

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 162****RIN 1076-AE36****Trust Management Reform: Residential Leases and Business Leases****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Indian Affairs (BIA) proposes to revise its regulations in the area of residential leases and business leases on trust and restricted land. The revisions would further fulfill the Secretary's fiduciary responsibility to federally recognized tribes and individual Indians. These regulations currently have reserved subparts for Residential Lease and Business Lease. These subparts, along with a subpart for General Provisions, will eventually provide regulations for residential and business leases on trust and restricted land. When we publish these changes as a final rule, we will remove the current subpart for Non-Agricultural Leases.

**DATES:** Written comments must be submitted no later than May 10, 2004.

**ADDRESSES:** Comments on this proposed rule should be addressed to: Ben Burshia, Chief, Division of Real Estate Services, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street NW., MS 4513-MIB, Washington, DC 20240. Submissions by facsimile should be sent to (202) 219-1255. Electronic comment submission is not available at this time.

DOI invites comments on the information collection requirements in the proposed regulation. You may submit comments by telefacsimile at (202) 395-5806 or by e-mail at [Ruth\\_Solomon@omb.eop.gov](mailto:Ruth_Solomon@omb.eop.gov). Please also send a copy of your comments to BIA at the location specified above. Note that requests for comments on the rule and the information collection are separate.

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, 202-219-1195.

**SUPPLEMENTARY INFORMATION:**

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- H. Civil Justice Reform (Executive Order 12988)
- I. National Environmental Policy Act (NEPA)
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**I. Background**

As part of trust reform initiatives, in January of 2001, the Bureau of Indian Affairs issued final Leasing and Permitting Regulations, 25 CFR part 162 (66 FR 7109, January 22, 2001). This final rule replaced the existing part 162 in its entirety. At that time, we reserved Subpart C, Residential Leases, and Subpart D, Business Leases, for future rulemaking to include the Indian Land Consolidation Act Amendments of 2000 and all other issues related to residential and business leases.

This proposed rule provides guidance for processing individual Indian and tribal residential and business leases on trust and restricted land. Subpart F, Non-agricultural Leases, currently provides general leasing regulations for all non-agricultural leases, which includes residential and business leases. The current Subpart F is general and does not differentiate between business and residential leases. Therefore, with text added to reserved Subparts C and D, Subpart F will be removed.

This proposed rule addresses the specific needs of residential and business leases and thus, will facilitate streamlining the processing of residential and business leases. This proposed rule will strengthen the services that we provide to federally recognized tribes and individual Indians. The rule is consistent with our fiduciary responsibility to individual Indians and tribes and reflects the provisions of the Departmental Manual, Part 303, Chapter 2, Principles for Managing Indian Trust Assets.

**II. Subpart-by-Subpart Analysis**

25 CFR part 162, Subpart C, Residential Leases, and Subpart D, Business Leases, will replace Subpart F, Non-Agricultural Leases. The consent requirements in the proposed regulations are consistent with the Indian Land Consolidation Act Amendments (ILCA) of 2000. Because the ILCA Amendments of 2000 do not apply to tribes in Alaska, the consent requirements for Alaska will remain the same as the previous regulations governing leasing. The proposed regulations provide for recognition and accommodation of tribal laws regulating

activities for residential and business leases, unless prohibited by federal law. The proposed regulations provide procedures for lease amendments, assignments, subleases and leasehold mortgages.

Under Subpart C, Residential Leases, of the proposed regulation, the definition for Residential Leases covers both ground leases and leases for residential development on tribal and allotted land. The definition of Residential Lease is defined as single-family homes and housing for public purposes. This definition was developed in order to provide regulations that streamline the processing of residential leases for Indian housing; leases not meeting this definition will be processed under Subpart D, Business Leases. The proposed regulations provide for a 30-day time-frame under which the Secretary or her designee must issue a decision on a complete residential lease application. Residential leases for nominal rent will be approved on tribal land if the rent is established by the tribe or on individual Indian land when the tenant is a member of the landowner's immediate family or a co-owner in the tract. Rental adjustments are not required for a residential lease unless negotiated in the lease. Also, bonds may not be required, if specified in the lease and upon a determination that it is in the best interest of the landowner(s). Subpart C also includes provisions for enforcement of lease violations.

Subpart D, Business Leases, of the proposed regulations covers both ground leases (undeveloped land) and leases of developed land (together with improvements thereon) on tribal or allotted land, authorizing the development or use of the leased premises. Leases covered by this subpart may authorize the construction of single-purpose or mixed use projects designed for use by any number of tenants or occupants. The leases may include: (1) Leases for residential purposes that are not covered in Subpart C; (2) Leases for public, religious, educational, and recreational purposes; and (3) Commercial or industrial leases for retail, office, manufacturing, storage, and/or other business purposes. The potential lessee may negotiate a lease with an Indian landowner. The lease is subject to the review and approval of the Secretary. Generally, business leases will not be advertised for competitive bid. A potential lessee may request, in writing, the names and addresses of the Indian landowners or their representatives for the purposes of negotiating a lease. The proposed

business lease regulations provide for the following when considering approval, disapproval or when requesting additional document information: When we receive a business lease and all of the supporting documents that conform to this part, we will approve, disapprove, or return for additional documents/corrections/modifications to the lease within 60 days of the date of our receipt of the documents. If we do not act within 60 days, the Indian landowner may take appropriate action under part 2 of this chapter. If we 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 business leases that have been granted or approved will be provided to the tenant, and made available to the Indian landowners upon request.

### III. Public Comments

The Bureau of Indian Affairs, with tribal participation, formulated a team to draft regulations for residential and business leases. On June 5, 2002, the initial draft Residential Lease and Business Lease regulations were distributed to the Regional Offices, the National Congress of American Indians, and the Inter-Tribal Monitoring Association, requesting comments. The comments received through that distribution were considered in the development of the final draft regulations as were the comments received from Tribal Consultations (meetings) in Portland, Oregon; Phoenix, Arizona; and Nashville, Tennessee, in September of 2002. In addition, the comments received from further consultation sessions in November of 2002 were taken into consideration in the formulation of the following proposed Residential and Business Leasing regulations. The consideration of comments has resulted in refinement, clarification and restructuring of the residential and business lease provisions.

In response to comments received, in Subpart C, Residential Leases, the definition of "immediate family" has been expanded to include "or when some other special relationship exists between the lessor and the lessee or special circumstances exist that in the opinion of the Secretary warrant the approval of the residential lease," based on 25 CFR 152.25(d). The definition of "single-family home" has been amended to include "a building with one to four dwelling units on a tract of land under a single lease" and a definition for "tribal land assignment" is provided.

The consent requirements were amended to clarify that the applicable percent for consent pertains to the amount of undivided interest owned and not the amount of owners. Language was provided to clarify who can represent the Indian landowners in negotiating or granting a residential lease. The environmental requirements were amended to include an explicit commitment to adopt tribal environmental reviews, to the extent such adoption is allowed under our procedures implementing the National Environmental Policy Act of 1969 (NEPA).

Comments were received requesting clarification on whether or not a 30-year lease can be paid in full at one time. Consistent with 25 U.S.C. 415b, the proposed regulations allow for payment in full only if it is provided for in the lease, otherwise rental payments may not be made or accepted more than one year in advance of the due date. Comments were received requesting more than one option to renew a residential lease. The proposed regulations have been amended to allow for more than one option to renew a residential lease provided the lease authority is the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4211. Comments were received from the Department of Housing and Urban Development (HUD) requesting that we provide language for the approval of leasehold mortgages on a residential lease for the purposes of refinancing a loan. The proposed regulations have been amended to expand the scope for approval of leasehold mortgages on residential leases, which would include refinancing. The Secretary will approve a leasehold mortgage under a residential lease when the required consents have been obtained from the Indian landowners and the Secretary finds that it is in the best interest of the landowner. HUD requested that along with the landowner's approval for cancellation of a lease, that we require the approval of the leasehold mortgagee. The proposed regulations were amended to include a requirement for approval from the mortgagee before cancellation of the residential lease. Comments were received requesting clarification of what would happen in the instance that a tenant does not diligently develop or abandons the leased premises. The proposed regulations were amended providing language to clarify this section of the regulation.

In the consideration of comments received, Subpart D, Business Leases, we are adding to the proposed

regulations the key terms under § 162.101 "Approval which means written authorization by the Secretary or his/her delegated official and must be a part of the instrument being approved." Also, under this same section we are proposing to add for clarification, the term "Fair annual rental or 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." The term Fair Annual Rental will be removed. Fair market rental relates to a period of time which may be more or less than one year, whereas, fair annual rental is for a one year period. We received comments on approvals and the proposed regulations were changed to add to § 162.107 paragraph "(c) All approvals must be in writing for permits, leases, subleases, assignments, modifications, amendments, etc., unless otherwise provided in the master lease." During consultations, there was a comment about *Who can represent the Indian landowners in negotiating or granting a lease?* The proposed regulations include paragraph "(d) Any person who is authorized to practice before the Department of the Interior under 43 CFR part 1 and has been given written authorization for representation." A comment was received about the requirement of appraisals on tribal land being unduly burdensome to tribal business and economic development. The proposed regulations include under § 162.407 paragraph "(d) Upon a duly adopted Tribal Resolution, we will use some other type of valuation for a business lease on tribal land, subject to our approval." A comment was received on NEPA compliance. We address this concern in requiring that the tenant should provide any environmental, archaeological reports and other documents, as determined by us to be necessary to facilitate our compliance with federal and tribal and/or local land use requirements, if applicable. We will adopt any tribal environmental review as our NEPA review, to the extent such adoption meets our standards in implementing NEPA. We received a comment inquiring on, *May a lease be mortgaged without the consent of the Indian landowners?* The proposed regulations include under § 162.430, "\* \* \* provided, if the approved lease includes the following: (a) The lease may be mortgaged without the further consent of the Indian landowners for the purpose of borrowing capital for commercially reasonable purposes defined in the lease if the lease contains a general authorization for such a

mortgage; (b) The mortgage cannot secure any unrelated debts owed by the lessee to the mortgagee; (c) The mortgage may be refinanced; and (d) The encumbrance instrument must be approved by us." A comment was received on *What happens if the lessee abandons the lease?* The proposed regulations include under § 162.457, "(a) If the lessee abandons the leased premises, the lessee and its sureties will not be relieved of the obligations contained in the lease; and (b) We may cancel the lease, effective immediately, and attempt to find a new lessee for the property." There were other comments on the typographical, grammatical and punctuation of the draft regulation, they were duly noted and changed appropriately. Other comments were acknowledged, considered and duly noted when we felt those items were either already addressed or were statutorily resolved.

#### IV. Procedural Requirements

##### A. Regulatory Planning and Review (Executive Order 12866)

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

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

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

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

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

This proposed rule describes how the BIA will administer residential and business leases on trust and restricted land. Thus, the impact of the rule is confined to the Federal Government and individual Indian and tribal landowners and does not impose a compliance burden on the economy generally. Accordingly, it has been determined that this rule is not a "significant regulatory action" from an economic standpoint, or otherwise creates any

inconsistencies or budgetary impacts to any other agency or federal program.

##### B. Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*e.g.*, small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

This proposed implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. Accordingly, this proposed regulation will not have an economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

##### C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under 5 U.S.C. 804(2), SBREFA, a rule is major if OMB finds that it results in (1) An annual effect on the economy of \$100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This proposed rule is not a major rule as defined by section 804 of the SBREFA. This rule is uniquely confined to the Federal Government, individual Indians and tribal landowners, thus, it will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This proposed rule provides regulatory guidance for residential and business leases on trust and restricted lands owned by individual Indians and tribes.

##### D. Unfunded Mandates Reform Act

The proposed implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48).

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). The impact of this proposed rule is confined to residential and business lease on land held in trust for individual Indians and tribes. Accordingly, this proposed rule will not result in the expenditure of \$100 million or more in any one year.

##### E. Takings Implication Assessment (Executive Order 12630)

This proposed implementation guidance does not have significant "takings" implications. Policies that have taking implications do not include actions affecting properties that are held in trust by the United States. The residential and business leasing regulations provide specific regulatory guidance on trust lands.

##### F. Energy Effects (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 which speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is restricted to 25 CFR part 162, subpart C, Residential Leases, and subpart D, Business Leases, on lands held in trust for individual Indians and tribes. Mineral development on lands held in trust for individual Indians and tribes is regulated under the Indian Mineral Development Act. Regulations for mineral development are provided under a separate part in 25 CFR parts 211, 212 and 225. This proposed implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

##### G. Federalism (Executive Order 13132)

This proposed implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States. While this proposed rule will impact tribal governments, there is no federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to

warrant the preparation of a federalism assessment.

*H. Civil Justice Reform (Executive Order 12988)*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729, February 7, 1996, imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for effective conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3 (a), section (b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to insure that the regulations: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affecting conduct while promoting simplification and burden reduction; (4) specifies the retroactive affect if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of the applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. This proposed implementation guidance does not unduly burden the judicial system and meets the applicable

standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

*I. National Environmental Policy Act (NEPA)*

This proposed rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under the proposed rule (*i.e.*, approval or disapproval of leases of Indian lands) will be subject at the time of the action itself to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

*J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Department has determined that because the proposed rulemaking will uniquely affect tribal governments it will follow Department and Administrative protocols in consulting with tribal governments on the rulemaking. Consequently, tribal governments will be notified through this **Federal Register** notice and through the BIA field offices, of the ramifications of this rulemaking. This will enable tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely input in

the development of the final rule. This will reinforce good intergovernmental relations with tribal governments and better inform, educate and advise such tribal governments on compliance requirements of the rule making. We consulted with tribal representatives during the formulation of this proposed regulation. On June 5, 2002, the initial draft Residential Lease and Business Lease regulations were distributed to the Bureau of Indian Affairs' Regional Offices, the National Congress of American Indians, and the Inter-Tribal Monitoring Association, requesting comments. The comments received through that distribution were considered in the development of the final draft regulations. We held Tribal Consultations (meetings) in Portland, Oregon, Phoenix, Arizona and Nashville, Tennessee, in September 2002. The comments received from these consultations were taken into consideration in the formulation of the following proposed Residential and Business Leasing regulations. We have committed to consulting with tribal representatives in the formulation of a final rule for the Residential and Business Lease regulations.

*K. Paperwork Reduction Act (44 U.S.C. 3501)*

This regulation requires an information collection from 10 or more parties, and therefore is subject to review under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Because the sections where the information collections occur has changed from the proposed rule of July 14, 2000 (65 FR 43918) and the final rule of January 22, 2001, we are including a table showing the section changes.

TABLE SHOWING CHANGES IN INFORMATION COLLECTION

Old CFR cite	New CFR cite	Section title	Change in collection	Explanation of change																																					
162.7 .....	162.301	May individual Indian landowners exempt their land from tribal policies for leasing on Indian Agricultural lands?	No Change .....	There is no change in collection of information. The regulatory requirements have been separated and clarified by providing separate regulations for Residential and Business Leases.																																					
162.205 * .....	162.401				162.8 .....	162.301	What notifications are required that tribal law applies to a lease on Indian Agricultural lands?	No Change .....	There is no change in collection of information. The regulatory requirements have been separated and clarified by providing separate regulations for Residential and Business Leases.	162.109 * .....	162.401	162.204 * .....					162.12 .....	162.309	How will the Secretary decide whether to grant and/or approve a lease?	No Change .....	There is no change in collection of information. The regulatory requirements have been separated and clarified by separate regulations.	162.241 * .....	162.409	162.14 .....	162.312	Must a lease be recorded? .....	No Change .....	There is no change in collection of information. The regulatory requirements have been separated and clarified by providing separate regulations for Residential and Business Leases.	162.246 * .....	162.412	162.18 .....	162.313	Is there a standard lease form? .....	No Change .....	Same as above.	162.218 * .....	162.413	162.20 .....	162.316	How is leased land described? .....	No Change .....
162.8 .....	162.301	What notifications are required that tribal law applies to a lease on Indian Agricultural lands?	No Change .....	There is no change in collection of information. The regulatory requirements have been separated and clarified by providing separate regulations for Residential and Business Leases.																																					
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162.20 .....	162.316	How is leased land described? .....	No Change .....	Same as above.																																					
	162.416																																								



TABLE OF BURDEN FOR 25 CFR PART 162 (1076–0155)—Continued

CFR section	Number of respondents	Number of annual responses	Hourly burden per response	Total annual hourly burden	Salary <sup>1</sup>	Federal burden per response	Total Federal annual burden hours	Salary <sup>2</sup>
162.305 .....	0	0	0 .....	0	0	0 .....	0	0
162.405 .....								
162.314 .....	7,250	7,250	3 hrs .....	21,750	402,810	3 hrs .....	21,750	402,810
162.414 .....								
162.317 .....	725	725	30 min .....	1,450	26,854	30 min .....	1,450	26,854
162.417 .....								
162.342 .....	7,250	7,250	15 min .....	1,813	33,576	15 min .....	1,813	33,576
162.445 .....								
162.348 .....	145	145	30 min .....	73	1,352	30 min .....	73	1,352
162.451 .....								
162.352 .....	145	145	30 min .....	73	1,352	30 min .....	73	1,352
162.455 .....								
Totals	14,500	121,140		106,065	1,962,365		106,065	1,962,365

<sup>1</sup> \$18.52 × total hourly burden = total hourly burden cost.  
<sup>2</sup> \$18.52 × total hourly burden = total Federal burden cost.

In addition, BIA collects fees for processing submitted documents, as set forth in sections 162.342 and 162.445, which can be considered as part of the information collection burden.

DOI invites comments on the information collection requirements in the proposed regulation. You may submit comments by telefacsimile at (202) 395–5806 or by e-mail at *Ruth\_Solomon@omb.eop.gov*. Please also send a copy of your comments to BIA at the location specified under the heading **ADDRESSES**. Note that requests for comments on the rule and the information collection are separate.

You can receive a copy of BIA's submission to OMB by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section, or by requesting the information from the BIA Information Collection Clearance Officer, 1951 Constitution Avenue, NW., Mail Stop 52 SIB, Washington, DC 20240.

Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the Program, including the practical utility of the information to BIA; (2) the accuracy of BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. The valid OMB Control Number for this information

collection is 1076–0155. However, OMB will assign a different temporary control number until the final rule is approved. At that time, the OMB Control Number will revert to 1076–0155.

OMB must make a decision concerning the collection of information requirements in this proposed rule no sooner than 30 days, and no later than 60 days, after it is published in the **Federal Register**. Therefore, a comment is best assured of having its maximum effect if OMB receives it within 30 days of publication. Comments on information collection requirements do not relate, however, to the deadline for general public comments on the proposed rule, indicated in the **DATES** section.

Organizations and individuals who submit comments on the information collection requirements should be aware that BIA keeps such comments available for public inspection during regular business hours. If you wish to have your name and address withheld from public inspection, you must state this prominently at the beginning of any comments you make. BIA will honor your request to the extent allowable by law.

**List of Subjects in 25 CFR Part 162**

Indians—lands.

Dated: January 6, 2004.

**Aurene M. Martin**,  
*Deputy Assistant Secretary—Indian Affairs.*

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend part 162 in Title 25 of the Code of Federal Regulations as follows:

**PART 162—LEASES AND PERMITS**

1. The authority citation for part 162 is revised to read as follows:

**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, 2218, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733, 4211; 44 U.S.C. 3101 *et seq.*

2. Revise paragraphs (b) and (c) and add paragraph (d) to § 162.100 to read as follows:

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

\* \* \* \* \*

(b) This part includes five subparts, including separate, self-contained subparts relating to Agricultural Leases (Subpart B), Residential Leases (Subpart C), Business Leases (Subpart D), and Special Requirements for Certain Reservations (Subpart E). 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 subparts A through D, except to the extent that subpart A through D are inconsistent with:

(1) The provisions in subpart E; or  
(2) Any act of Congress under which the leases are made.

(c) These regulations apply to all leases in effect when the regulations are promulgated.

(d) Unless otherwise agreed by the parties, this part will not affect the validity or terms of any existing lease or any restatement of an existing lease.

3. Amend § 162.101 by:

A. Revising the terms of "Immediate family;" "Lease;" "Life Estate;" "Mortgage;" "Permit;" and "Tribal land;" and

B. Removing the term "Fair annual rental;" and

C. Adding in alphabetical order the terms "Approval;" "Fair annual rental or fair market rental;" "Consent or consenting;" "Grant or granting;" "Housing for public purposes;" "Single-family home;" and "Tribal land assignment," to read as follows:

§ 162.101 What key terms do I need to know?

\* \* \* \* \*

*Approval* means written authorization by the Secretary or a delegated official that is a part of the instrument being approved.

\* \* \* \* \*

*Consent or consenting* means the execution of a lease by the Indian landowner or by the Secretary on behalf of an individual Indian landowner.

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

\* \* \* \* \*

*Grant or granting* means the process of consenting to a lease.

*Housing for public purposes* means multi-family developments and single family residential developments administered by a Tribal Housing Authority (or other Tribally-Designated Housing Entity) or financed by a tribal/federal/state housing program.

*Immediate family* means a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or when some other special relationship exists between the lessor and lessee or special circumstances exist that in the opinion of the Secretary warrant the approval of the residential lease.

\* \* \* \* \*

*Lease* means a written contract between Indian landowner(s) 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.

\* \* \* \* \*

*Life estate* means an interest in Indian land that expires upon the death of the interest holder(s) or some other person. A life estate is also referred to as "life use."

\* \* \* \* \*

*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. A mortgage of a leasehold of Indian land cannot pledge the beneficial or restricted title to the land.

\* \* \* \* \*

*Permit* means a written, non-assignable, contract 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.

\* \* \* \* \*

*Single-family home* means a building with one to four dwelling units on a tract of land under a single lease (also referred to as a homesite lease).

\* \* \* \* \*

*Tribal land* means the surface estate of land, or any interest therein, held by the United States in trust for, or for the use and benefit of, a tribe, band, community, group or pueblo of Indians, or an Indian corporation chartered under 25 U.S.C. 477. The term also includes the surface estate of land or any interest therein held by a tribe, band, community, group or pueblo of Indians that is subject to federal restrictions against alienation or encumbrance.

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

\* \* \* \* \*

4. Revise § 162.102 to read as follows:

§ 162.102 What land, or interests in land, are subject to this part?

(a) This part applies to Indian land and government land, including any tract in which an individual Indian or tribe owns an interest 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 this part, 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 this part, we will not lease any fee interest in Indian land, nor will we collect rent on behalf of any fee owners. The leasing of the trust and restricted interests of the Indian landowners will not be conditioned on a lease having been obtained from the owners of any fee interests. Where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a lease of the remainder interests only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners.

(d) This section applies to tribal land leased under a corporate charter that we issue under 25 U.S.C. 477, or under a special act of Congress authorizing leases without our approval. This part does not apply to these leases except to the extent that the authorizing statutes require us to enforce the leases on behalf of the Indian landowners.

5. Revise § 162.105 to read as follows:

§ 162.105 Can BIA combine for leasing purposes tracts that have different Indian landowners?

(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 will apply to each tract separately. We may combine multiple tracts into a unit for leases negotiated 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 owner's interest in proportion to the acreage within the entire unit. Unless otherwise agreed upon by the Indian landowners, market rent will be based on the value of the entire leased unit, without any consideration being given to the relative or contributive values of the individual tracts within the unit.

6. Revise §§ 162.108, 162.109, and 162.110 to read as follows:

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

(a) We will make reasonable efforts to see that lessees 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. Upon actual notice of a violation, we will also assist landowners in the enforcement of direct payment obligations, 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 make reasonable efforts to see that lessees comply with the 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 emergency action as needed to preserve the value of the land.

(c) In those cases where tribal law or ordinances are in place we may defer enforcement responsibilities to the tribe.

**§ 162.109 What laws apply to leases granted or approved under this part?**

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

(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 substantially and materially inconsistent with this part or other applicable Federal law. This part may be superseded or modified by tribal laws, 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) Tribal laws may include laws assigning the responsibility for leasing to a Division, Department, or local governmental unit of a tribe, and any lease with that Division, Department, or local governmental unit is considered to be a lease with that tribe.

(d) State laws may apply to a lease of Indian land if the laws are expressly agreed to by the parties to the lease, and by the tribe, if the lease is for individually-owned land. Unless expressly provided in the lease of tribal land, or the tribe's consent for a lease of individually owned land, the agreement does not waive the tribe's sovereign immunity or provide its consent to state civil regulatory jurisdiction.

**§ 162.110 Can tribes administer this part on behalf of the Secretary or BIA?**

Any tribe or tribal organization that is administering programs or services under 25 CFR part 900:

(a) Can administer the provisions in this part that authorize or require us to take certain actions; and

(b) Cannot administer the provisions of this part relating to the granting, approval, or enforcement of leases and permits.

7. Add § 162.114 to read as follows:

**§ 162.114 Who should I contact with questions concerning the leasing process?**

The Indian landowner or prospective tenant should contact the local BIA Realty Office or any tribal realty office for answers to questions about the leasing process.

8. Add § 162.115 to read as follows:

**§ 162.115 Does the information submission require approval by the Office of Management and Budget?**

Yes, information as requested in Subparts B, C, D and E requires approval by the Office of Management and Budget. OMB has assigned OMB Control Number 1076-0155. Please note that, as a federal agency, we may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

9. Add subparts C and D to read as follows:

**Subpart C—Residential Leases**

**General Provisions**

162.300 What types of leases does this subpart cover?

162.301 How will the BIA accommodate tribal laws on land under a residential lease?

**How To Obtain a Lease**

162.302 Can a tenant negotiate a residential lease with the Indian landowners?

162.303 When can the Indian landowners grant a residential lease?

162.304 What are the consent requirements for a residential lease on a fractionated tract?

162.305 Who can represent the Indian landowners in negotiating or granting a residential lease?

162.306 When can BIA grant a permit for residential use?

162.307 Must the land be appraised before BIA's grant or approval of a residential lease?

162.308 What documents must BIA review before granting or approving a residential lease?

162.309 How and when will BIA decide whether to grant or approve a residential lease?

162.310 When will a residential lease be effective?

162.311 When is a decision to grant or approve a residential lease effective?

162.312 Must a residential lease or permit be recorded?

**Lease Requirements**

162.313 Is there a standard residential lease form?

162.314 Are there any provisions that must be included in a residential lease?

162.315 What requirements must be satisfied in executing a residential lease?

162.316 How should a residential lease describe the land?

162.317 How much rent must be paid under a residential lease?

162.318 Must the rent be adjusted under a residential lease?

162.319 When are rental payments due under a residential lease?

162.320 Will untimely rental payments incur interest charges or penalties?

162.321 To whom can rental payments be made under a residential lease?

162.322 What form of rental payment can be accepted under a residential lease?

162.323 What other types of payments are required under a residential lease?

162.324 How long can the term of a residential lease run?

162.325 Can a residential lease be amended, assigned, sublet, or mortgaged?

162.326 How will BIA decide whether to approve an amendment to a residential lease?

162.327 Can a residential lease be assigned without the consent of the Indian landowners?

162.328 May a residential lease be sublet without the consent of the Indian landowners?

162.329 May a residential lease be mortgaged without the consent of the Indian landowners?

162.330 May Indian landowners withhold their consent to an assignment, sublease, or mortgage?

162.331 When will a decision to approve an amendment, assignment, sublease, or mortgage under a residential lease be effective?

162.332 How can the leased premises be used under a residential lease?

162.333 Can improvements be made under a residential lease?

162.334 Who will own the improvements made under a residential lease?

162.335 What indemnities are required under a residential lease?

162.336 How will payment rights and obligations relating to residential land be allocated between the Indian landowners and the tenant?

162.337 Can a residential lease provide for negotiated remedies in the event of a violation?

162.338 Must a tenant provide a bond under a residential lease?

162.339 What forms of bonds can be accepted under a residential lease?

162.340 How will a bond be administered?

162.341 Is insurance required under a residential lease?

**Lease Administration**

162.342 Are there administrative fees for actions relating to residential leases?



162.343 Will BIA notify a tenant when a rental payment is due under a residential lease?

#### Lease Enforcement

- 162.344 What will BIA do if rental payments are not made as required by a residential lease?
- 162.345 What fees are assessed on delinquent rental payments due under a residential lease?
- 162.346 How will BIA determine whether the activities of a tenant under a residential lease comply with the terms of the lease?
- 162.347 What will BIA do about a violation under a residential lease?
- 162.348 What will BIA do if a violation of a residential lease is not cured on time?
- 162.349 Will BIA's appeal bond rules apply to cancellation decisions?
- 162.350 When is a cancellation of a residential lease effective?
- 162.351 Can BIA take emergency action if leased premises are threatened?
- 162.352 What will BIA do if a tenant remains in possession after a lease expires or is canceled?
- 162.353 May a lease be terminated before its expiration date?
- 162.354 What happens if the tenant abandons or does not diligently develop the leased premises?

#### Subpart D—Business Leases

##### General Provisions

- 162.400 What types of leases are covered by this subpart?
- 162.401 How will BIA accommodate tribal laws on land under a business lease?

##### How To Obtain a Lease

- 162.402 How and when can a business lease be obtained?
- 162.403 When can the Indian landowners grant a business lease?
- 162.404 What are the consent requirements for a business lease on a fractionated tract?
- 162.405 Who can represent the Indian landowners in negotiating or granting a business lease?
- 162.406 When can BIA grant a permit for business use?
- 162.407 How will BIA estimate the fair market rental of Indian land?
- 162.408 What documents must BIA review before granting or approving a business lease?
- 162.409 How and when will BIA decide whether to approve a business lease?
- 162.410 When will a business lease be effective?
- 162.411 For purposes of appeal, when will a BIA decision to grant or approve a business lease be effective?
- 162.412 Must a business lease or permit be recorded?

##### Lease Requirements

- 162.413 Is there a standard business lease form?
- 162.414 Are there any provisions that must be included in a business lease?
- 162.415 Are there any formal requirements that must be satisfied in the execution of a business lease?

- 162.416 How should the land be described in a business lease?
- 162.417 How much rent must be paid under a business lease?
- 162.418 Must the rent be adjusted under a business lease?
- 162.419 When are rental payments due under a business lease?
- 162.420 Will untimely rental payments made under a business lease be subject to interest charges or late payment penalties?
- 162.421 To whom can rental payments be made under a business lease?
- 162.422 What form of rental payment can be accepted under a business lease?
- 162.423 What other types of payments are required under a business lease?
- 162.424 How long can the term of a business lease run?
- 162.425 Can a business lease be amended, assigned, sublet, or mortgaged?
- 162.426 How and when can a business lease be amended?
- 162.427 May a lease be assigned without the consent of the Indian landowners?
- 162.428 May a lease be subleased without the consent of the Indian landowners and the approval of the Secretary?
- 162.429 How will BIA decide whether to approve an assignment or sublease under a business lease?
- 162.430 May a lease be mortgaged without the consent of the Indian landowners?
- 162.431 How will BIA decide whether to approve a leasehold mortgage under a business lease?
- 162.432 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under a business lease be effective?
- 162.433 Must an amendment, assignment, sublease, or mortgage approved under a business lease be recorded?
- 162.434 When will BIA take action on an amendment, assignment, sublease, or mortgage under a business lease?
- 162.435 How can the leased premises be used under a business lease?
- 162.436 Can improvements be made under a business lease?
- 162.437 Who will own the improvements made under a business lease?
- 162.438 What indemnities are required under a business lease?
- 162.439 How will payment rights and obligations relating to business leases be allocated between the Indian landowners and the lessee?
- 162.440 Can a business lease provide for negotiated remedies in the event of a violation?
- 162.441 Must a lessee or assignee provide a bond for a lease?
- 162.442 What forms of bond can be accepted under a business lease?
- 162.443 How will a bond be administered?
- 162.444 Will we require insurance for a business lease?

##### Lease Administration

- 162.445 Will administrative fees be charged for actions relating to business leases?
- 162.446 Will we notify a lessee when a rental payment is due under a business lease?

#### Lease Enforcement

- 162.447 What will we do if rental payments are not made in the time and manner required by a business lease?
- 162.448 Will any special fees be assessed on delinquent rental payments due under a business lease?
- 162.449 How will we determine whether the activities of a lessee under a business lease are in compliance with the terms of the lease?
- 162.450 What will we do in the event of a violation under a business lease?
- 162.451 What will we do if a violation of a business lease is not cured to our satisfaction within the requisite time period?
- 162.452 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving business leases?
- 162.453 When will a cancellation of a business lease be effective?
- 162.454 Can we take emergency action if the leased premises are threatened with immediate and significant harm?
- 162.455 What will we do if a lessee holds over after the expiration or cancellation of a business lease?
- 162.456 May a lease be terminated before its expiration date?
- 162.457 What happens if the lessee abandons the lease?

#### Subpart C—Residential Leases

##### General Provisions

##### § 162.300 What types of leases does this subpart cover?

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon) on tribal or allotted land, for the purposes of Indian housing. The regulations in this subpart also apply to permits made for Indian housing purposes, if appropriate. Leases covered by this subpart would authorize the construction or use of:

- (1) A single-family home; and
- (2) Housing for public purposes.

(b) Leases for other residential development (for example, multi-family developments and single family residential developments for profit) are covered under subpart D of this part.

##### § 162.301 How will BIA accommodate tribal laws on land under a residential lease?

(a) Unless prohibited by Federal law, we will recognize and accommodate tribal laws regulating activities on land under a residential lease, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) This paragraph applies when this subpart is inconsistent with a tribal law and § 162.109 prohibits tribal law to supersede or modify this subpart. We may waive provisions of this subpart

under 25 CFR part 1, if the waiver does not:

- (1) Violate a Federal statute or judicial decision; or
- (2) Conflict with our general trust responsibility under Federal law.

**How To Obtain a Lease**

**§ 162.302 Can a tenant negotiate a residential lease with the Indian landowners?**

Yes, a tenant can obtain a residential lease through direct negotiation. We will assist prospective tenants in contacting the Indian landowners or their representatives to negotiate a lease, including providing the names and addresses of the Indian landowners upon written request. We will assist the Indian landowners in those negotiations upon request.

**§ 162.303 When can the Indian landowners grant a residential lease?**

(a) Tribes may grant residential leases of tribally-owned land, including any tribally-owned undivided interest(s) in a fractionated tract, as evidenced by an appropriate tribal authorization and 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 landowners, or emancipated minors, may grant residential leases of their land, including undivided interests in fractionated tracts, subject to our approval.

(c) In order to grant a residential lease of a fractionated tract, the Indian landowners must:

- (1) Obtain approval of the required percentage of the owners of the undivided interest in the tract as required by § 162.304; and
  - (2) Obtain our approval.
- (d) The proceeds from a residential lease that we approve under paragraph (c) of this section must be distributed to all owners of undivided interests in the tract covered by the lease.

(1) The amount of the proceeds distributed to each owner must be determined in accordance with the portion of the undivided interest in the tract covered under the lease owned by that owner.

(2) This paragraph applies where the owners of the applicable percentage of interests under § 162.304 grant a residential lease on behalf of all of the Indian owners of a fractionated tract. The non-consenting Indian landowners (including those on whose behalf we have granted consent under § 162.304(c)) must receive a fair market

rental, even if the land is being leased at less than a fair market rental under § 162.317.

(e) Upon request of the Indian landowner, we will assist the tenant in obtaining the grant of the applicable percentage of interests under § 162.304 of this subpart.

**§ 162.304 What are the consent requirements for a residential lease on a fractionated tract?**

(a) Except for Alaska, the Indian landowners must determine the percentage referred to in the Indian Land Consolidation Act Amendments of 2000, 25 U.S.C. section 2218, as follows:

If the number of owners of the undivided interest in the tract is. . .	Then the percentage of owners who must approve of the lease is. . .
(1) Five or fewer .....	100 percent.
(2) More than five but less than 11.	80 percent.
(3) More than 10 but fewer than 20.	60 percent.
(4) Twenty or more ...	Over 50 percent.

(b) In Alaska, residential leases of Indian lands may be negotiated by the Indian landowners, or their representatives who may execute leases under § 162.305, provided:

(1) The owners of a majority of the interests have negotiated a lease satisfactory to us;

(2) We grant the lease on behalf of those persons for whom we are authorized to grant leases under paragraph (c) of this section; and

(3) The total combined consent of the owners and us provides 100 percent consent.

(c) We may give written consent to a lease, and that consent must be counted in the percentage ownership described in paragraphs (a) or (b) of this section, 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) Individuals whose whereabouts are unknown to us, after reasonable attempts are made to locate such individuals;

(3) Individuals who are found to be non compos mentis, or determined to be an adult in need of assistance or under legal disability as defined in part 115 of this chapter;

(4) Orphaned minors;

(5) Individuals who have given us a written power of attorney to lease their land; and

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

(i) We have given the Indian landowners written notice of our intent to grant 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.

**§ 162.305 Who can represent the Indian landowners in negotiating or granting a residential lease?**

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

(a) An adult 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 Federal, 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.

(d) Any person who is authorized to practice before the Department of the Interior under 43 CFR Part 1.

**§ 162.306 When can BIA grant a permit for residential use?**

(a) We may grant a permit for residential use in the same manner as we would grant a residential lease under § 162.304(c), for example, to keep an Indian landowner's house occupied while the landowner's estate is going through probate. 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, or to protect the trust resource, but we must give the Indian landowners subsequent immediate notice and advise them of their right to appeal the decision under part 2 of this chapter. If the permit is granted to protect the trust resource, the permit will be effective immediately under part 2 of this chapter.

(b) We may grant a permit for residential use on government land.

(c) A tribe may grant a permit, subject to our approval, in the same manner as it would grant a lease under § 162.303.

(d) Permits may be revoked upon reasonable notice to the permittee, as specified in the permit.

**§ 162.307 Must the land be appraised before BIA's grant or approval of a residential lease?**

(a) To support the Indian landowners in their negotiations, and to assist in our consideration of whether a residential lease is in the Indian landowners' best interest, we must determine the fair market rental of the land before our grant or approval of the lease, even if the land may be leased at less than a fair market rental under § 162.317, except as provided in paragraph (c) of this section.

(b) A fair market rental may be determined by referral to published residential rental rates in the area, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair market rental, the appraisal or valuation must be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(c) Upon receipt of an appropriate Tribal Resolution, we may not require an appraisal for a lease on tribal land.

**§ 162.308 What documents must BIA review before granting or approving a residential lease?**

(a) The Indian landowner and the tenant must provide an executed lease that complies with the requirements of this part. We will assist the Indian landowner in this process upon request.

(b) In addition to the executed lease, the parties must provide the following supporting documents:

(1) 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.

(2) Where a bond is required under § 162.338, the bond must be furnished before we consider the lease application complete under § 162.309(b).

(3) The tenant should provide environmental and archaeological reports, surveys, and site assessments, as needed to facilitate BIA compliance with NEPA and other applicable Federal and tribal land use requirements. We will adopt any tribal environmental review as our NEPA review, to the extent such adoption is allowed under our procedure implementing NEPA.

(4) The tenant may be required to provide proof that the proposed use is in conformance with applicable tribal ordinances.

**§ 162.309 How and when will BIA decide whether to grant or approve a residential lease?**

(a) Before we grant or 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 approval 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, or any other Federal or tribal land use requirements.

(b) We will take action on the lease within 30 days of the date of our receipt of the lease and supporting documents. (This deadline applies only if the lease is in an approved form and we have received all of the documents that we need to support the findings required by paragraph (a) of this section.) If we do not act within 30 days, the Indian landowner may take appropriate action under part 2 of this chapter.

(c) If we 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. Upon grant or approval of a residential lease, we will provide a copy to the tenant and make the lease available to the Indian landowner(s) upon request.

**§ 162.310 When will a residential lease be effective?**

Unless otherwise provided in the lease, a residential lease will be effective on the date on which the lease is granted or approved by us. A residential lease may be made effective on some past or future date, by agreement, but such a lease may not be granted or approved more than one year before the date on which the lease term is to

commence. All approvals must be in writing.

**§ 162.311 When is a decision to grant or approve a residential lease effective?**

Our decision to grant or approve a residential lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter.

**§ 162.312 Must a residential lease or permit be recorded?**

(a) A residential 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 grant or approval under this subpart.

(b) Residential 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**

**§ 162.313 Is there a standard residential lease form?**

No, there is no standard residential lease form. We will assist the Indian landowners in drafting lease provisions that conform to the requirements of this part.

**§ 162.314 Are there any provisions that must be included in a residential lease?**

Yes, in addition to the other requirements of this part, all residential leases must include the following provisions.

(a) The obligations of the tenant and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status.

(b) Nothing in the lease must delay or prevent termination of Federal trust responsibilities for the land during the lease's term.

(c) Termination of Federal trust responsibilities for the land does not abrogate the lease.

(d) The owners of the land and the tenant and its surety or sureties must be notified of any change in the status of the land.

(e) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.

(f) The tenant must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including tribal laws and leasing policies.

**§ 162.315 What requirements must be satisfied in executing a residential lease?**

(a) A residential 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 § 162.305 must identify the owner being represented and the authority under which such action is being taken.

(b) A residential lease must be executed by individuals having the necessary capacity and authority to bind the tenant under applicable law.

(c) A residential lease must include a citation of the provisions in this subpart that authorize our grant or approval, along with a citation of the formal documents by which such authority has been delegated to the official taking such action.

**§ 162.316 How should a residential lease describe the land?**

A residential lease should describe the leased premises by reference to a public survey, if possible. The lease must include a legal description or other description that is sufficient to identify the leased premises. Where there are undivided interests owned in fee status, the aggregate percentage of trust and restricted interests should be identified in the description of the leased premises.

**§ 162.317 How much rent must be paid under a residential lease?**

(a) A residential lease must provide for the payment of a fair market rental at the beginning of the lease term and at specified times during the term of the lease, unless a lesser amount is permitted under paragraphs (b) or (c) of this section. The tenant's rent payments will be in fixed amounts.

(b) We will approve a residential lease of tribal land at a nominal rent, or at less than a fair market rental, if such a rent is negotiated or established by the tribe.

(c) We will approve a residential lease of individually-owned land at a nominal rent or at less than a fair market rental, if the tenant is a member of the Indian landowner's immediate family; a co-owner in the lease tract; when some other special relationship exists between the lessor and lessee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

**§ 162.318 Must the rent be adjusted under a residential lease?**

(a) A residential lease is not required to allow for rental adjustments, unless the parties agree to provide for periodic adjustments in the lease.

(b) If rental adjustments are provided for, 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.

**§ 162.319 When are rental payments due under a residential lease?**

A residential lease must specify the dates on which all rental payments are due. Unless otherwise provided in the lease, rental 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.

**§ 162.320 Will untimely rental payments incur interest charges or penalties?**

A residential lease must specify the rate at which interest will accrue on any rental 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 rental 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 § 162.347.

**§ 162.321 To whom can rental payments be made under a residential lease?**

(a) A residential lease must specify whether rental 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.

(b) Rental payments made directly to the Indian landowners must be made to the parties and addresses specified in the lease, unless the tenant receives notice of a change of ownership or address. Unless otherwise provided in the lease, rental payments may not be made payable directly to anyone other than the Indian landowners.

(c) A lease that provides for rental 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.

**§ 162.322 What form of rental payment can be accepted under a residential lease?**

(a) When rental payments are made directly to the Indian landowners, a residential lease must specify the type of payment that is acceptable to the owners.

(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.

**§ 162.323 What other types of payments are required under a residential lease?**

(a) The tenant may be required to pay additional fees, taxes, and 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 office.

(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. Payment must be to the appropriate office in charge of the irrigation project or drainage district.

**§ 162.324 How long can the term of a residential lease run?**

(a) A residential 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 granted or 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 50 years. The lease may provide for a primary term of less than 50 years with a provision for renewal(s), so long as the maximum term, including the renewal(s), does not exceed 50 years. A residential lease may not be extended by holdover.

(c) Where the Secretary grants a lease under § 162.304(c)(1) on behalf of undetermined heirs or devisees of an individual Indian decedent owning 100 percent interest in the land, the maximum term of that lease may not exceed 2 years.

(d) If an option to renew is provided, the lease must specify:

(1) The time and manner in which the option must be exercised; and

(2) Any additional consideration which will be due upon the exercise of the option or the commencement of the renewal period.

**§ 162.325 Can a residential lease be amended, assigned, sublet, or mortgaged?**

Yes, a residential lease can be amended, assigned, sublet, or mortgaged in accordance with §§ 162.326 to 162.331.

**§ 162.326 How will BIA decide whether to approve an amendment to a residential lease?**

We will approve a residential lease amendment if:

(a) The required consents have been obtained from the Indian landowners (under § 162.304) and any mortgagee or any other sureties; and

(b) We find the amendment to be in the best interest of the Indian landowners, under the standards set forth in § 162.309.

**§ 162.327 Can a residential lease be assigned without the consent of the Indian landowners?**

(a) The lease may be assigned without the consent of the Indian landowners if the assignee agrees in writing to assume all of the tenant's obligations under the lease, including bonding requirements, and:

(1) The lease provides for assignments without further consent of the landowners;

(2) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance; or

(3) As specified in the lease.

(b) If the owners' consent is required, it must be obtained in the same manner as a new lease, unless the lease authorizes one or more of the Indian landowners to consent on behalf of all such owners.

(c) Consent must be obtained from the holders of any bonds or mortgages.

(d) Except as provided in paragraph (e) of this section, the assignment must be approved by the Secretary. Such approval will not be withheld providing that our approval will protect the best interests of the Indian landowners. To make that determination we will consider whether:

(1) The tenant is not in default, and will remain liable under the lease;

(2) The assignee agrees to be bound by the terms of the lease;

(3) The proposed use by the assignee will require an amendment of the lease;

(4) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(5) The assignee has provided supporting documents which demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease.

(e) The lease may be assigned without our approval if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;

(2) The assignee agrees in writing to assume all of the obligations under the lease; and

(3) The assignee agrees in writing that any tenant to whom it transfers the lease will be another member of the tribe, a person who is eligible to be a member, a Tribal Housing Authority (or other Tribally-Designated Housing Entity), or the tribe. If no tribal member or person who is eligible to be a member or Tribal Housing Authority (or other Tribally-Designated Housing Entity) or the tribe wishes to lease the property, the lease may be transferred to another Indian, consistent with tribal law. If no Indian wishes to lease the property, the lease may be transferred to a non-Indian, consistent with tribal law.

(f) The assignment must be recorded under § 162.312.

(g) If the lease was approved at less than fair market rent under § 162.317(c), and the assignee is not a co-owner or a member of the Indian landowner's immediate family, the assignment must provide for the assignee to pay fair market rent to the Indian landowner.

**§ 162.328 May a residential lease be sublet without the consent of the Indian landowners?**

(a) The lease may provide for subleasing without the consent of the Indian landowners when the sublease is part of a housing development for public purposes for which a general plan has been submitted and approved and we have approved a sublease form for use in the project. Unless otherwise specified in the lease, the Indian landowners must consent to a sublease of a single-family home in the same manner as the initial lease.

(b) Consent to the sublease must be obtained from any sureties.

(c) The subtenant must agree to be bound by the terms of the lease.

(d) If the lease was approved at less than fair market rent under § 162.317(c), and the subtenant is not a co-owner or a member of the Indian landowner's immediate family, the sublease must provide for the subtenant to pay fair market rent to the Indian landowner.

(e) Except as provided in paragraph (e) of this section or as provided in the lease, we must approve the sublease. We will not withhold approval providing that our approval will protect the best interests of the Indian landowners. To make that determination we will consider whether:

(1) The tenant is not in default, and will remain liable under the lease;

(2) The subtenant agrees to be bound by the terms of the lease;

(3) The Indian landowner should receive some or all of any income received by the tenant for the sublease;

(4) The proposed use by the subtenant will require an amendment of the lease;

(5) The value of any part of the leased premises not covered by the sublease would be adversely affected; and

(6) The subtenant has provided supporting documents which demonstrate that the sublease will be enforceable against the subtenant, and that the subtenant will be able to perform its obligations under the sublease.

(f) Part of the leased premises may be sublet without our approval when:

(1) The sublease is for housing for public purposes; and

(2) We have approved a sublease form and rent schedule for use in the project.

(g) The sublease should be recorded under § 162.312.

(h) A sublease under paragraph (f) of this section should be recorded under § 162.312. All other subleases must be recorded.

**§ 162.329 May a residential lease be mortgaged without the consent of the Indian landowners?**

(a) The residential lease may be mortgaged without further consent of the Indian landowners if the lease contains a general authorization for such a mortgage, and it states what law would apply in case of foreclosure.

(b) We must approve the leasehold mortgage. We will approve a leasehold mortgage under a residential lease if:

(1) The required consents have been obtained from the Indian landowners and the holders of the tenant's bond; and

(2) We find that our approval is in the best interests of the Indian landowners.

(c) In making the finding required by paragraph (b)(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 require modification to be consistent with 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.

**§ 162.330 May Indian landowners withhold their consent to an assignment, sublease, or mortgage?**

Yes, Indian landowners may withhold their consent to an assignment, sublease, or mortgage. However, Indian landowners are encouraged not to withhold their consent unreasonably.

(a) A lease may require that:

(1) The Indian landowners specify their reasons for withholding consent; and

(2) The owners' consent will be deemed granted if a response to a request for consent is not given within a time period specified in the lease.

(b) 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 § 162.347.

(c) A residential 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;

(2) Increase or decrease the lease area; or

(3) Terminate or modify the term of the lease.

(d) 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 § 162.304.

**§ 162.331 When will a decision to approve an amendment, assignment, sublease, or mortgage under a residential lease be effective?**

Our decision to grant or approve an amendment, assignment, sublease, or

mortgage under a residential 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.

**§ 162.332 How can the leased premises be used under a residential lease?**

A residential lease must describe the authorized uses of the leased premises. Any use of the leased premises for an unauthorized purpose, will be treated as a lease violation under § 162.347.

**§ 162.333 Can improvements be made under a residential lease?**

(a) A residential lease must generally describe the type and location of any improvements to be constructed by the tenant. Unless otherwise provided in the lease, any specific plans for the construction of those improvements will not require the consent of the Indian landowners or our approval.

(b) Construction of any improvements not described in the lease must be approved as an amendment to the lease under § 162.326. An attempt by the tenant to construct improvements, without the necessary consent and approval, will be treated as a lease violation under § 162.347.

**§ 162.334 Who will own the improvements made under a residential lease?**

(a) A residential 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 before 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. This obligation survives the termination or expiration of the lease.

**§ 162.335 What indemnities are required under a residential lease?**

(a) A residential 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 the tenant would be prohibited by law from making such an agreement.

(b) Unless the tenant would be prohibited by law from making such an agreement, a residential 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 material from the leased premises that occurs during the lease term, regardless of fault.

**§ 162.336 How will payment rights and obligations relating to residential land be allocated between the Indian landowners and the tenant?**

Unless otherwise provided in a residential 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. The amount of the payments that are distributed to each owner must be determined in accordance with the portion of the undivided interests in the tract covered under the lease owned by the land owner. Such payments may include:

- (a) Insurance proceeds;
- (b) Trespass damages; and
- (c) Condemnation awards.

**§ 162.337 Can a residential lease provide for negotiated remedies in the event of a violation?**

(a) A residential 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 residential 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 § 162.349. 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 residential 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 § 162.349.

**§ 162.338 Must a tenant provide a bond under a residential lease?**

(a) Except as provided in paragraph (b) of this section, the tenant must provide a bond to secure:

(1) At least one rental payment under the terms of the lease;

(2) The construction of any required improvements;

(3) The performance of any additional lease obligations, including the payment of operation and maintenance charges under § 162.323(b); and

(4) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition.

(b) A bond may not be required, if specified in the lease and upon a determination under § 162.309 that such a waiver is in the best interest of the Indian landowner(s).

**§ 162.339 What forms of bonds can be accepted under a residential 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 the 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 them if the terms of the lease are violated.

(3) Certificates of deposit that:

(i) Indicate on their face that our approval is required before redemption by any party;

(ii) Have a face value at least equal to the bond amount, plus any penalties for early redemption; and

(iii) Are accompanied by a statement granting full authority to us to sell them in case of a violation of the terms of the lease.

(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 before its expiration date;

(ii) Be payable to BIA (or tribe if the bond is held by the tribe under paragraph (b) of this section);

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date BIA receives it; 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.

(6) Assignment of a savings account.

(7) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash and for which our approval is required before 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 a residential lease of tribal land.

**§ 162.340 How will a 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 §§ 162.344 or 162.348, we will refund the bond to the tenant upon the expiration or termination of the lease.

**§ 162.341 Is insurance required under a residential lease?**

When necessary to protect the interests of the Indian landowners, a residential lease must require that a tenant provide insurance. Such insurance should include property, liability and/or casualty insurance, depending on the interests to be protected. If insurance is required, it must identify both the Indian landowners and the United States as additional insured parties, and be sufficient to protect all insurable improvements on the leased premises.

**Lease Administration**

**§ 162.342 Are there administrative fees for actions relating to residential leases?**

(a) We will charge an administrative fee each time we approve a residential 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 percent of the annual rent.

(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 costs in preparing or processing the documents and administering the lease are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

**§ 162.343 Will BIA notify a tenant when a rental payment is due under a residential lease?**

We may issue bills or invoices to a tenant in advance of the dates on which rental payments are due under a residential 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.

**Lease Enforcement**

**§ 162.344 What will BIA do if rental payments are not made as required by a residential lease?**

(a) A tenant's failure to pay rent in the time and manner required by a residential lease is a violation of the lease, and we will issue a notice of violation under § 162.347.

(1) If the lease requires that rental payments be made to us, we will send the tenant and its sureties a notice of violation within 10 business days of the date on which the rental payment was due.

(2) If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within 10 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 period required by § 162.347, and the amount due is not in dispute, we may take any of the actions in this paragraph.

(1) We may:

(i) Take action to recover the unpaid rent and any associated interest charges or late payment penalties;

(ii) Cancel the lease under § 162.348; or

(iii) 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.

(2) We do not have to cancel the lease or give any further notice to the tenant before taking action to recover any unpaid rent.

(3) If we cancel the lease, we can still take action to recover any unpaid rent.

(c) We or the Indian landowners may accept partial payments and underpayments, but acceptance does not waive 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.

(d) If a personal or business check is dishonored, and a 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 lease, and a notice of violation will be issued under § 162.347. 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 § 162.322.

**§ 162.345 What fees are assessed on delinquent rental payments due under a residential lease?**

(a) 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 residential 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 . . .
(1) \$50.00 .....	Administrative fee for dishonored checks.
(2) \$15.00 .....	Administrative fee for BIA processing of each notice or demand letter.
(3) 18 percent of balance due.	Administrative fee charged by Treasury following referral for collection of delinquent debt.

(b) If all or part of the costs incurred in collection of the debt are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

**§ 162.346 How will BIA determine whether the activities of a tenant under a residential lease comply with the terms of the lease?**

(a) Unless a residential 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 10 business days of that notification. If we find out from another source that a specific lease violation has occurred, we will initiate an appropriate investigation and make a reasonable attempt to notify the Indian landowners.

**§ 162.347 What will BIA do about a violation under a residential lease?**

(a) If we determine that a residential lease has been violated, we will send the tenant and its sureties and any mortgagee a notice of violation within 5 business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 10 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.

**§ 162.348 What will BIA do if a violation of a residential lease is not cured on time?**

(a) If the tenant does not cure a violation of a residential lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

- (1) We should cancel the lease under paragraph (c) of this section and §§ 162.350 through 162.354;
- (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 and any mortgagee a cancellation letter within 5 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 § 162.349, including the amount of any appeal bond that must be posted to perfect an appeal of the cancellation decision;
- (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 perfected by that time; and
- (5) If the lease so provides, cancellation will be subject to the approval of the holder of any outstanding leasehold mortgage.

**§ 162.349 Will BIA's appeal bond rules apply to cancellation decisions?**

(a) The appeal bond provisions of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.348. Instead, when BIA decides to cancel a residential lease, we may require that the tenant post an appeal bond in order to perfect 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.

(c) If the appeal bond is not posted, BIA can dismiss the appeal. That dismissal will be final for the Department of the Interior.

**§ 162.350 When is a cancellation of a residential lease effective?**

A cancellation decision involving a residential lease becomes stayed and not effective 30 days after either the tenant receives a cancellation letter from us, or 40 days from the date the letter is mailed, whichever is earlier. The cancellation decision will be further stayed if the tenant perfects an appeal under §§ 162.348 and 162.349 and part 2 of this chapter, unless the decision is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the tenant must



continue to pay rent and comply with the other terms of the lease. If an appeal is not perfected in accordance with § 162.350 and part 2 of this chapter, the cancellation decision will be effective 31 days after either the tenant receives a cancellation letter from us, or 41 days from the date the letter is mailed, whichever is earlier.

**§ 162.351 Can BIA take emergency action if leased premises are threatened?**

We may take appropriate emergency action if there is a natural disaster or 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 residential lease. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm. We will make reasonable efforts to notify the Indian landowners, either before or after the emergency action is taken.

**§ 162.352 What will BIA do if a tenant remains in possession after a lease expires or is canceled?**

If a tenant remains in possession after the expiration or cancellation of a residential lease, we will treat the unauthorized use as a trespass. Unless we have been advised in writing by the applicable percentage of Indian landowners under § 162.304 that they are engaged in negotiations with the tenant 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, such as forcible entry and detainer action.

**§ 162.353 May a lease be terminated before its expiration date?**

(a) The lease may provide either party with one or more options to terminate, for any reason. If an option to terminate is provided, the lease must specify the time and manner in which the option must be exercised.

(b) The lease may be mutually terminated by agreement between the lessee and the applicable percentage of Indian landowners under § 162.304, subject to our approval and notice to any approved encumbrancer.

(c) If the lease so provides, termination will be subject to the approval of the holder of any outstanding leasehold mortgage.

**§ 162.354 What happens if the tenant abandons or does not diligently develop the leased premises?**

(a) If the tenant does not diligently develop the leased premises or abandons the leased premises before expiration of the lease term, the tenant

and its sureties continue to be responsible for the obligations contained in the lease. The lease may specify a time after which the leased premises must be developed or a period of non-use after which the lease premises will be considered abandoned.

(b) We will treat the non-use as a violation of the lease under § 162.346, and may cancel the lease under §§ 162.347–162.350.

**Subpart D—Business Leases**

**General Provisions**

**§ 162.400 What types of leases are covered by this subpart?**

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with any improvements) on Indian land, authorizing the development or use of the leased premises.

(b) Leases covered by this subpart may authorize the construction of single-purpose or mixed use projects designed for use by any number of tenants or occupants. These leases may include:

- (1) Leases for residential purposes that are not covered in subpart C;
- (2) Leases for public, religious, educational, and recreational purposes; and
- (3) Commercial or industrial leases for retail, office, manufacturing, storage, and/or other business purposes.

**§ 162.401 How will BIA accommodate tribal laws on land under a business lease?**

(a) Unless prohibited by Federal law, we will recognize and accommodate tribal laws regulating activities on land under a residential lease, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) This paragraph applies when this subpart is inconsistent with a tribal law and § 162.109 prohibits tribal law to supersede or modify this subpart. We may waive provisions of this subpart under 25 CFR part 1, if the waiver does not:

- (1) Violate a Federal statute or judicial decision; or
- (2) Conflict with our general trust responsibility under Federal law.

**How To Obtain a Lease**

**§ 162.402 How and when can a business lease be obtained?**

If you are a potential lessee, you may negotiate a lease with an Indian landowner. The lease is subject to review and approval by the Secretary. Generally, business leases will not be advertised for competitive bid. You may request, in writing, the names and

addresses of the Indian landowners or their representatives for the purpose of negotiating a lease.

**§ 162.403 When can the Indian landowners grant a business lease?**

(a) We can approve business leases on tribal land only with the written consent of the tribe, as evidenced by an appropriate tribal resolution. Tribal written consent is also required for a lease of any tribally-owned undivided interest(s) in a fractionated tract, subject to our approval, except when the individual owners have consented in the percentages indicated in § 162.404. Where a tribal land assignment has been made to a tribal member or some other individual under tribal law or custom, and the assignee subsequently leases to another party, the assignee and the tribe must both consent to the lease, subject to our approval.

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

**§ 162.404 What are the consent requirements for a business lease on a fractionated tract?**

(a) Except for Alaska, the Indian landowners must determine the percentage referred to in the Indian Land Consolidation Act Amendments of 2000, 25 U.S.C. section 2218, as follows:

If the number of owners of the undivided interest in the tract is. . .	Then the percentage of owners who must approve of the lease is. . .
(1) Five or fewer	100 percent.
(2) More than five but less than 11.	80 percent.
(3) More than 10 but fewer than 20.	60 percent.
(4) Twenty or more	Over 50 percent.

(b) In Alaska, Indian landowners, or their representatives who may execute leases under § 162.405 of this part may negotiate business leases of Indian land only if:

- (1) The owners of a majority of the interests have negotiated a lease that we approve;
- (2) We grant the lease on behalf of those persons for whom we are authorized to grant leases under § 162.404(c); and
- (3) Our consent when combined with the consent of the owners provides 100 percent consent.

(c) We may give written consent to a lease, and that consent must be counted in the percentage ownership described in paragraphs (a) and (b) of this section, 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) Any heir or devisee if the heir or devisee has been determined but after reasonable attempts have been made, cannot be located;

(3) Individuals who are found to be non compos mentis, or determined to be an adult in need of assistance or under legal disability as defined in part 115 of this chapter;

(4) Orphaned minors who do not have guardians duly appointed by a court of competent jurisdiction;

(5) Individuals who have given us a written power of attorney to lease their land; and

(6) The individual landowners of a fractionated tract where 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 3-month negotiation period immediately following such notice, and the land is not being used by an Indian landowner.

**§ 162.405 Who can represent the Indian landowners in negotiating or granting a business lease?**

The following individuals or entities may represent an individual Indian landowner, provided that there are no Federal or tribal laws prohibiting this activity:

(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, legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable Federal, 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.

(d) Any representative who is authorized to practice before the Department of the Interior under 43 CFR part 1.3.

**§ 162.406 When can BIA grant a permit for business use?**

(a) We may grant a permit for business use in the same manner as we would grant a business lease under § 162.404(c) 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, or to protect the trust resource, but we must give the Indian landowners subsequent immediate notice and advise them of their right to appeal the decision under part 2 of this chapter. If the permit is granted to protect the trust resource, the permit will be effective immediately under part 2 of this chapter.

(b) We may grant a permit for business use on government land.

(c) We will not grant a permit for business use on tribal land, but a tribe may grant a permit, subject to our approval, in the same manner as it would grant a lease under § 162.403.

(d) Permits may be revoked upon reasonable notice to the permittee, as specified in the permit. Decisions to revoke a permit may not be appealed under part 2 of this chapter.

(e) Permits may not be assigned.

**§ 162.407 How will BIA estimate the fair market rental of Indian land?**

We will use an appraisal to determine the fair market rental of land before we grant or approve a lease, except as provided in paragraph (d) of this section.

(a) The purpose of the appraisal is to support the Indian landowners in their negotiations, and to assist in our consideration of whether a business lease is in the Indian landowners' best interest.

(b) We will either prepare the appraisal ourselves or use an appraisal from the Indian landowner or lessee subject to our approval.

(c) The appraisal must be prepared in accordance with USPAP.

(d) Upon a duly adopted Tribal Resolution, we will use some other type of valuation for a business lease on tribal land, subject to our approval.

**§ 162.408 What documents must BIA review before granting or approving a business lease?**

If you are a lessee, you must submit the documents required by this section, unless we decide otherwise.

(a) If you are a corporation, limited liability company, partnership, joint venture, or other legal entity, you must be in good standing, authorized to conduct business in the state where the land is located, or on the reservation, if applicable. You must provide organizational documents, certificates, filing records, and resolutions or other authorization documents, as needed to show that the lease will be enforceable against you and that you will be able to perform all of your lease obligations.

(b) We may require you to pay for an independent appraisal, which we must review and approve, to support the

negotiated rent and term provisions in the lease.

(c) We may require you to provide, at a minimum, financial statements and credit reports or, where such records are not available, other appropriate documentation to show that you can meet the monetary obligations under the lease.

(d) We may require you to provide proof that the proposed use is in conformance with applicable tribal ordinances.

(e) If the proposed lease will authorize new construction, we may require you to provide:

(1) Environmental reports, archaeological reports and other documents that we need to comply with environmental laws and land use requirements (if possible, we will adopt any tribal environmental review as our NEPA review);

(2) A preliminary site plan identifying the proposed location of any new buildings, roads and utilities, and a construction schedule showing the tentative commencement and completion dates for those improvements; and

(3) A certified survey plat of the leased premises that includes the legal description of the land encumbered by the lease, and a description of each tract of trust/restricted land in the lease and the acreage of each. Plats should show the tie-in to the nearest corner of a public survey, all courses and distances, exceptions, and tract acreages.

(f) We may require you to provide additional documentation to demonstrate its ability to perform all of the lease obligations.

**§ 162.409 How and when will BIA decide whether to approve a business lease?**

(a) Before we approve a business 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 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, or any other Federal or tribal land use requirements; and

(5) Receive notice from the tribe that all tribal procedures regarding tribal land development and land use have been satisfied.

(b) When we receive a business lease and all of the supporting documents that conform to this part, we will approve, disapprove, or return the submission for revision within 60 days of the date of our receipt of the documents. If we do not act within 60 days, the Indian landowner may take appropriate action under part 2 of this chapter. If we 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 business leases that have been granted or approved will be provided to the tenant, and made available to the Indian landowners upon request.

**§ 162.410 When will a business lease be effective?**

Unless otherwise provided in the lease, a business lease will be effective on the date on which the lease is granted or approved by us. A business lease may be made effective on some past or future date, by agreement, but such a lease may not be granted or approved more than one year before the date on which the lease term is to commence. All approvals must be in writing.

**§ 162.411 For purposes of appeal, when will a BIA decision to grant or approve a business lease be effective?**

Our decision to grant or approve a business lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter.

**§ 162.412 Must a business lease or permit be recorded?**

(a) A business lease or permit must be recorded in the Land Titles and Records Office with jurisdiction over the land. We will record the lease or permit immediately following our approval under this subpart. The business lease or permit may also be recorded in the local county recorder's office.

(b) Business leases of tribal land that do not require our approval under § 162.102 of this part must be recorded by the tribe in the Land Titles and

Records Office with jurisdiction over the land.

**Lease Requirements**

**§ 162.413 Is there a standard business lease form?**

No, based on the need for flexibility in negotiating and drafting of appropriate lease terms and conditions, there is no standard business lease form that must be used. We will assist the Indian landowners in drafting lease provisions that conform to the requirements of this part.

**§ 162.414 Are there any provisions that must be included in a business lease?**

In addition to the other requirements of this part, all business leases must provide that:

(a) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(b) Nothing contained in this lease must 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 must not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties must 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 lessee must comply with all applicable Federal, tribal, state and local laws, ordinances, rules, regulations, and other legal requirements.

**§ 162.415 Are there any formal requirements that must be satisfied in the execution of a business lease?**

(a) A business lease must identify the Indian landowners and their respective interests in the leased premises. The requisite percentage of landowners must consent in writing to the lease. One who executes a lease in a representative capacity under § 162.405 must identify the owner being represented and the authority under which such action is being taken.

(b) The lessee must provide evidence of appropriate authority to execute a business lease.

(c) A business 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.

(d) All signatures of the landowner(s) and lessee(s) may be required to be

either witnessed by two individuals or be notarized.

**§ 162.416 How should the land be described in a business lease?**

A business lease must describe the leased premises by reference to a public survey. Where there are undivided interests owned in fee status, the aggregate portion of trust or restricted interests should be identified in the description of the leased premises.

**§ 162.417 How much rent must be paid under a business lease?**

(a) The lease must require the initial payment of fair market rental, based on a fixed amount, a percentage of the projected income, or a combination of both unless paragraphs (c), (d) and (f) of this section permit a lesser amount.

(b) Unless the lessee is paying nominal rental as described in paragraphs (c), (d) and (f) of this section, or unless the rental amount is based primarily on a percentage of income, the lease may be reviewed annually in accordance with § 162.418, but must provide for a review and possible adjustment of the rental, at a minimum, every fifth year.

(c) We will approve a negotiated lease of tribal land, or of any undivided tribal interest in a fractionated allotment, which provides for the payment of nominal rent, or less than a fair market rental, if the tribe provides a resolution containing an explanation why approval will serve the tribe's best interest over the entire period in which the reduced rent will be paid. Unless otherwise specified, the reduced rent must be applied for the entire lease term.

(d) We may approve a lease of individually-owned Indian land which provides for the payment of nominal rent, or less than a fair market rental, if:

(1) The lease is for religious, educational, recreational, cultural, or other public purposes;

(2) The lessee is a member of the individual Indian landowner's immediate family or a co-owner; or

(3) The lessee is a joint venture or other legal entity in which the Indian owners directly participate in the revenues or profits generated by the lease, and the distribution of profits or revenues to the owners is projected to exceed the rent that would otherwise be paid over the entire lease term.

(e) We may grant on behalf of non-consenting minority undivided interest owners only if the lease provides for payment of fair market value for their interest(s).

(f) If new construction is required, the lease may provide for the payment of less than a fair annual rental during the

pre-development and construction periods specified in the lease.

**§ 162.418 Must the rent be adjusted under a business lease?**

If rental adjustments are required by us, the lease must specify:

- (a) When adjustments are made.
- (b) Who makes the adjustments.
- (c) What the adjustments are based on.
- (d) How disputes arising from the adjustments are resolved.

**§ 162.419 When are rental payments due under a business lease?**

A business lease must specify the dates on which all rental payments are due. Unless otherwise provided in the lease, rental payments may not be made or accepted more than one year in advance of the due date. Rental payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

**§ 162.420 Will untimely rental payments made under a business lease be subject to interest charges or late payment penalties?**

A business lease must specify the rate at which interest will accrue on any rental 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 rental 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 lessee from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.450.

**§ 162.421 To whom can rental payments be made under a business lease?**

(a) A business lease must specify whether rental payments will be made directly to the Indian landowners or to us on behalf of the Indian landowners. Any changes to the direct pay provision of the lease must be made by amendment to the lease, but such amendment will only require the consent of the individual requesting direct pay and the lessee, and approval of the Secretary. If the lease provides for payment to be made directly to the Indian landowners, the lease must also require that the lessee either provide immediate proof of payment to us or retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, for the duration of the lease plus 6 years and 90 days.

(b) Rental payments made directly to the Indian landowners must be made to the parties specified in the lease, unless the lessee receives notice of a change of ownership. Unless otherwise provided in the lease, rental payments may not be made payable directly to anyone other than the Indian landowners.

(c) A lease that provides for rental 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 after consultation with the Indian landowner(s), that direct payment should be discontinued.

**§ 162.422 What form of rental payment can be accepted under a business lease?**

(a) When 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 lessee;
- (2) Money orders;
- (3) Cashier's checks;
- (4) Certified checks; or
- (5) Electronic funds transfer payments.

**§ 162.423 What other types of payments are required under a business lease?**

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction over the land. The lessee must pay these amounts to the appropriate office.

(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 lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. Failure to make such payments will constitute a violation of the lease.

**§ 162.424 How long can the term of a business lease run?**

(a) A lease will specify the term of the lease, as well as any option to renew, extend, or terminate.

(b) The lease term, including any renewal period, must be reasonable, given the purpose of the lease and the type of financing and level of investment required.

(c) Unless otherwise authorized by Federal statute, leases for business purposes will have a maximum primary term that does not exceed 25 years. An extension for one additional term not to exceed 25 years may be included. Leases of land on the following reservations may be made for terms of not to exceed 99 years, including any option to renew: the Gila River Reservation, AZ; the Hualapai Reservation, AZ; the San Carlos Apache Reservation, AZ; Yavapai-Prescott Community Reservation, land on the Colorado River Reservation, AZ and CA., the Navajo Reservation, AZ, NM, and UT; the Palm Springs Reservation, CA; the Soboba Indian Reservation, CA; the Viejas Indian Reservation, CA; the Cabazon Indian Reservation, CA; the Fort Mohave Reservation, CA, AZ, and NV; the Southern Ute Reservation, CO; Hollywood (formerly Dania) Reservation, FL; the Coeur d'Alene Indian Reservation, ID; The Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, MN; the Pueblos of Cochiti, Pojoaque, Tesuque, Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant,"), and Zuni, NM; The Pyramid Lake Reservation, NV; the Burns Paiute Reservation, OR; the Spokane Reservation, WA; the Kalispel Indian Reservation, WA; the Swinomish Reservation, WA; the Tulalip Reservation, WA; leases of the lands comprising the Moses Allotment Number 10, Chelan County, WA; and lands held in trust for: the Twenty-nine Palms Band of Luiseno Mission Indians, CA; the Torres Martinez Desert Cahuilla Indians, CA; the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, CA; the Cahuilla Band of Indians of California, CA; the Confederated Salish and Kootenai Tribes of the Flathead Reservation, MT; leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, ND; the Pueblo of Santa Clara, NM; the Las Vegas Paiute Tribe of Indians, NV; the Reno Sparks Indian Colony, NV; the Cherokee Nation of Oklahoma, OK; the Confederated Tribes of the Umatilla Indian Reservation, OR; the Confederated Tribes of the Grand Ronde Community of Oregon, OR; the Confederated Tribes of the Colville

Reservation, WA; and any other reservations as authorized by Congress.

(d) Where the Secretary grants a lease under § 162.404(c)(1) on behalf of undetermined heirs or devisees of an individual Indian decedent owning 100 percent interest in the land, the maximum term of that lease may not exceed 2 years.

(e) A lease can be extended only by one renewal or extension, not to exceed 25 years. The exercise of the option must be in writing and the lease must specify:

(1) The time and manner in which the option must be exercised; and

(2) Any additional consideration, if any, which will be due upon the exercise of the option or the commencement of the renewal period.

(f) The lease may not:

(1) Be renewed or extended by holdover; or

(2) Provide a right of first refusal or any other type of preference with respect to a new lease.

(g) The Secretary must record in the Land Titles and Records Office the official notice to the lessee of the grant of extension or termination.

**§ 162.425 Can a business lease be amended, assigned, sublet, or mortgaged?**

Yes, a business lease can be amended, assigned, sublet, or mortgaged in accordance with §§ 162.426 to 162.431.

**§ 162.426 How and when can a business lease be amended?**

(a) A lease may authorize one or more of the Indian landowners, or a designated representative of the Indian landowners, to consent to an amendment on the landowners' behalf, subject to our approval. The lease may also designate us as the landowners' representative. A designated landowner or representative may not negotiate or consent to an amendment that would:

(1) Reduce the payment obligations or terms to the Indian landowners;

(2) Increase or decrease the lease area; or

(3) Terminate or modify the term of the lease.

(b) Where the Indian landowners have not designated a representative for the purpose of consenting to an amendment, such consent may be granted by or on behalf of the landowners in the same manner as a new lease.

**§ 162.427 May a lease be assigned without the consent of the Indian landowners?**

(a) The lease may be assigned without the consent of the Indian landowners if:

(1) The lease provides for assignments without further consent of the landowners; or

(2) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance; and the assignee agrees in writing to assume all of the lessee's obligations under the lease, including bonding requirements.

(b) If the Indian landowners' consent is required, it must be obtained in the same manner as a new lease, unless the lease authorizes one or more of the Indian landowners to consent on behalf of all such owners.

(c) If the lease provides, consent must be obtained from any sureties or guarantors.

(d) The assignment of a lease must be approved by the Secretary. Such approval will not be withheld providing that our approval will protect the best interests of the Indian landowners. To make that determination we will consider whether:

(1) The proposed use by the assignee will require an amendment of the lease;

(2) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(3) The assignee has provided supporting documents which demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease.

(e) The lease may provide that assignments may be made without the consent of the landowners, but the assignments must be approved by the Secretary.

**§ 162.428 May a lease be subleased without the consent of the Indian landowners and the approval of the Secretary?**

(a) The lease may provide for subleasing without the consent of the Indian landowners when the sublease is part of a commercial development or residential development for which a general plan has been submitted and approved and we have approved a sublease form for use in the project. The lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval of the Secretary. A copy of the executed sublease must be provided to us.

(b) If the owners' consent is required, it must be obtained in the same manner as a new lease, unless the lease authorizes one or more of the Indian landowners to consent on behalf of all such owners.

(c) Consent must be obtained from any sureties or guarantors.

(d) The sublessee must agree to be subordinated to the terms of the lease.

(e) If the lease requires that the sublease be approved by the Secretary,

such approval will not be withheld providing that our approval will protect the best interests of the Indian landowners. To make that determination we will consider whether:

(1) The proposed use by the sublessee will require an amendment of the lease;

(2) The value of any part of the leased premises not covered by the sublease would be adversely affected; and

(3) The sublessee has bonded its performance and provided supporting documents which demonstrate that the sublease will be enforceable against the sublessee, and that the sublessee will be able to perform its obligations under the sublease.

**§ 162.429 How will BIA decide whether to approve an assignment or sublease under a business lease?**

(a) We will approve an assignment or sublease under a business lease if:

(1) The required consents have been obtained from the parties to the lease under § 162.404 and the tenant's sureties and encumbrancers;

(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.

**§ 162.430 May a lease be mortgaged without the consent of the Indian landowners?**

(a) The lease may be mortgaged without further consent of the Indian landowners for the purpose of borrowing capital for commercially reasonable purposes defined in the lease

if the lease contains a general authorization for such a mortgage.

(b) The mortgage cannot secure any unrelated debts owed by the lessee to the mortgagee.

(c) The mortgage may be refinanced.

(d) The encumbrance instrument must be approved by us.

**§ 162.431 How will BIA decide whether to approve a leasehold mortgage under a business lease?**

(a) We will approve a leasehold mortgage under a business lease if:

(1) The required consents have been obtained from the parties to the lease under § 162.404 and the tenant's sureties;

(2) The mortgage covers only the tenant's interest in the leased premises, and no unrelated collateral; and

(3) 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.

**§ 162.432 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under a business lease be effective?**

Our decision to approve an amendment, assignment, sublease, or mortgage under a business lease will be effective immediately, even though an appeal has been 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.

**§ 162.433 Must an amendment, assignment, sublease, or mortgage approved under a business lease be recorded?**

An amendment, assignment, sublease, or mortgage approved under a business 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.

**§ 162.434 When will BIA take action on an amendment, assignment, sublease, or mortgage under a business lease?**

(a) We will take action on a business lease amendment, assignment, sublease, or mortgage within 60 days of the date of our receipt of the complete assignment and all supporting documents. If we do not act within 60 days, any interested party may take appropriate action under part 2 of this chapter. If we approve or disapprove an amendment, assignment, sublease, or mortgage, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter. Copies of business lease amendments, assignments, subleases or mortgages that have been granted or approved will be provided to the tenant, and made available to the Indian landowners upon request.

(b) Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

**§ 162.435 How can the leased premises be used under a business lease?**

A business 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 lessee to maintain continuous operations throughout the lease term unless so provided in the lease, will be treated as a lease violation.

**§ 162.436 Can improvements be made under a business lease?**

Yes, improvements can be made under a business lease. A business lease must:

(a) Describe, or provide for development of, a plan that describes the type and location of any improvements to be constructed by the lessee. Development plans for the construction of those improvements will require the review and approval by tribal officials, if applicable, and must be filed with us before the commencement of construction, unless specifically exempted in the lease.

(b) Provide a construction schedule.

**§ 162.437 Who will own the improvements made under a business lease?**

(a) A business lease must specify who will own any improvements constructed by the lessee during the lease term. The lease must indicate whether any improvements constructed by the lessee 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 lessee's expense, with the leased premises to be restored as close as possible to their condition before construction of such improvements.

(b) If the lease allows the lessee 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 and restoration of the premises at the lessee's expense. This obligation survives the termination or expiration of the lease.

(c) A business lease may also contain alternative provisions for disposal of the leasehold improvements, including provision for reimbursement of the residual value of the improvements at the termination of the lease.

**§ 162.438 What indemnities are required under a business lease?**

(a) A business lease must require that the lessee indemnify and hold the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises, unless the lessee would be prohibited by law from making such an agreement.

(b) Unless the lessee would be prohibited by law from making such an agreement, a business lease must specifically require that the lessee 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, unless the liability or cost arises from the gross negligence or wilful misconduct of the Indian landowner.

**§ 162.439 How will payment rights and obligations relating to business leases be allocated between the Indian landowners and the lessee?**

The lease must specify the distribution of 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:

- (a) Insurance proceeds;
- (b) Trespass damages; and
- (c) Condemnation awards.

**§ 162.440 Can a business lease provide for negotiated remedies in the event of a violation?**

(a) A business 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 business 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 § 162.452. 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 business lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through an alternative dispute resolution method. We may not be bound by decisions made in such forums, for example, if they conflict or diminish our trust responsibility to the Indian landowners or are contrary to Federal law, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.452.

**§ 162.441 Must a lessee or assignee provide a bond for a lease?**

(a) Except as provided in paragraph (c) of this section, the lessee or assignee will be required to provide a bond to secure:

- (1) The payment of one year's rental;
- (2) The construction of any required improvements;
- (3) The performance of any additional lease obligations, including the payment of operation and maintenance charges under § 162.424;

(4) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition; and

(5) Applicable tribal laws and policies.

(b) The lease may provide that we may adjust security or bond requirements at any time to reflect changing conditions.

(c) The lease may provide that a bond is not required, however we must determine that this is in the best interest of the landowners.

**§ 162.442 What forms of bond can be accepted under a business lease?**

We will only accept bonds in the following forms:

(a) Negotiable Treasury securities that:

- (1) Have a market value at least equal to the bond amount; and

(2) 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.

(b) Certificates of deposit that indicate on their face that our approval is required before redemption by any party; and

(1) Have a face value at least equal to the bond amount, plus any penalties for early redemption; and

(2) 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.

(c) Irrevocable letters of credit (LOC) issued by Federally-insured financial institutions authorized to do business in the United States. LOC's must:

(1) Contain a clause that grants us authority to demand immediate payment if the lessee defaults or fails to replace the LOC within 30 calendar days before its expiration date;

(2) Be payable to the Department of the Interior, BIA;

(3) Be irrevocable during its term and have an initial expiration date of not less than one year following the date BIA receives it; and

(4) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed.

(d) Surety bond issued by a company approved by the U.S. Department of the Treasury;

(e) Assignment of savings account; or

(f) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which Secretarial approval is required before redemption by any party.

**§ 162.443 How will a bond be administered?**

(a) If a lease requires a bond or guaranty, the bond or guaranty must remain effective throughout the lease term and any renewal period.

Alternatively, the lease may provide for the bond or guaranty to be modified or released:

- (1) After a specified period of time;
- (2) If we determine that the original bond or guaranty is no longer needed to secure the contractual obligations; or
- (3) If, for leases on tribal lands, the tribe requests the modification or release of the bond, and we approve the request.

(b) If the lease does not initially require a bond or guaranty, or if it

provides for modification or release at some future date, the lease must allow us to establish or reinstate a bond or guaranty requirement at any time we deem it necessary to secure the contractual obligations. A tribe may request that we establish or reinstate a bond or guaranty requirement.

(c) We may require that the surety or guarantor provide any supporting documents needed to show that the bond or guaranty will be enforceable, and that the surety or guarantor will be able to perform the guaranteed obligations. The surety or guarantor must provide notice of cancellation before canceling the bond.

(d) The lease must require that the lessee or assignee obtain the consent of the surety or guarantor, with respect to any amendment, assignment, sublease, or leasehold mortgage that directly impacts or affects the obligations and liabilities of the surety or guarantor. The lease must also provide for the surety or guarantor to receive a copy of any notice of default issued to the lessee by us or by the Indian landowners.

**§ 162.444 Will we require insurance for a business lease?**

We may require any or all of the following types of insurance depending upon the activity conducted under the lease: property, business interruption, liability, and casualty (such as for fire, hazard, or flood). If insurance is required, it must:

(a) Be provided in an amount sufficient to:

- (1) Protect any improvements on the leased premises;
- (2) Cover losses such as personal injury or death; and
- (3) Protect the interest of the Indian landowner.

(b) Identify the Indian landowners and the United States as additional insured parties.

(c) Be provided by a nationally accredited insurance company, with a minimum insurer financial strength rating of "A" or its equivalent, authorized to do business in the state where the land is located.

**Lease Administration**

**§ 162.445 Will administrative fees be charged for actions relating to business leases?**

(a) We will charge an administrative fee each time we approve a business lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the lessee, assignee, or sublessee, to cover our costs in preparing or processing the documents and administering the lease.

(b) We will charge administrative fees based on the rent payable under the lease. The fee will be 3 percent of the annual rent payable, including any percentage-based rent that can be reasonably estimated. 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.

(c) 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.

**§ 162.446 Will we notify a lessee when a rental payment is due under a business lease?**

We may issue bills or invoices to a lessee in advance of the dates on which rental payments are due under a business lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

**Lease Enforcement**

**§ 162.447 What will we do if rental payments are not made in the time and manner required by a business lease?**

(a) A lessee's failure to pay rent in the time and manner required by a business lease will be a violation of the lease, and a notice of violation will be issued under § 162.450. If the lease requires that rental payments be made to us, we will send the lessee and its sureties a notice of violation within 10 business days after the date the rent was due. If the lease provides for payment directly to the Indian landowners, we will send the lessee and its sureties a notice of violation within 10 business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a lessee fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.450, 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 § 162.451, 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 termination of the lease or any further notice to the lessee, nor will such an action be precluded by a prior termination.

(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 rental payments, or refunded. Lessee will not be entitled to any interest accrued on advanced payments.

(d) If a personal or business check is dishonored, and a 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 lease and a notice of violation will be issued under § 162.450. Any payment made to cure such a violation, and any future payments by the same lessee, must be made by one of the alternative payment methods listed in § 162.422.

**§ 162.448 Will any special fees be assessed on delinquent rental payments due under a business lease?**

(a) 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 business lease. The following special fees will be assessed to cover administrative costs incurred by us in the collection of the debt:

The lessee will pay . . .	For . . .
(1) \$50.00 .....	Administrative fee for dishonored checks.
(2) \$25.00 .....	Administrative fee for our processing of each notice or demand letter.
(3) 18 percent of balance due.	Administrative fee charged by Treasury following referral for collection of delinquent debt.

(b) 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.

**§ 162.449 How will we determine whether the activities of a lessee under a business lease are in compliance with the terms of the lease?**

(a) Unless a business 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 to determine if the lessee is in compliance with the 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 5 business days of that notification. If we find out from another source that a specific lease violation has occurred, we will initiate an appropriate investigation and make a reasonable attempt to notify the Indian landowners.

**§ 162.450 What will we do in the event of a violation under a business lease?**

(a) If we determine that there has been a violation of a business lease we will send the lessee and its sureties a notice of violation within 5 business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 10 business days of the receipt of a notice of violation, the lessee 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.

**§ 162.451 What will we do if a violation of a business lease is not cured to our satisfaction within the requisite time period?**

(a) If the lessee does not cure a violation of a business 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 §§ 162.453 through 162.457;
- (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 lessee should be granted additional time in which to cure the violation.

(b) If we decide to grant a lessee additional time in which to cure a violation, the lessee 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 lessee, its encumbrancers, and its sureties a cancellation letter within 5 business days of that decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners. The cancellation letter will:

- (1) Explain the grounds for cancellation;



(2) Notify the lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;

(3) Notify the lessee of its right to appeal under part 2 of this chapter, as modified by § 162.452, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the lessee 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.

**§ 162.452 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving business leases?**

(a) The appeal bond provisions in part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.451.

Instead, when we decide to cancel a business lease, we may require that the lessee 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.

(c) If the appeal bond is not posted, BIA can dismiss the appeal. That dismissal will be final for the Department of the Interior.

**§ 162.453 When will a cancellation of a business lease be effective?**

A cancellation decision involving a business lease will not be effective until 30 days after either the lessee receives

a cancellation letter from us, or ten days from the date the letter is mailed, whichever is earlier. The cancellation decision will be stayed if the lessee files an appeal under §§ 162.451 and 162.452 and part 2 of this chapter unless the decision is made immediately effective under part 2. While a cancellation decision is stayed, the lessee must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.453 and part 2 of this chapter, the cancellation decision will be effective on the 31st day after either the lessee receives a cancellation letter from us, or 10 days from the date the letter is mailed, whichever is earlier.

**§ 162.454 Can we take emergency action if the leased premises are threatened with immediate and significant harm?**

In the event of a natural disaster, or if a lessee or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a business lease, we may 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.

**§ 162.455 What will we do if a lessee holds over after the expiration or cancellation of a business lease?**

If a lessee remains in possession after the expiration or cancellation of a business lease, we will treat the unauthorized use as a trespass. Unless we have been advised in writing by the applicable percentage of Indian landowners under § 162.404 that they are engaged in good faith negotiations with the lessee 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, such as forcible entry and detainer action.

**§ 162.456 May a lease be terminated before its expiration date?**

(a) Yes, the lease may provide either party with one or more options to terminate, for any reason. If an option to terminate is provided, the lease must specify the time and manner in which the option must be exercised.

(b) The lease may be mutually terminated by agreement between the lessee and the Indian landowners, subject to our approval and notice to any approved encumbrancer. The percentage of consent by the landowners for termination must be in the same percentages as required to obtain a lease (*see* § 162.404).

**§ 162.457 What happens if the lessee abandons the lease?**

(a) If a lessee abandons the leased premises, the lessee and its sureties will not be relieved of the obligations contained in the lease.

(b) We may cancel the lease, effective immediately, and attempt to find a new lessee for the property.

**Subpart E [Amended]**

9. The title for subpart E is revised to read as follows:

**Subpart E—Special Requirements for Certain Reservations**

**Subpart F [Removed]**

10. Subpart F (§§ 162.600–162.633) is removed in its entirety.

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