made on the approved form. The project engineer will furnish copies of this form upon request. All applications must be executed in triplicate.

**§ 173.9 Bonds.**

Except in cases of temporary concession permits, leases, permits, and traders' licenses granted under parts 166, 162, and 140 of this chapter, which are governed by the requirements of those parts, the applicant shall within 60 days after approval of the application furnish a surety bond for the faithful performance of the terms of the permit in an amount equal to the total sum accruing during the period of the permit. Such bond shall be executed by an approved surety company, or by at least three individual sureties, whose individual unencumbered assets are equal to double the amount of the bond. In the case of temporary concession permits, the permittee shall deposit at the time of receiving the permit, a sum equal to twice the rental, which sum shall, upon the expiration of the permit, be refunded to the permittee, if all the terms and conditions of the permit have been met; otherwise, such sum shall be retained as liquidated damages.

**§ 173.10 Payments.**

Each permittee shall pay at the time of receiving the permit the first year's charge as fixed therein. When a permit extends over a period of years, the next and succeeding payments shall be due and payable annually in advance. The full amount accruing under a temporary permit shall be paid at the time the application is filed.

**§ 173.11 Supervision of permittees' rates.**

All rates or charges collected by a permittee for services rendered by the permittee in the operation of the concession granted under a permit, must be submitted through the project engineer to the Secretary for approval. Copies of the approved rate schedule shall be posted in at least two conspicuous places on the premises. Approved rates may not be changed without first obtaining in the same manner

a change in the rate schedule. The Secretary shall have the right to readjust rates charged from time to time and to amend or change any permit issued. Failure to comply with the approved rates automatically makes the permit subject to cancellation.

**§ 173.12 Services from project.**

When the facilities of the project make it possible to supply water for domestic purposes, electricity or any other type of service to the permittee, the cost of connecting the project facilities shall be borne by the permittee and the work must be in accordance with standard practices and accepted by the project engineer, and as provided for in project regulations. All services rendered by the project to the permittee shall be paid for at the existing or modified schedule of rates; or if no schedule has been approved, at a rate to be approved by the Secretary which will reasonably reimburse the project for the cost of such services.

**§ 173.13 Permit not a lease.**

Any permit issued under this part does not grant any leasehold interest nor cover the sale, barter, merchandising, or renting of any supplies or equipment except as therein specified. Any permittee who engages in trade with the Indians must also apply for and receive a trader's license as provided by part 140 of this chapter.

**§ 173.14 Further requirements authorized.**

The project engineer is authorized to incorporate into any proposed permit to meet the needs of any particular case, subject to the approval of the Secretary, such further special requirements as may be agreed upon by him and the applicant, such requirements to be consistent with the general purposes of this part.

**§ 173.15 Permittee subject to State law.**

The holder of any permit issued under this part shall be subject to and abide by the laws and regulations of the United States and State laws if applicable to the conduct of the particular business or activity conducted by the permittee. Violations of this section shall render the permit void

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but shall not release the permittee from any obligations arising thereunder.

**§ 173.16 Reserved area, Coolidge Dam.**

No permit for any commercial business or other activity (except boating concessions confined to the Soda Spring Canyon) shall be issued to any applicant to operate within a radius of three-fourths of a mile from the center of the Coolidge Dam, Arizona.

**§ 173.17 Agricultural and grazing permits and leases.**

(a) Permits or leases may be granted after the lands set forth in §173.0 have been classified as to use and then only for the purpose for which the land is classified. Permits for grazing lands suitable for division into range units shall be granted in accordance with part 166 of this chapter; and agricultural lands and all other grazing lands shall be leased in accordance with part 166 of this chapter.

(b) Lands for which leases or permits are granted pursuant to the terms and conditions of this part shall not be eligible for benefit payments under the provisions and conditions of the Crop Control and Soil Conservation Act of April 27, 1935 (49 Stat. 163; 16 U.S.C. 590a), as amended by the act of February 29, 1936 (49 Stat. 1148; 16 U.S.C. 590g), and subsequent amendatory acts.

**§ 173.18 Term and renewal of permits.**

No concession granted under the provisions of this part shall extend for a period in excess of 10 years. An application for the renewal of a lease, permit, or concession permit shall be treated in the same manner as an original application under this part. Should there be an application or applications other than the renewal application for a permit covering the same area, the renewal application may, if the applicant has met all the requirements of the expiring permit and has been a satisfactory permittee, be given preferential consideration for the renewal of the permit should the applicant meet the highest and most satisfactory offer contained in the several applications.

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**§ 173.19 Improvements.**

Title to improvements constructed on the premises by the permittee shall be fixed and determined by the terms of the permit.

**§ 173.20 Revocation of permits.**

Any permit issued pursuant to this part may be revoked at any time within the discretion of the Secretary. Agricultural and grazing leases dealt with in §173.17 shall be subject to cancellation as provided for in the respective parts 162 and 166 of this chapter, and the conditions of the instruments executed pursuant thereto.

**§ 173.21 Notice to vacate.**

A permittee shall within 10 days after notification in writing of the cancellation of his permit by the Secretary, vacate the premises covered by the said permit. Any person occupying lands dealt with in the act of April 4, 1938 (52 Stat. 193) without an approved permit or lease shall be notified in writing by the project engineer of the requirements of this part and that for the failure of such person to comply with these requirements and receive a permit or lease within 60 days after receipt of the written notice shall constitute a willful violation of this part, and the project engineer shall submit promptly to the Commissioner of Indian Affairs a detailed report concerning the case, together with recommendations looking to the taking of appropriate legal action to remove such person from the area and to the collection of such funds to compensate for any use made of the property or damages suffered thereto.

**§ 173.22 Disposition of revenue.**

Funds derived from concessions or leases under this part except those so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure under existing law in the operation and maintenance of the irrigation project on which collected and as provided for in part 161 of this chapter. Funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not

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been compensated, shall be deposited to the credit of the proper tribe.

### § 173.23 Organized tribes.

Concessions and leases on tribal lands withdrawn or reserved for the purposes specified in the act of April 4, 1938 (52 Stat. 193) and dealt with in this part, of any Indian tribe organized under section 16 of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476) for which the tribe has not been compensated shall be made by the organized tribe pursuant to its constitution or charter: *Provided*, No lease or concession so made shall be inconsistent with the primary purpose for which the lands were reserved or withdrawn.

## PART 175—INDIAN ELECTRIC POWER UTILITIES

### Subpart A—General Provisions

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- 175.30 Billing.
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### Subpart E—System Extensions and Upgrades

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- 175.50 Obtaining rights-of-way.
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### Subpart G—Appeals

- 175.60 Appeals to the area director.
- 175.61 Appeals to the Interior Board of Indian Appeals.
- 175.62 Utility actions pending the appeal process.

AUTHORITY: 5 U.S.C. 301; sec. 2, 49 Stat. 1039-1040; 54 Stat. 422; sec. 5, 43 Stat. 475-476; 45 Stat. 210-211; and sec. 7, 62 Stat. 273.

SOURCE: 56 FR 15136, Apr. 15, 1991, unless otherwise noted.

### Subpart A—General Provisions

#### § 175.1 Definitions.

*Appellant* means any person who files an appeal under this part.

*Area Director* means the Bureau of Indian Affairs official in charge of a designated Bureau of Indian Affairs Area, or an authorized delegate.

*Customer* means any individual, business, or government entity which is provided, or which seeks to have provided, services of the utility.

*Customer service* means the assistance or service provided to customers, other than the actual delivery of electric power or energy, including but not limited to such items as: Line extension, system upgrade, meter testing, connections or disconnection, special meter-reading, or other assistance or service as provided in the operations manual.

*Electric power utility or Utility* means that program administered by the Bureau of Indian Affairs which provides for the marketing of electric power or energy.

*Electric service* means the delivery of electric energy or power by the utility to the point of delivery pursuant to a service agreement or special contract. The requirements for such delivery are set forth in the operations manual.

*Officer-in-Charge* means the individual designated by the Area Director

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as the official having day-to-day authority and responsibility for administering the utility, consistent with this part.

*Operations manual* means the utility's written compilation of its procedures and practices which govern service provided by the utility.

*Power rates* means the charges established in a rate schedule(s) for electric service provided to a customer.

*Service* means electric service and customer service provided by the utility.

*Service agreement* means the written form provided by the utility which constitutes a binding agreement between the customer and the utility for service except for service provided under a special contract.

*Service fees* means the charge for providing administrative or customer service to customers, prospective customers, and other entities having business relationships with the utility.

*Special contract* means a written agreement between the utility and a customer for special conditions of service. A special contract may include, but is not limited to, such items as: Street or area lights, traffic lights, telephone booths, irrigation pumping, unmetered services, system extensions and extended payment agreements.

*Utility office(s)* means the current or future facility or facilities of the utility which are used for conducting general business with customers.

### § 175.2 Purpose.

The purpose of this part is to regulate the electric power utilities administered by the Bureau of Indian Affairs.

### § 175.3 Compliance.

All utility customers and the utilities are bound by the rule in this part.

### § 175.4 Authority of area director.

The Area Director may delegate authority under this part to the Officer-in-Charge except for the authority to set rates as described in §§175.10 through 175.13.

### § 175.5 Operations manual.

(a) The Area Director shall establish an operations manual for the administration of the utility, consistent with

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this part and all applicable laws and regulations. The Area Director shall amend the operations manual as needed.

(b) The public shall be notified by the Area Director of a proposed action to establish or amend the operations manual. Notices of the proposed action shall be published in local newspaper(s) of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall contain: A brief description of the proposed action; the effective date; the name, address, and telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 30 days before the scheduled effective date of the operations manual, or amendments thereto.

(c) After giving consideration to all comments received, the Area Director shall establish or amend the operations manual, as appropriate. A notice of the Area Director's decision and the basis for the decision shall be published and posted in the same manner as the previous notices.

### § 175.6 Information collection.

The information collection requirements contained in §175.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0021. This information is being collected to provide electric power service to customers. Response to this request is "required to obtain a benefit." Public reporting for this information collection is estimated to average .5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 337-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Project 1076-0021, Office of Management and Budget, Washington, DC 20502.

### Subpart B—Service Fees, Electric Power Rates and Revenues

#### § 175.10 Revenues collected from power operations.

The Area Director shall set service fees and electric power rates in accordance with the procedures in §§ 175.11 and 175.12 to generate power revenue.

(a) *Revenues.* Revenues collected from power operations shall be administered for the following purposes, as provided in the Act of August 7, 1946 (60 Stat. 895), as amended by the Act of August 31, 1951 (65 Stat. 254):

(1) Payment of the expenses of operating and maintaining the utility;

(2) Creation and maintenance of reserve Funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the utility;

(3) Amortization, in accordance with repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and

(4) Payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(b) *Rate and fee reviews.* Rates and fees shall be reviewed at least annually to determine if project revenues are sufficient to meet the requirements set forth in paragraph (a) of this section. The review process shall be as prescribed by the Area Director.

#### § 175.11 Procedures for setting service fees.

The Area Director shall establish, and amend as needed, service fees to cover the expense of customer service. Service fees shall be set by unilateral action of the Area Director and remain in effect until amended by the Area Director pursuant to this section. At least 30 days prior to the effective date, a schedule of the service fees, together with the effective date, shall be published in local newspaper(s) of general circulation and posted in the utility office(s). The Area Director's decision shall be final for the Department of the Interior.

#### § 175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.

Except for adjustments to rates due to changes in the cost of purchased power or energy, the Area Director shall adjust electric power rates according to the following procedures:

(a) Whenever the review described in § 175.10(b) of this part indicates that an adjustment in rates may be necessary for reasons other than a change in cost of purchased power or energy, the Area Director shall direct further studies to determine whether a rate adjustment is necessary and, if indicated, prepare rate schedules.

(b) Upon completion of the rate studies, and where a rate adjustment has been determined necessary, the Area Director shall conduct public information meetings as follows:

(1) Notices of public meetings shall be published in local newspapers of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall provide: The date, time, and place of the scheduled meeting; a brief description of the action; the name, the address, and the telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 15 days before the scheduled date of the meeting.

(2) Written and oral statements shall be received at the public meetings. The record of the public meeting shall remain open for the filing of written statements for five days following the meeting.

(c) After giving consideration to all written and oral statements, the Area Director shall make a decision about a rate adjustment. A notice of the Area Director's decision, the basis for the decision, and the adjusted rate schedule(s), if any, shall be published and posted in the same manner as the previous notices of public meetings.

(d) Rates shall remain in effect until further adjustments are approved by the Area Director pursuant to this part.

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### § 175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

Whenever the cost of purchased power or energy changes, the effect of the change on the cost of service shall be determined and the Area Director shall adjust the power rates accordingly. Rate adjustments due to the change in cost of purchased power or energy shall become effective upon the unilateral action of the Area Director and shall remain in effect until amended by the Area Director pursuant to this section. A notice of the rate adjustment, the basis for the adjustment, the rate schedule(s) shall be published and posted in the same manner as described in § 175.12(c) of this part. The Area Director's decision shall be final for the Department of the Interior.

## Subpart C—Utility Service Administration

### § 175.20 Gratuities.

All employees of the utility are forbidden to accept from a customer any personal compensation or gratuity rendered related to employment by the utility.

### § 175.21 Discontinuance of service.

Failure of customer(s) to comply with utility requirements as set forth in this part and the operations manual may result in discontinuance of service. The procedure(s) for discontinuance of service shall be set forth in the operations manual.

### § 175.22 Requirements for receiving electrical service.

In addition to the other requirements of this part, the customer, in order to receive electrical service, shall enter into a written service agreement or special contract for electrical power services.

### § 175.23 Customer responsibilities.

The customer(s) of a utility subject to this part shall:

(a) Comply with the National Electrical Manufacturers Association Standards and/or the National Electrical Code of the National Board of

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Fire Underwriters for Electric Wiring and Apparatus as they apply to the installation and operation of customer-owned equipment;

(b) Be responsible for payment of all financial obligations resulting from receiving utility service;

(c) Comply with additional requirements as further defined in the operations manual;

(d) Not operate or handle the utility's facilities without the express permission of the utility;

(e) Not allow the unauthorized-use of electricity; and

(f) Not install or utilize equipment which will adversely affect the utility system or other customers of the utility.

### § 175.24 Utility responsibilities.

A utility subject to this part shall:

(a) Endeavor to provide safe and reliable energy to its customers. The specific types of service and limitations shall be further defined in the operations manual;

(b) Construct and operate facilities in accordance with accepted industry practice;

(c) Exercise reasonable care in protecting customer-owned equipment and property;

(d) Comply with additional requirements as further defined in the operations manual;

(e) Read meters or authorize the customer(s) to read meters at intervals prescribed in the operations manual, service agreement, or special contract, except in those situations where the meter cannot be read due to conditions described in the operations manual;

(f) Not operate or handle customer-owned equipment without the express permission of the customer, except to eliminate what, in the judgment of the utility, is an unsafe condition; and

(g) Not allow the unauthorized use of electricity.

## Subpart D—Billing, Payments, and Collections

### § 175.30 Billing.

(a) *Metered customers.* The utility shall render bills at monthly intervals unless otherwise provided in special contracts. Bills shall be based on the



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applicable rate schedule(s). Unless otherwise determined, the amount of energy and/or power demand used by the customer shall be as determined from the register on the utility's meter at the customer's point of delivery. A reasonable estimate of the amount of energy and/or power demand may be made by the utility in the event a meter is found with the seal broken, the utility's meter fails, utility personnel are unable to obtain actual meter registrations, or as otherwise agreed by the customer and the utility. Estimates shall be based on the pattern of the customer's prior consumption, or on an estimate of the customer's electric load where no billing history exists.

(b) *Unmetered customers.* Bills shall be determined and rendered as provided in the customer's special contract.

(c) *Service fee billing.* The utility shall render service fee bills to the customer(s) as a special billing.

### § 175.31 Methods and terms of payment.

Payments shall be made in person or by mail to the utility's office designated in the operations manual. The utility may refuse, for cause, to accept personal checks for payment of bills.

### § 175.32 Collections.

The utility shall attempt collection on checks returned by the customer's bank due to insufficient funds or other cause. An administrative fee shall be charged for each collection action taken by the utility other than court proceedings. An unredeemed check shall cause the customer's account to become delinquent, which may be cause for discontinuance of service. Only legal tender, a cashier's check, or a money order shall be accepted by the utility to cover an unredeemed check and associated charges.

## Subpart E—System Extensions and Upgrades

### § 175.40 Financing of extensions and upgrades.

(a) The utility may extend or upgrade its electric system to serve additional loads (new or increased loads).

(b) If funds are not available, but the construction would not be adverse to the interests of the utility, a customer may contract with the utility to finance all necessary construction.

(1) A customer may be allowed to furnish required material or equipment for an extension or upgrade or to install such items or to pay the utility for such installation. Any items furnished or construction performed by the customer shall comply with the applicable plans and specifications approved by the utility.

(2) The utility may arrange to refund all or part of a customer's payment of construction costs if additional customers are later served by the same extension or if the Area Director determines that the service will provide substantial economic benefits to the utility. All arrangements for refunds shall be stipulated in a special contract.

## Subpart F—Rights-of-Way

### § 175.50 Obtaining rights-of-way.

Where there is no existing right(s)-of-way for the utility's facilities, the customer shall be responsible for obtaining all rights-of-way necessary to the furnishing of service.

### § 175.51 Ownership.

All rights-of-way, material, or equipment furnished and/or installed by a customer pursuant to this part shall be and remain the property of the United States.

## Subpart G—Appeals

### § 175.60 Appeals to the area director.

(a) Any person adversely affected by a decision made under this part by a person under the authority of an Area Director may file a notice of appeal with the Area Director within 30 days of the personal delivery or mailing of the decision. The notice of appeal shall be in writing and shall clearly identify the decision being appealed. No extension of time shall be granted for filing a notice of appeal.

(b) Within 30 days after a notice of appeal has been filed, the appellant shall file a statement of reason(s) with the Area Director. The statement of

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reason(s) shall explain why the appellant believes the decision being appealed is in error, and shall include any argument(s) that the appellant wishes to make and any supporting document(s). The statement of reason(s) may be filed at the same time as the notice of appeal. If no statement of reason(s) is filed, the Area Director may summarily dismiss the appeal.

(c) Documents are properly filed with the Area Director when they are received in the facility officially designated for receipt of mail addressed to the Area Director, or in the immediate office of the Area Director.

(d) Within 30 days of filing of the statement of reason(s), the Area Director shall:

(1) Render a written decision on the appeal, or

(2) Refer the appeal to the Office of Hearings and Appeals Board of Indian Appeals for decision.

(e) Where the Area Director has not rendered a decision with 30 days of filing of the statement of reasons, the appellant may file an appeal with the Office of Hearings and Appeals Board of Indian Appeals pursuant to § 175.61.

## § 175.61 Appeals to the Interior Board of Indian Appeals.

(a) An Area Director's decision under this part, except a decision under § 175.11 or 175.13, may be appealed to the Office of Hearings and Appeals Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D, except that a notice of appeal from a decision under § 175.12 shall be filed within 30 days of publication of the decision. The address for the Interior Board of Indian Appeals shall be included in the operations manual.

(b) Where the Area Director determines to refer an appeal to the Office of Hearings and Appeals Board of Indian Appeals, in lieu of deciding the appeal, he/she shall be responsible for making the referral.

(c) If no appeal is timely filed with the Office of Hearings and Appeals Board of Indian Appeals, the Area Director's decision shall be final for the Department of the Interior.

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## § 175.62 Utility actions pending the appeal process.

Pending an appeal, utility actions relating to the subject of the appeal shall be as follows:

(a) If the appeal involves discontinuance of service, the utility is not required to resume such service during the appeal process unless the customer meets the utility's requirements.

(b) If the appeal involves the amount of a bill and:

(1) The customer has paid the bill, the customer shall be deemed to have paid the bill under protest until the final decision has been rendered on the appeal; or

(2) The customer has not paid the bill and the final decision rendered in the appeal requires payment of the bill, the bill shall be handled as a delinquent account and the amount of the bill shall be subject to interest, penalties, and administrative costs pursuant to section 3 of the Federal Claims Collection Act of 1966, As amended, 31 U.S.C. 3717.

(c) If the appeal involves an electric power rate, the rate shall be implemented and remain in effect subject to the final decision on the appeal.

## PART 178—RESALE OF LANDS WITHIN THE BADLANDS AIR FORCE GUNNERY RANGE (PINE RIDGE AERIAL GUNNERY RANGE)

Sec.

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AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2; 16 U.S.C. 3; 82 Stat. 663.

SOURCE: 34 FR 9985, June 28, 1969, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 178.1 Purpose.

The regulations in this part govern the reacquisition by former Indian and non-Indian owners of lands, or interests therein, acquired by the United

States of America as a part of the Badlands Air Force Gunnery Range, sometimes referred to and known as the Pine Ridge Aerial Gunnery Range. The regulations also govern the acquisition by former Indian owners of life estates in national monument lands formerly owned by them and the acquisition of lieu lands when lands formerly owned by them are not available or are not desired by them for reacquisition. The legislative authority for reacquisition of lands or interests therein by former owners is the Act of August 8, 1968 (Pub. L. 90-468; 82 Stat. 663).

#### § 178.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(b) "Superintendent" means the officer in charge of the Pine Ridge Indian Agency, Pine Ridge, S. Dak.

(c) "Act" means the Act of August 8, 1968 (Pub. L. 90-468; 82 Stat. 663).

(d) "Gunnery Range" means the area on the Pine Ridge Indian Reservation in South Dakota that was acquired by the United States for use of the Air Force commonly known as the Pine Ridge Aerial Gunnery Range or the Badlands Air Force Gunnery Range.

(e) "Monument" means the Badlands National Monument as enlarged by section 1 of the Act of August 8, 1968 (Pub. L. 90-468).

(f) "Tribe" means the Oglala Sioux Tribe of Indians of South Dakota.

#### § 178.3 Eligibility to purchase.

(a) Any former owner of a tract of land or interest in a tract of land, whether title was held in trust or in fee, which was acquired by the United States as a part of the Gunnery Range may purchase such tract pursuant to the provisions of the Act and the regulations set forth in this part: *Provided*, Said tract has been declared excess to the needs of the Department of the Air Force, has been transferred to the administrative jurisdiction of the Secretary of the Interior, and is not within the boundaries of the Monument or within that portion of the Gunnery Range retained for use of the Department of the Air Force.

(b) If a former owner is deceased and is survived by a spouse, the spouse may

purchase under the same terms and conditions as the former owner except that if the former owner was an Indian whose land was held in trust and his surviving spouse is a non-Indian, the title to said tract shall be conveyed to the non-Indian spouse in a fee simple status.

(c) If the former owner is deceased and the spouse is also deceased, the children of the former owner may repurchase the tract.

(d) If the former owner is not survived by a spouse or children there exist no repurchase rights involving the tract.

(e) Not more than five former owners may join in purchasing a tract of land. "Former owner" means each person from whom the United States acquired an interest in a tract of land, or if such person is deceased, the surviving spouse, or if such spouse is deceased, his children. If more than five former owners apply to acquire a tract, the Superintendent shall notify them in writing that it will be necessary for them to agree among themselves as to the five or less of them who shall acquire the tract. If agreement among the owners is obtained, those individuals who are to acquire the tract shall then file an application to purchase it. The matter of reaching agreement among the owners is the sole responsibility of said owners and not the responsibility of the Department of the Interior and/or the Bureau of Indian Affairs to participate in the negotiations between the owners. If the former owners fail to reach such an agreement, all applications for the tract shall be rejected.

#### § 178.4 Notice to former owners.

After publication of these regulations, there shall be published in the FEDERAL REGISTER notice that certain described lands and interests in lands have been transferred to the administrative jurisdiction of the Secretary and are available for repurchase by the former owners pursuant to section 3(b) of the Act. Upon transfer of administrative jurisdiction over lands that may thereafter be declared excess to the needs of the Department of the Air Force and acceptance by the Secretary,

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notice of such transfer shall be published in the FEDERAL REGISTER. No attempt shall be made to notify each individual former non-Indian owner personally, but the transfer of jurisdiction to the Secretary may be further publicized by the publishing of notice in a local newspaper of general circulation.

### § 178.5 Special notice to former Indian owners.

(a) The Superintendent shall notify the former Indian owners, in writing, at their last known addresses of their right to repurchase the tracts formerly owned by them in those instances where the tracts are outside of the boundaries of the Monument and are outside of the boundaries of the area of the Gunnery Range retained by the Department of the Air Force. Such notice shall include (1) the legal description; (2) the purchase price thereof; (3) the minimum amount of down payment required; (4) a recital that balance of purchase price may be paid in 20 annual installments; (5) the annual rate of interest on unpaid balance; (6) information whether title is to be taken in trust or in fee; and (7) the date by which the executed application to purchase must be received in the office of the Superintendent. A form of application for execution by the former owners shall accompany said notice, said application to include the legal description of the land, purchase price and other pertinent information.

(b) In those instances where the tracts of land or portions thereof are within the boundaries of the area of the Gunnery Range retained by the Department of the Air Force, the Superintendent shall notify the former Indian owners, in writing, at their last known addresses that they may elect to purchase available tracts of land in lieu of the lands formerly owned by them, said lieu lands to be of substantially the same value as the tracts originally owned by them. Such notice shall also advise said former owners that they may, as an alternative, elect to purchase the tracts formerly owned by them at such time as the tracts may be declared excess to the needs of the Department of the Air Force and transferred to the Secretary of the Interior. As to this alternative, no promise or

prediction may be made as to when, or whether, the land may eventually become surplus to the needs of the Department of the Air Force, and the notice shall specifically so state. Such notice shall include (1) the legal description of the land formerly owned by them; (2) the purchase price of the lieu land which price shall be computed on the same basis as though the original tract were available; (3) the minimum amount of down payment required; (4) a recital that balance of purchase price may be paid in 20 annual installments; (5) the annual rate of interest on unpaid balance; (6) information whether title is to be taken in trust or in fee; and (7) the date by which election to purchase lieu lands or wait until lands formerly owned by them are declared excess must be received in the office of the Superintendent. The notice shall be accompanied by a form for execution by the former owner whereby said owner elects to purchase lieu lands or to repurchase the tract formerly owned by said owner when it is declared excess.

(c) In those instances where a tract of land or portion thereof is within the boundaries of the Monument, the Superintendent shall notify the former Indian owner, in writing, at his last known address that he may elect to acquire a life estate in such tract or portion thereof at no cost but subject to the restrictions on use referred to under "Conveyance Documents" (§257.7). Such notice shall include the legal description of the lands formerly owned by him upon which he may acquire a life estate. The notice shall also inform the former owner that he may elect to purchase any available tract of land in lieu of the lands formerly owned by him, said lieu lands to have substantially the same values as the tract originally owned by him. Such notice shall include (1) the purchase price of the lieu land which price shall be computed on the same basis as though the original tract were available for purchase; (2) the minimum amount of down payment required; (3) a recital that balance of purchase price may be paid in 20 annual installments; (4) the annual rate of interest on unpaid balance; (5) information whether title is to be taken in trust or in fee;

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and (6) the date by which the election to acquire the life estate or lieu lands must be received in the Office of the Superintendent. Such notice shall be accompanied by a form for execution by the former owner whereby said owner elects to acquire a life estate in the lands formerly owned by said owner or elects to purchase lieu lands.

### § 178.6 Applications by former owners.

(a) Applications by former Indian owners to purchase lands formerly owned by them, or to purchase lieu lands, or to take a life estate in a tract of land within the Monument area should be made on forms furnished by the Superintendent and filed within the period specified in section 3(b) (5) of the Act. Such applications shall be filed in the Office of the Superintendent.

(b) A former non-Indian owner may file application to purchase land pursuant to section 3(b) of the Act within 1 year from the date notice is published in the FEDERAL REGISTER that the land he formerly owned has been declared excess to the needs of the Department of the Air Force and has been transferred to the Secretary. Such application shall be filed in the Office of the Superintendent. The applicant shall furnish proof of his ownership or the ownership of his predecessor in interest at the time of the acquisition of the land by the United States. Upon receipt of an application to purchase and proof of ownership the Superintendent shall cause the land to be appraised and thereafter he shall inform the applicant in writing of the fair market value of the tract which shall be the purchase price, the minimum amount of down payment required, that the balance of the purchase price may be paid in 20 annual installments, and the annual rate of interest on the unpaid balance.

### § 178.7 Conveyance documents.

(a) Where there is an election by a former Indian owner of a tract of land within the monument boundary to acquire a life estate in such tract at no cost the following types of provisions and restrictions shall be applicable to the use thereof:

(1) Agricultural uses are permitted. Only those commercial activities associated with normal agricultural operations would be allowed.

(2) Construction or reconstruction of any roads to the property, including locations and materials used, are subject to approval by the National Park Service.

(3) Mining activities of all kinds are prohibited inasmuch as the United States retains all mineral rights.

(4) Residential and other facilities necessary for, or incidental to, ranching and other agricultural purposes are permitted. This includes, but is not limited to, barns, sheds, fences, stock dams, wells utilizing surface or subsurface water, and other needed access accessory structures.

(5) The cutting of native trees, except for firewood for the personal use of the grantee, his family or assignee, is prohibited unless determined by the National Park Service to be essential to the permitted use of the tract.

(6) All improvements and structures are subject to removal upon termination of the life estate or they shall be deemed to become the property of the United States. The family or assignee of the grantee shall have a reasonable time to vacate the premises upon termination of the life estate and may harvest annual crops planted during the tenure of the estate.

(7) Water rights owned by the United States in the premises remain vested in the United States, but the grantee has a right to reasonable use of the water.

(8) Grantee must observe and adhere to all applicable Federal, State, and local laws and regulations, including Federal laws and regulations for the protection of the black-footed ferret and other wildlife in the Monument. The United States reserves the right to enter upon the conveyed lands to assure such compliance and for the exercise of any other rights and privileges reserved to it.

(9) The conveyed premises must be kept in a neat and orderly condition and no waste or injury may be committed to the land. Pollution of water on or adjacent to the property is prohibited.

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(10) Reasonable precautions must be taken to prevent, suppress, and extinguish forest, brush, grass, and other fires on the property.

(11) Grantee may not claim damages for injury by or against the United States which might be directly attributable to existence of the Monument.

(12) Other provisions deemed necessary by the National Park Service in individual circumstances may be included in the conveyance document.

(b) When title to the land being acquired is to be taken in trust for the purchaser and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, a sale contract shall be executed by the purchaser and the Secretary. The down payment shall be not less than \$100 or 20 per centum of the purchase price, whichever is less. The purchaser shall be entitled to a credit of a pro rata share of the grazing fees collected by the United States for use of the land during the grazing year in which the sale contract is executed, which credit shall be applied as all or a part of the down payment for the land being purchased. In the event the proportionate share of the grazing fees credited to the purchaser is less than the required down payment, the purchaser shall pay the balance of the down payment in cash, or by certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs at the time the sale contract is executed. Upon execution of the contract by the Secretary, a deed shall be prepared and executed by the Secretary conveying title to the land to the United States in trust for the purchaser. When the sale contract and deed are executed, the balance of the proportionate share of the grazing fees, if any, due the purchaser shall be paid to him and the down payment shall be deposited in the U.S. Treasury to the credit of the United States as general fund receipts. All subsequent installment payments shall be deposited in a like manner to the credit of the United States. The sale contract shall include (1) the legal description of the land; (2) the purchase price; (3) the amount of down payment; (4) the amount of annual principal installment payments; (5) the annual rate of interest on un-

paid balance; (6) the due dates of annual installments; (7) a recital that the unpaid balance is a lien against the land and against all rents, bonuses and royalties received therefrom; (8) a recital that a delinquency of 90 days in making annual installment payments will subject the contract to foreclosure with loss of all payments theretofore made thereon; and (9) a recital that upon payment being made in full the deed to the United States in trust for the purchaser will be delivered to the purchaser.

(c) If title to the tract is acquired in a trust status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to the United States of America in trust for the purchaser by a deed executed by the Secretary.

(d) If the purchaser is to acquire the tract in a fee status and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, the title shall be conveyed to the purchaser in a fee status by a deed executed by the Secretary. The purchaser shall execute a mortgage naming the United States as mortgagee and shall execute promissory notes for the annual installment payments with the annual rate of interest set forth therein. The deed and mortgage shall be recorded in the office of the register of deeds of the county in which the land is situated, the recording costs to be borne by the purchaser. Upon payment of the full amount of the mortgage a satisfaction of mortgage shall be executed by the Secretary and delivered to the purchaser who shall be responsible for recordation thereof in the office of the register of deeds.

(e) If the purchaser is to acquire the tract in a fee status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to said purchaser in a fee status by a deed executed by the Secretary. The purchaser shall be responsible for recordation of the deed in the office of the register of deeds of the county in which the land is situated.

(f) Each deed executed pursuant to paragraphs (c), (d), and (e) of this section shall contain a provision that if

the tract is offered for sale by the purchaser within a period of 10 years from the date of said deed, the tribe shall be notified in writing that the tract is being offered for sale and of the terms of the offer and said tribe shall have a period of 60 days to exercise a right of first refusal to purchase such tract upon the terms set forth in the notice.

(g) All sale documents referred to in this section shall be recorded in the office of the Bureau of Indian Affairs having custody of the land title records of the Pine Ridge Indian Reservation pursuant to 25 CFR part 150.

#### § 178.8 Selection of lieu lands.

(a) Lieu lands which may be selected for purchase by former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument are defined as (1) those lands heretofore acquired by the United States for use of the Air Force Gunnery Range which are outside the boundaries of the Monument and outside the boundaries of the area retained for use by the Department of the Air Force which are not selected for repurchase by former owners within 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, and (2) all of the submarginal lands acquired by the United States under authority of the National Industrial Recovery Act of 1933 and subsequent relief acts, within the Pine Ridge Indian Reservation, except those submarginal lands within the area retained for use by the Department of the Air Force or within the Monument, administrative jurisdiction over which was transferred to the Secretary of the Interior by Executive Order No. 7368, dated April 15, 1938.

(b) The former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument may elect to purchase lieu lands of substantially the same value pursuant to section 4(b) and section 4(c) of the Act. Inasmuch as identification of all of the lands from which lieu selections may be made cannot be determined until the time has expired for former owners of lands outside of the area used by the

Department of the Air Force and outside the boundaries of the Monument to purchase the tracts formerly owned by them, former owners who have filed an election to purchase lieu lands within 1 year from the date of publication of the notice prescribed in section 3(b)(5) of the Act, shall be deemed to have filed a timely application to purchase notwithstanding the fact that a specific tract of land has not been designated in said election.

(c) Upon the expiration of 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, the Superintendent shall prepare a complete list of all lands available from which selections of lieu lands may be made. The Superintendent shall also prepare a list of all former owners who elected to purchase lieu lands, numbering them consecutively without regard as to date of receipt of such election. The numbers shall then be placed on separate uniform slips of paper and placed in a bowl. The numbers will then be withdrawn from the bowl and a record made of the order in which they were withdrawn. The owner of the first number withdrawn shall be afforded the first opportunity to select lieu lands. The owners of lands represented by the following numbers will be afforded an opportunity to select lieu lands in the priority in which their numbers were drawn.

(d) When all selections of lieu lands have been made as provided in paragraph (c) of this section, the Secretary shall determine the comparability of the lands originally owned and the lieu selections. If the lieu selections are not substantially the same value as the lands originally owned, the owners shall be afforded an opportunity to make other selections which are substantially the same value.

(e) To determine whether the former Indian owned land and the selected lieu land in each case are of substantially the same value, the consideration paid by the United States for each tract may be accepted as indicative of the value of each tract at the time it was acquired. If information as to the price paid for any specific tract is not available, or if for any reason it is concluded that the consideration paid by the United States for the land is not

acceptable evidence as to value for this purpose, the Secretary shall cause the tracts to be appraised to determine their comparability. The appraisals of lands shall be made on the basis of current market values. The lands shall be considered to be substantially the same value if the differences in values do not exceed 10 percent of the greater value.

**§ 178.9 Lands formerly held subject to restrictions against alienation.**

Former Indian owners who held title to the lands which were acquired for the gunnery range subject to restrictions against alienation without the approval of the Secretary of the Interior shall be conveyed title to the reacquired lands in a trust status in the same manner as though they had held trust title to the lands taken.

**PART 179—LIFE ESTATES AND FUTURE INTERESTS**

Sec.

- 179.1 Purpose, scope, and information collection.
- 179.2 Definitions.
- 179.3 Application of State law.
- 179.4 Distribution of principal and income.
- 179.5 Value of life estates and remainders.
- 179.6 Notice of termination of life estate.

AUTHORITY: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201-11.

CROSS REFERENCE: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see parts 150, Land Records and Title Documents; 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights-of-Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, Leasing of Allotted Lands for Mining; 213, Leasing of Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency.

SOURCE: 53 FR 25953, July 8, 1988, unless otherwise noted.

**§ 179.1 Purpose, scope, and information collection.**

(a) These regulations set forth the authorities, policy and procedures governing the administration of life es-

tates and future interests in Indian lands by the Secretary of the Interior. These regulations do not apply to any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

(b) These regulations do not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**§ 179.2 Definitions.**

*Agency* means an Indian Agency or other field unit of the Bureau of Indian Affairs having the Indian land under its immediate jurisdiction.

*Contract Bonus* means cash consideration paid or agreed to be paid as incentive for execution of the contract.

*Income* means the rents and profits of real property and the interest on invested principal.

*Indian Land* means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

*Principal* means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

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

*Superintendent* means the designated officer in charge of an Agency.

**§ 179.3 Application of State law.**

In the absence of Federal law or Federally-approved tribal law to the contrary, the rules of life estates and future interests in the State in which the land is located shall be applied on Indian land. State procedural laws concerning the appointment and duties of private trustees shall not apply.

**§ 179.4 Distribution of principal and income.**

In all cases where the document creating the life estate does not specify a distribution of proceeds; or where the vested remainderman and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds;



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or where, by such document or agreement or by the application of State law, the open mine doctrine does not apply; the Secretary shall:

(a) Distribute all rents and profits, as income, to the life tenant.

(b) Distribute any contract bonus one-half each to the life tenant and the remainderman.

(c) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case §179.4(d) shall apply. The principal will be distributed to the remainderman upon termination of the life estate.

(d) In all other instances, distribute the principal immediately according to the formulas set forth in §179.5, investing all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

**§179.5 Value of life estates and remainders.**

(a) The value of a life estate shall be determined by the formula: Value of Life Estate =  $P \times L$ , where P = Value of principal, and L = Life estate factor for the age and sex of the life tenant, as shown in Column 2 on tables A(1) and A(2).

(b) The value of a remainder shall be determined by the formula: Value of Remainder =  $P \times R$ , where P = Value of principal, and R = Remainder factor for the age and sex of the life tenant, as shown in Column 3 on tables A(1) and A(2).

**TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST**

(1)—Age	(2)—Life estate	(3)—Remainder
0	0.9305	0.06295
1	.96217	.03783
2	.96170	.03830
3	.96053	.03947
4	.95905	.04095
5	.95732	.04268
6	.95540	.04460
7	.95331	.04669
8	.95195	.04895
9	.94861	.05139

**TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued**

(1)—Age	(2)—Life estate	(3)—Remainder
10	.94598	.05402
11	.94316	.05684
12	.94019	.05981
13	.93708	.06292
14	.93391	.06609
15	.93069	.06931
16	.92746	.07254
17	.92419	.07581
18	.92089	.07911
19	.91751	.08249
20	.91403	.08597
21	.91046	.08954
22	.90678	.09328
23	.90292	.09702
24	.89884	.10116
25	.89445	.10555
26	.88972	.11028
27	.88465	.11535
28	.87925	.12075
29	.87353	.12647
30	.86750	.13250
31	.86117	.13883
32	.85451	.14549
33	.84752	.15248
34	.84020	.15980
35	.83255	.16745
36	.82455	.17545
37	.81622	.18378
38	.80755	.19245
39	.79854	.20146
40	.78923	.21077
41	.77960	.22040
42	.76967	.23033
43	.75944	.24056
44	.74891	.25109
45	.73808	.26192
46	.72695	.27305
47	.71552	.28448
48	.70385	.29615
49	.69198	.30802
50	.67997	.32003
51	.66785	.33215
52	.65560	.34440
53	.64320	.35680
54	.63060	.36940
55	.61776	.38224
56	.60466	.39534
57	.59131	.40869
58	.57778	.42222
59	.56417	.43583
60	.55052	.44948
61	.53687	.46313
62	.52321	.47679
63	.50954	.49046
64	.49585	.50415
65	.48212	.51788
66	.46836	.53164
67	.45458	.54542
68	.44077	.55923
69	.42689	.57311
70	.41294	.58706
71	.39889	.60111

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TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Re-remainder
72	.38474	.61526
73	.37051	.62949
74	.35624	.64376
75	.34194	.65806
76	.32761	.67239
77	.31327	.68673
78	.29895	.70105
79	.28481	.71519
80	.27098	.72902
81	.25773	.74227
82	.24527	.75473
83	.23354	.76646
84	.22217	.77783
85	.21070	.78930
86	.19955	.80045
87	.18870	.81130
88	.17822	.82178
89	.16831	.83169
90	.15922	.84078
91	.15097	.84903
92	.14350	.85650
93	.13681	.86319
94	.13081	.86919
95	.12535	.87465
96	.11998	.88002
97	.11487	.88513
98	.10999	.89001
99	.10532	.89468
100	.10087	.89913
101	.09661	.90339
102	.09250	.90750
103	.08846	.91154
104	.08439	.91561
105	.08000	.92000
106	.07471	.92529
107	.06718	.93282
108	.05426	.94574
109	.02830	.97170

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Re-remainder
15	.95314	.04686
16	.95076	.04924
17	.94829	.05171
18	.94572	.05428
19	.94303	.05697
20	.94021	.05979
21	.93724	.06276
22	.93412	.06588
23	.93085	.06915
24	.92739	.07261
25	.92375	.07625
26	.91993	.08007
27	.91591	.08409
28	.91168	.08832
29	.90725	.09275
30	.90259	.09741
31	.89773	.10227
32	.89265	.10735
33	.88733	.11267
34	.88176	.11824
35	.87593	.12407
36	.86985	.13015
37	.86349	.13651
38	.85687	.14313
39	.84998	.15002
40	.84281	.15719
41	.83536	.16464
42	.82764	.17236
43	.81962	.18038
44	.81131	.18869
45	.80269	.19731
46	.79374	.20626
47	.78448	.21552
48	.77488	.22512
49	.76498	.23502
50	.75476	.24524
51	.74423	.25577
52	.73339	.26661
53	.72220	.27780
54	.71062	.28938
55	.69859	.30141
56	.68612	.31388
57	.67320	.32680
58	.65988	.34012
59	.64622	.35378
60	.63226	.36774
61	.61803	.38197
62	.60352	.39648
63	.58871	.41129
64	.57355	.42645
65	.55803	.44197
66	.54211	.45789
67	.52583	.47417
68	.50924	.49076
69	.49241	.50759
70	.47540	.52460
71	.45823	.54177
72	.44088	.55912
73	.42341	.57659
74	.40587	.59413
75	.38833	.61167
76	.37073	.62927

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Re-remainder
0	0.95383	0.04617
1	.97370	.02630
2	.97372	.02628
3	.97308	.02692
4	.97217	.02783
5	.97110	.02890
6	.96989	.03011
7	.96853	.03147
8	.96703	.03297
9	.96541	.03459
10	.96365	.03635
11	.96176	.03824
12	.95975	.04025
13	.95764	.04236
14	.95543	.04457

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TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
77 .....	.35307	.64693
78 .....	.33546	.66454
79 .....	.31811	.68189
80 .....	.30117	.69883
81 .....	.28489	.71511
82 .....	.26935	.73065
83 .....	.25439	.74561
84 .....	.23956	.76044
85 .....	.22441	.77559
86 .....	.21010	.78990
87 .....	.19674	.80326
88 .....	.18431	.81569
89 .....	.17285	.82715
90 .....	.16241	.83759
91 .....	.15301	.84699
92 .....	.14470	.85530
93 .....	.13741	.86259
94 .....	.13103	.86897
95 .....	.12535	.87465
96 .....	.11998	.88002
97 .....	.11487	.88513
98 .....	.10999	.89001
99 .....	.10532	.89468
100 .....	.10087	.89913
101 .....	.09661	.90339
102 .....	.09250	.90750
103 .....	.08846	.91154
104 .....	.08439	.91561
105 .....	.08000	.92000
106 .....	.07471	.92529
107 .....	.06718	.93282
108 .....	.05426	.94574
109 .....	.02830	.97170

**§ 179.6 Notice of termination of life estate.**

Upon receipt of a renunciation of interest or notice of death of an Indian or non-Indian who died possessed of a life estate in Indian land, the Superintendent having jurisdiction shall file a copy of the renunciation or death certificate or other evidence of death with the appropriate Bureau of Indian Affairs' Land Titles and Records Office for recording.

**PART 181—INDIAN HIGHWAY SAFETY PROGRAM**

Sec.

- 181.1 Purpose.
- 181.2 Definitions.
- 181.3 Am I eligible to receive a program grant?
- 181.4 How do I obtain an application?
- 181.5 How are applications ranked?

181.6 How are applicants informed of the results?

181.7 Appeals.

AUTHORITY: 23 U.S.C. 402; 25 U.S.C. 13.

SOURCE: 62 FR 55331, Oct. 24, 1997, unless otherwise noted.

**§ 181.1 Purpose.**

This part will assist the BIA Indian Highway Safety Program Administrator to disperse funds DOT/NHTSA has made available. The funds assist selected tribes with their proposed Highway Safety Projects. These projects are designed to reduce traffic crashes, reduce impaired driving crashes, increase occupant protection education, provide Emergency Medical Service training, and increase police traffic services.

**§ 181.2 Definitions.**

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

*Applicant* means an individual or persons on whose behalf an application for assistance and/or services has been made under this part.

*Application* means the process through which a request is made for assistance or services.

*Grant* means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct, or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

*Grantee* means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

*Recipient* means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

**§ 181.3 Am I eligible to receive a program grant?**

The Indian Highway Safety Program grant is available to any federally recognized tribe. Because of the limited financial resources available for the program, the Bureau of Indian Affairs

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(BIA) is unable to award grants to all applicants. Furthermore, some grant recipients may only be awarded a grant to fund certain aspects of their proposed tribal projects.

### § 181.4 How do I obtain an application?

BIA mails grant application packages for a given fiscal year to all federally recognized tribes by the end of February of the preceding fiscal year. Additional application packages are available from the Program Administrator, Indian Highway Safety Program, P.O. Box 2003, Albuquerque, New Mexico 87103. Each application package contains the necessary information concerning the application process, including format, content, and filing requirements.

### § 181.5 How are applications ranked?

BIA ranks each timely filed application by assigning points based upon four factors.

(a) *Factor No. 1—Magnitude of the problem* (Up to 50 points available). In awarding points under this factor, BIA will take into account the following:

- (1) Whether a highway safety problem exists.
- (2) Whether the problem is significant.
- (3) Whether the proposed tribal project will contribute to resolution of the identified highway safety problem.
- (4) The number of traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.
- (5) The number of alcohol-related traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.
- (6) The number of reported traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.
- (7) The number of reported alcohol-related traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(b) *Factor No. 2—Countermeasure selection* (Up to 40 points available). In awarding points under this factor, BIA will take into account the following:

- (1) Whether the countermeasures selected are the most effective for the identified highway safety problem.
- (2) Whether the countermeasures selected are cost effective.
- (3) Whether the applicant's objectives are realistic and attainable.
- (4) Whether the applicant's objectives are time framed and, if so, whether the time frames are realistic and attainable.

(c) *Factor No. 3—Tribal Leadership and Community Support* (Up to 10 points available). In awarding points under this factor, BIA will take into account the following:

- (1) Whether the applicant proposes using tribal resources in the project.
- (2) Whether the appropriate tribal governing body supports the proposal plan, as evidenced by a tribal resolution or otherwise.
- (3) Whether the community supports the proposal plan, as evidenced by letters or otherwise.

(d) *Factor No. 4—Past Performance* (+ or –10 points available). In awarding points under this factor, BIA will take into account the following:

- (1) Financial and programmatic reporting requirements.
- (2) Project accomplishments.

### § 181.6 How are applicants informed of the results?

BIA will send a letter to all applicants notifying them of their selection or non-selection for participation in the Indian Highway Safety Program for the upcoming fiscal year. BIA will explain to each applicant not selected for participation the reason(s) for non-selection.

### § 181.7 Appeals.

You may appeal actions taken by BIA officials under this part by following the procedures in 25 CFR part 2.