

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, 416, 477, 635, 2201 *et seq.*, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733, 4211; 44 U.S.C. 3101 *et seq.*

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### Subpart A—General Provisions

SOURCE: 77 FR 72467, Dec. 5, 2012, unless otherwise noted.

#### PURPOSE, DEFINITIONS, AND SCOPE

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

(a) The purpose of this part is to promote leasing on Indian land for housing, economic development, and other purposes.

(b) This part specifies:

- (1) Conditions and authorities under which we will approve leases of Indian land and may issue permits on Government land;
- (2) How to obtain leases;
- (3) Terms and conditions required in leases;
- (4) How we administer and enforce leases; and
- (5) Special requirements for leases made under special acts of Congress that apply only to certain Indian reservations.

(c) If any section, paragraph, or provision of this part is stayed or held invalid, the remaining sections, paragraphs, or provisions of this part remain in full force and effect.

#### § 162.002 How is this part subdivided?

(a) This part includes multiple subparts relating to:

- (1) General Provisions (Subpart A);
- (2) Agricultural Leases (Subpart B);
- (3) Residential Leases (Subpart C);

(4) Business Leases (Subpart D);

(5) Wind Energy Evaluation, Wind Resource, and Solar Resource Leases (Subpart E);

(6) Special Requirements for Certain Reservations (Subpart F); and

(7) Records (Subpart G).

(b) Leases covered by subpart B are not subject to the provisions in subpart A. Leases covered by subpart B are subject to the provisions in subpart G, except that if a provision in subpart B conflicts with a provision of subpart G, then the provision in subpart B will govern.

(c) Subpart F applies only to leases made under special acts of Congress covering particular Indian reservations. Leases covered by subpart F are also subject to the provisions in subparts A through G, except to the extent that subparts A through G are inconsistent with the provisions in subpart F or any act of Congress under which the lease is made, in which case the provisions in subpart F or any act of Congress under which the lease is made will govern.

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

*Adult* means a person who is 18 years of age or older.

*Appeal bond* means a bond posted upon filing of an appeal.

*Approval* means written authorization by the Secretary or a delegated official or, where applicable, the “deemed approved” authorization of an amendment or sublease.

*Assignment* means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee’s rights, and assumes all or some of the lessee’s obligations, under a lease.

*BIA* means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under § 162.018.

*Business day* means Monday through Friday, excluding federally recognized holidays and other days that the applicable office of the Federal Government is closed to the public.

*Cancellation* means BIA action to end a lease.

*Consent or consenting* means written authorization by an Indian landowner to a specified action.

*Constructive notice* means notice:

(1) Posted at the tribal government office, tribal community building, and/or the United States Post Office; and

(2) Published in the local newspaper(s) nearest to the affected land and/or announced on a local radio station(s).

*Court of competent jurisdiction* means a Federal, tribal, or State court with jurisdiction.

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

*Emanipated minor* means a person less than 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.

*Equipment installation plan* means a plan that describes the type and location of any improvements to be installed by the lessee to evaluate the wind resources and a schedule showing the tentative commencement and completion dates for installation of those improvements.

*Fair market rental* means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market, or as determined by competitive bidding.

*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 and administered by the United States, not including Indian land.

*Holdover* means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

*Housing for public purposes* means multi-family developments, single-family residential developments, and single-family residences:

(1) Administered by a tribe or tribally designated housing entity (TDHE); or

(2) Substantially financed using a tribal, Federal, or State housing assistance program or TDHE.

*Immediate family* means, in the absence of a definition under applicable tribal law, a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or member of the household.

*Indian* means:

(1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*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 and includes both individually owned Indian land and tribal land.

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

*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.

*Indian tribe* means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

*Interest*, when used with respect to Indian land, means an ownership right to the surface estate of Indian land.

*Lease* means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.

*Lease document* means a lease, amendment, assignment, sublease, or leasehold mortgage.

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

*Lessee* means person or entity who has acquired a legal right to possess Indian land by a lease under this part.

*Life estate* means an interest in property held only for the duration of a designated person(s)' life. A life estate may be created by a conveyance document or by operation of law.

*LTRO* means the Land Titles and Records Office of the BIA.

*Mail* means to send something by U.S. Postal Service or commercial delivery service.

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

*Mortgagee* means the holder of a leasehold mortgage.

*NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

*Nominal rental or nominal compensation* means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

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

*Notice of violation* means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified period of time to show cause why the lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.

*Orphaned minor* means a minor whose parents are deceased.

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

*Permanent improvements* means buildings, other structures, and associated infrastructure attached to the leased premises.

*Permit* means a written, non-assignable agreement between Indian landowners or BIA and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Indian land or Government land, for a specified purpose.

*Permittee* means a person or entity who has acquired a privilege to use Indian land or Government land by a permit.

*Power of attorney* means an authority by which one person enables another to act for him or her as attorney-in-fact.

*Remainder interest* 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.

*Restoration and reclamation plan* means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

*Secretary* means the Secretary of the Interior.

*Single-family residence* means a building with one to four dwelling units on a tract of land under a single residential lease, or as defined by applicable tribal law or other tribal authorization.

*Single-family residential development* means two or more single-family residences owned, managed, or developed by a single entity.

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

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

*TDHE* means a tribally designated housing entity under 25 U.S.C. 4103(22), a tribally-sponsored or tribally sanctioned not-for-profit entity, or any limited partnership or other entity organized for the purpose of developing or improving low-income housing utilizing tax credits.

*Termination* means action by Indian landowners to end a lease.

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*Trespass* means any unauthorized occupancy, use of, or action on any Indian land or Government land.

*Tribal authorization* means a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

*Tribal land* means any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of 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).

*Tribal land assignment* means a contract or agreement that conveys to tribal members or wholly owned tribal corporations any rights for the use of tribal lands, assigned by an Indian tribe in accordance with tribal laws or customs.

*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, and tribal court rulings.

*Trust or restricted land* means any tract, or interest therein, held in trust or restricted status.

*Trust or restricted status* means:

(1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians; or

(2) That one or more tribes or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

*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.

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

*Us/we/our* means the BIA.

*Violation* means a failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of our enforcement of a lease under this part no matter how “violation” or “default” is defined in the lease.

**§ 162.004 To what land does this part apply?**

(a) This part applies to Indian land and Government land, including any tract in which an individual Indian or Indian tribe owns an interest in trust or restricted status.

(1) We will not take any action on a lease of fee interests or collect rent on behalf of fee interest owners. We will not condition our approval of a lease of the trust and restricted interests on your having obtained a lease from the owners of any fee interests. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(2) We will not include the fee interests in a tract in calculating the applicable percentage of interests required for consent to a lease document.

(b) This paragraph (b) applies if there is a life estate on the land to be leased.

(1) When all of the trust or restricted interests in a tract are subject to a single life estate, the life tenant may lease the land without the consent of the owners of the remainder interests or our approval, for the duration of the life estate.

(i) The lease will terminate upon the death of the life tenant.

(ii) The life tenant must record the lease in the LTRO.

(iii) The lessee must pay rent directly to the life tenant under the terms of the lease unless the whereabouts of the life tenant are unknown, in which case we may collect rents on behalf of the life tenant.

(iv) We may monitor the use of the land on behalf of the owners of the remainder interests, as appropriate, but will not be responsible for enforcing the lease on behalf of the life tenant.

(v) We will not lease the remainder interests or join in a lease by the life tenant on behalf of the owners of the

remainder interests except as needed to preserve the value of the land.

(vi) We will be responsible for enforcing the terms of the lease on behalf of the owners of the remainder interests.

(2) When less than all of the trust or restricted interests in a tract are subject to a single life estate, the life tenant may lease his or her interest without the consent of the owners of the remainder interests, but must obtain the consent of the co-owners and our approval.

(i) We will not lease on the life tenant's behalf.

(ii) The lease must provide that the lessee pays the life tenant directly, unless the life tenant's whereabouts are unknown in which case we may collect rents on behalf of the life tenant.

(iii) The lease must be recorded in the LTRO, even where our approval is not required.

(iv) We will be responsible for enforcing the terms of the lease on behalf of the owners of the remainder interests.

(3) Where the remaindermen and the life tenant have not entered into a lease or other written agreement approved by the Secretary providing for the distribution of rent monies under the lease, the life tenant will receive payment in accordance with the distribution and calculation scheme set forth in Part 179 of this chapter.

(4) The life tenant may not cause or allow permanent injury to the land.

(5) The life tenant must provide a copy of the executed lease to all owners of the remainder interests.

WHEN TO GET A LEASE

**§ 162.005 When do I need a lease to authorize possession of Indian land?**

(a) You need a lease under this part to possess Indian land if you meet one of the criteria in the following table, unless you are authorized to possess or use the Indian land by a land use agreement not subject to this part under § 162.006(b) or by a permit.

If you are . . .	then you must obtain a lease under this part . . .
(1) A person or legal entity (including an independent legal entity owned and operated by a tribe) who is not an owner of the Indian land.	from the owners of the land before taking possession of the land or any portion thereof.

If you are . . .	then you must obtain a lease under this part . . .
(2) An Indian landowner of a fractional interest in the land.	from the owners of other trust and restricted interests in the land, unless all of the owners have given you permission to take or continue in possession without a lease.

(b) You do not need a lease to possess Indian land if:

(1) You are an Indian landowner who owns 100 percent of the trust or restricted interests in a tract; or

(2) You meet any of the criteria in the following table.

You do not need a lease if you are . . .	but the following conditions apply . . .
(i) A parent or guardian of a minor child who owns 100 percent of the trust or restricted interests in the land.	We may require you to provide evidence of a direct benefit to the minor child and when the child is no longer a minor, you must obtain a lease to authorize continued possession.
(ii) A 25 U.S.C. 477 corporate entity that manages or has the power to manage the tribal land directly under its Federal charter or under a tribal authorization (not under a lease from the Indian tribe).	You must record documents in accordance with § 162.343, § 162.443, and § 162.568.

**§ 162.006 To what types of land use agreements does this part apply?**

(a) This part applies to leases of Indian land entered into under 25 U.S.C. 380, 25 U.S.C. 415(a), and 25 U.S.C. 4211, and other tribe-specific statutes authorizing surface leases of Indian land with our approval.

(b) This part does not apply to:

(1) Land use agreements entered into under other statutory authority, such as the following:

This part does not apply to . . .	which are covered by . . .
(i) Contracts or agreements that encumber tribal land under 25 U.S.C. 81.	25 CFR part 84.
(ii) Traders' licenses . . . . .	25 CFR part 140.
(iii) Timber contracts . . . . .	25 CFR part 163.
(iv) Grazing permits . . . . .	25 CFR part 166.
(v) Rights-of-way . . . . .	25 CFR part 169.
(vi) Mineral leases, prospecting permits, or mineral development agreements.	25 CFR parts 211, 212, 213, 225, 226, 227.
(vii) Tribal land assignments and similar instruments authorizing uses of tribal land.	tribal laws.

(2) Leases of water rights associated with Indian land, except to the extent

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the use of water rights is incorporated in a lease of the land itself.

(3) The following leases, which do not require our approval, except that you must record these leases in accordance with §§162.343, 162.443, and 162.568:

- (i) A lease of tribal land by a 25 U.S.C. 477 corporate entity under its charter to a third party for a period not to exceed 25 years; and
- (ii) A lease of Indian land under a special act of Congress authorizing leasing without our approval.

**§162.007 To what permits does this part apply?**

(a) Permits for the use of Indian land do not require our approval; however, you must fulfill the following requirements:

- (1) Ensure that permitted activities comply with all applicable environmental and cultural resource laws; and
- (2) Submit all permits to the appropriate BIA office to allow us to maintain a copy of the permit in our records. If we determine within 10 days of submission that the document does not meet the definition of “permit” and grants a legal interest in Indian land, we will notify you that a lease is required.

(b) The following table provides examples of some common characteristics of permits versus leases.

Permit	Lease
Does not grant a legal interest in Indian land.	Grants a legal interest in Indian land.
Shorter term .....	Longer term.
Limited use .....	Broader use with associated infrastructure.
Permittee has non-possessory right of access.	Lessee has right of possession, ability to limit or prohibit access by others.
Indian landowner may terminate at any time.	Indian landowner may terminate under limited circumstances.

(c) We will not administer or enforce permits on Indian land.

(d) We may grant permits for the use of Government land. The leasing regulations in this part will apply to such permits, as appropriate.

**§162.008 Does this part apply to lease documents I submitted for approval before January 4, 2013?**

This part applies to all lease documents, except as provided in §162.006. If you submitted your lease document to

us for approval before January 4, 2013, the qualifications in paragraphs (a) and (b) of this section also apply.

(a) If we approved your lease document before January 4, 2013, this part applies to that lease document; however, if the provisions of the lease document conflict with this part, the provisions of the lease govern.

(b) If you submitted a lease document but we did not approve it before January 4, 2013, then:

- (1) We will review the lease document under the regulations in effect at the time of your submission; and
- (2) Once we approve the lease document, this part applies to that lease document; however, if the provisions of the lease document conflict with this part, the provisions of the lease document govern.

**§ 162.009 Do I need BIA approval of a subleasehold mortgage?**

Unless the lease provides otherwise, sublease, or by request of the parties, you do not need our approval of a subleasehold mortgage. If the lease or sublease requires, or parties request, our approval, we will use the procedures governing our review of leasehold mortgages.

**HOW TO GET A LEASE**

**§ 162.010 How do I obtain a lease?**

(a) This section establishes the basic steps to obtain a lease.

- (1) Prospective lessees must:
  - (i) Directly negotiate with Indian landowners for a lease; and
  - (ii) For fractionated tracts, notify all Indian landowners and obtain the consent of the Indian landowners of the applicable percentage of interests, under §162.012; and
- (2) Prospective lessees and Indian landowners must:
  - (i) Prepare the required information and analyses, including information to facilitate our analysis under applicable environmental and cultural resource requirements; and
  - (ii) Ensure the lease complies with the requirements in subpart C for residential leases, subpart D for business leases, or subpart E for wind energy evaluation, wind resource, or solar resource leases; and

(3) Prospective lessees or Indian landowners must submit the lease, and required information and analyses, to the BIA office with jurisdiction over the lands covered by the lease, for our review and approval.

(b) Generally, residential, business, wind energy evaluation, wind resource, and solar resource leases will not be advertised for competitive bid.

**§ 162.011 How does a prospective lessee identify and contact individual Indian landowners to negotiate a lease?**

(a) Prospective lessees may submit a written request to us to obtain the following information. The request must specify that it is for the purpose of negotiating a lease:

- (1) Names and addresses of the individual Indian landowners or their representatives;
- (2) Information on the location of the parcel; and
- (3) The percentage of undivided interest owned by each individual Indian landowner.

(b) We may assist prospective lessees in contacting the individual Indian landowners or their representatives for the purpose of negotiating a lease, upon request.

(c) We will assist individual Indian landowners in lease negotiations, upon their request.

**§ 162.012 What are the consent requirements for a lease?**

(a) For fractionated tracts:  
 (1) Except in Alaska, the owners of the following percentage of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a lease of that tract:

If the number of owners of the undivided trust or restricted interest in the tract is . . .	Then the required percentage of the undivided trust or restricted interest is . . .
(i) One to five, .....	90 percent;
(ii) Six to 10, .....	80 percent;
(iii) 11 to 19, .....	60 percent;
(iv) 20 or more, .....	Over 50 percent.

(2) Leases in Alaska require consent of all of the Indian landowners in the tract.

(3) If the prospective lessee is also an Indian landowner, his or her consent will be included in the percentages in paragraphs (a)(1) and (2) of this section.

(4) Where owners of the applicable percentages in paragraph (a)(1) of this section consent to a lease document:

(i) That lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document; and

(ii) That lease document will not bind a non-consenting Indian tribe, except with respect to the tribally owned fractional interest, and the non-consenting Indian tribe will not be treated as a party to the lease. Nothing in this paragraph affects the sovereignty or sovereign immunity of the Indian tribe.

(5) We will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the percentages in paragraph (a)(1) of this section based on our records on the date on which the lease is submitted to us for approval.

(b) Tribal land subject to a tribal land assignment may only be leased with the consent of the tribe.

**§ 162.013 Who is authorized to consent to a lease?**

(a) Indian tribes, adult Indian landowners, and emancipated minors, may consent to a lease of their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

- (1) An adult with legal custody acting on behalf of his or her minor children;
- (2) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;
- (3) Any person who is authorized to practice before the Department of the Interior under 43 CFR 1.3(b) and has been retained by the Indian landowner for this purpose;

(4) BIA, under the circumstances in paragraph (c) of this section; or

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

- (i) Meets all of the formal requirements of any applicable law under § 162.014;

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(ii) Identifies the attorney-in-fact; and

(iii) Describes the scope of the powers granted, to include leasing land, and any limits on those powers.

(c) BIA may give written consent to a lease, and that consent must be counted in the percentage ownership described in § 162.012, on behalf of:

(1) The individual owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined;

(2) An individual whose whereabouts are unknown to us, after we make a reasonable attempt to locate the individual;

(3) An individual who is found to be non compos mentis or determined to be an adult in need of assistance who does not have a guardian duly appointed by a court of competent jurisdiction, or an individual under legal disability as defined in part 115 of this chapter;

(4) An orphaned minor who does not have a guardian duly appointed by a court of competent jurisdiction;

(5) An individual who has given us a written power of attorney to lease their land; and

(6) The individual Indian landowners of a fractionated tract where:

(i) We have given the Indian landowners written notice of our intent to consent to a lease on their behalf;

(ii) The Indian landowners are unable to agree upon a lease during a 3 month negotiation period following the notice; and

(iii) The land is not being used by an Indian landowner under § 162.005(b)(1).

**LEASE ADMINISTRATION**

**§ 162.014 What laws will apply to leases approved under this part?**

(a) In addition to the regulations in this part, leases approved under this part:

(1) Are subject to applicable Federal laws and any specific Federal statutory requirements that are not incorporated in this part;

(2) Are subject to tribal law, subject to paragraph (b) of this section; and

(3) Are not subject to State law or the law of a political subdivision thereof except that:

(i) State law or the law of a political subdivision thereof may apply in the

specific areas and circumstances in Indian country where the Indian tribe with jurisdiction has made it expressly applicable;

(ii) State law may apply in the specific areas and circumstances in Indian country where Congress has made it expressly applicable; and

(iii) State law may apply where a Federal court has expressly applied State law to a specific area or circumstance in Indian country in the absence of Federal or tribal law.

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

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

(2) 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

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

(c) Unless prohibited by Federal law, the parties to a lease may subject that lease to State or local law in the absence of Federal or tribal law, if:

(1) The lease includes a provision to this effect; and

(2) The Indian landowners expressly agree to the application of State or local law.

(d) An agreement under paragraph (c) of this section does not waive a tribe's sovereign immunity unless the tribe expressly states its intention to waive sovereign immunity in the lease of tribal land.

**§ 162.015 May a lease contain a preference consistent with tribal law for employment of tribal members?**

A lease of Indian land may include a provision, consistent with tribal law, requiring the lessee to give a preference to qualified tribal members, based on their political affiliation with the tribe.



**§ 162.016 Will BIA comply with tribal laws in making lease decisions?**

Unless contrary to Federal law, BIA will comply with tribal laws in making decisions regarding leases, including tribal laws regulating activities on leased land under tribal jurisdiction, including, but not limited to, tribal laws relating to land use, environmental protection, and historic or cultural preservation.

**§ 162.017 What taxes apply to leases approved under this part?**

(a) Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

(b) Subject only to applicable Federal law, activities under a lease conducted on the leased premises are not subject to any fee, tax, assessment, levy, or other charge (e.g., business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities may be subject to taxation by the Indian tribe with jurisdiction.

(c) Subject only to applicable Federal law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests may be subject to taxation by the Indian tribe with jurisdiction.

**§ 162.018 May tribes administer this part on BIA's behalf?**

A tribe or tribal organization may contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f *et seq.*) to administer any portion of this part that is not an approval or disapproval of a lease document, waiver of a requirement for lease approval (including but not limited to waivers of fair market rental and valuation, bonding, and insurance), cancellation of a lease, or an appeal.

**§ 162.019 May a lease address access to the leased premises by roads or other infrastructure?**

A lease may address access to the leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 CFR part 169. Roads or other infrastructure within the leased premises do not require compliance with 25 CFR part 169 during the term of the lease, unless otherwise stated in the lease.

**§ 162.020 May a lease combine tracts with different Indian landowners?**

(a) We may approve a lease that combines multiple tracts of Indian land into a unit, if we determine that unitization is:

(1) In the Indian landowners' best interest; and

(2) Consistent with the efficient administration of the land.

(b) For a lease that covers multiple tracts, the minimum consent requirements apply to each tract separately.

(c) Unless the lease provides otherwise, the rent or other compensation will be prorated in proportion to the acreage each tract contributes to the entire lease. Once prorated per tract, the rent will be distributed to the owners of each tract based upon their respective percentage interest in that particular tract.

**§ 162.021 What are BIA's responsibilities in approving leases?**

(a) We will work to provide assistance to Indian landowners in leasing their land, either through negotiations or advertisement.

(b) We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, including 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.*

(c) We will promptly respond to requests for BIA approval of leases, as specified in §§ 162.340, 162.440, 162.530, and 162.565.

(d) We will work to ensure that the use of the land is consistent with the Indian landowners' wishes and applicable tribal law.

## § 162.022

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

(a) Upon written notification from an Indian landowner that the lessee has failed to comply with the terms and conditions of the lease, we will promptly take appropriate action, as specified in §§ 162.364, 162.464, and 162.589. Nothing in this part prevents an Indian landowner from exercising remedies available to the Indian landowners under the lease or applicable law.

(b) We will promptly respond to requests for BIA approval of amendments, assignments, leasehold mortgages, and subleases, as specified in subparts C, D, and E.

(c) We will respond to Indian landowners' concerns regarding the management of their land.

(d) We will take emergency action as needed to preserve the value of the land under § 162.024.

### **§ 162.023 What if an individual or entity takes possession of or uses Indian land without an approved lease or other proper authorization?**

If an individual or entity takes possession of, or uses, Indian land without a lease and a lease is required, the unauthorized possession or use is a trespass. We may take action to recover possession, including eviction, on behalf of the Indian landowners and pursue any additional remedies available under applicable law. The Indian landowners may pursue any available remedies under applicable law.

### **§ 162.024 May BIA take emergency action if Indian land is threatened?**

(a) We may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm to Indian land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

(b) We will make reasonable efforts to notify the individual Indian landowners before and after taking emergency action. In all cases, we will notify the Indian landowners after taking emergency action by actual or con-

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structive notice. We will provide written notification of our action to the Indian tribe exercising jurisdiction over the Indian land before and after taking emergency action.

### **§ 162.025 May decisions under this part be appealed?**

Appeals from BIA decisions under this part may be taken under part 2 of this chapter, except for deemed approvals and as otherwise provided in this part. For purposes of appeals from BIA decisions under this part, "interested party" is defined as any person whose own direct economic interest is adversely affected by an action or decision. Our decision to disapprove a lease may be appealed only by an Indian landowner. Our decision to disapprove any other lease document may be appealed only by the Indian landowners or the lessee.

### **§ 162.026 Who can answer questions about leasing?**

An Indian landowner or prospective lessee may contact the local BIA realty office (or of any tribe acting on behalf of BIA under § 162.018) with jurisdiction over the land for answers to questions about the leasing process.

### **§ 162.027 What documentation may BIA require in approving, administering, and enforcing leases?**

(a) We may require that the parties provide any pertinent environmental and technical records, reports, and other information (e.g., records of lease payments), related to approval of lease documents and enforcement of leases.

(b) We will adopt environmental assessments and environmental impact statements prepared by another Federal agency, Indian tribe, entity, or person under 43 CFR 46.320 and 42 CFR 1506.3, including those prepared under 25 U.S.C. 4115 and 25 CFR part 1000, but may require a supplement. We will use any reasonable evidence that another Federal agency has accepted the environmental report, including but not limited to, letters of approval or acceptance.

(c) Upon our request, the parties must make appropriate records, reports, or information available for our inspection and duplication. We will

keep confidential any information that is marked confidential or proprietary and will exempt it from public release to the extent allowed by law and in accordance with 43 CFR part 2. We may, at our discretion, treat a lessee's failure to cooperate with such request, provide data, or grant access to information or records as a lease violation.

**§ 162.028 How may an Indian tribe obtain information about leases on its land?**

Upon request of the Indian tribe with jurisdiction, BIA will promptly provide information on the status of leases on tribal land, without requiring a Freedom of Information Act request.

**§ 162.029 How does BIA provide notice to the parties to a lease?**

(a) When this part requires us to notify the parties of the status of our review of a lease document (including but not limited to, providing notice to the parties of the date of receipt of a lease document, informing the parties of the need for additional review time, and informing the parties that a lease proposal package is not complete):

(1) For leases of tribal land, we will notify the lessee and the tribe by mail; and

(2) For leases of individually owned Indian land, we will notify the lessee by mail and, where feasible, the individual Indian landowners either by constructive notice or by mail.

(b) When this part requires us to notify the parties of our determination to approve or disapprove a lease document, and to provide any right of appeal:

(1) For leases of tribal land, we will notify the lessee and the tribe by mail; and

(2) For leases of individually owned Indian land, we will notify the lessee by mail and the individual Indian landowners either by constructive notice or by mail.

**Subpart B—Agricultural Leases**

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

For purposes of this subpart:

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

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

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

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

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

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

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

*Day* means a calendar day.

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

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

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

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

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

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