sent to: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

* * * * *

24. In § 754.4, revise paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

§ 754.4 Unprocessed Western Red Cedar.

* * * * *

(d) *License Applications.* (1) Applicants requesting to export unprocessed western red cedar must submit a properly completed application electronically via SNAP+ unless BIS has authorized the applicant to use the paper form BIS–748P, Multipurpose Application Form (see § 748.1(e) of the EAR). An application to export unprocessed western red cedar must include such other documents as may be required by BIS, and the following statement, either in the ''Additional Information'' field or block of the application or as a separate signed statement from an authorized representative of the exporter (if submitted in the ''Additional Information'' field of the application, a separate signature is not required):

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feed scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979.

(Signature)

(Date)

(2) ''Various'' may be entered in the ''Purchaser'' and ''Ultimate Consignee'' fields or blocks on the applications when there is more than one purchaser or ultimate consignee.

(3) For each application submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period described in part 762 of the EAR, and produce or make available for inspection, the following:

(i) * * *

(ii) * * *

* * * * *

25. In § 754.5, revise paragraph (b)(2) to read as follows:

§ 754.5 Horses for Export by Sea

* * * * *

b *License policy.* (1) * * *

(2) Other license applications will be approved if BIS, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter. You must provide a statement in the ''Additional Information'' field or block of the license application, certifying that no horse under consignment is being exported for the purpose of slaughter.

26. In supplement No. 2 to part 754, revise footnote number 2 to read as follows:

[2] For export licensing purposes, report commodities on export license applications in units of quantity indicated.

PART 772—[AMENDED]

27. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

28. Revise § 772.1 by adding a sentence at the end of the definition of ''applicant'' as follows:

§ 772.1 Definitions.

* * * * *

Applicant * * *

This definition does not apply to the term ''SNAP+ applicant'' used in § 748.7 of the EAR.

* * * * *

Dated: November 3, 2003.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 03–28133 Filed 11–10–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 161

RIN 1076–AE46

Navajo Partitioned Lands Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking adds a new part to the regulations of the Bureau of Indian Affairs to govern the grazing of livestock on the Navajo Partitioned Land (NPL) of the Navajo-Hopi Former Joint Use Area (FJUA) of the 1882 Executive Order reservation. The purpose of these regulations is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes.

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

ADDRESSES: All comments on the proposed rule must be in writing and addressed to: Bill Downes, Acting Director, Office of Trust Responsibilities, Attn.: Agriculture and Range, MS–3061–MIB, Code 210, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–6464.

You may submit written comments on the proposed information collection to the Desk Officer for the Department of the Interior, Office of Management and Budget, either by telefaxing to (202) 395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Harold Russell, (505) 863–8256, at the Navajo Regional Office in Gallup, New Mexico.

SUPPLEMENTARY INFORMATION: As a result of the long-standing dispute between the Hopi Tribe and the Navajo Nation over beneficial ownership of the reservation created by the Executive Order of December 16, 1882, Congress passed the Act of July 22, 1958, 72 Stat. 403, which permitted the Navajo Nation and the Hopi Tribe to sue each other in federal court to resolve the issue. The Hopi Tribe initiated such a suit on August 1, 1958, in United States District Court for the District of Arizona in *Healing* v. *Jones,* 174 F. Supp. 211 (D. Ariz. 1959), (*Healing I*). The merits of the case were heard by a three judge panel of the United States District Court for the District of Arizona in *Healing* v. *Jones,* 210 F. Supp. 125 (D. Ariz. 1962) aff'd 373 U.S. 758 (1963), (*Healing II*) after the initial procedural challenges to the suit were dismissed in *Healing I.* The district court determined that while the Hopi Tribe had a right to the exclusive use and occupancy of a portion of the 1882 reservation know as District 6, it shared the remaining lands of the 1882 reservation in common with the Navajo Nation. Disputes between the two tribes continued over the right to use and occupy the 1882 reservation in spite of the district court's decision in *Healing II.* In an attempt to resolve these ongoing problems, Congress enacted the Navajo-Hopi Settlement Act, 25 U.S.C. 640d–640d–31, which provided for the partition of the Joint Use Area of the 1882 reservation, excluding District 6, between the two tribes. The Act was amended by the Navajo-Hopi Indian Relocation Amendments Acts of 1980, 94 Stat. 929, due to the dissatisfaction expressed by both tribes with the relocation process.

The Relocation Act Amendments added subsection (c) to 25 U.S.C. 640d–18. It required the Secretary of the Interior to complete the livestock reduction program contained in 25

U.S.C. 640d–18(a) within 18 months of its enactment. The new subsection also required that all grazing control and range restoration activities be coordinated and executed with the concurrence of the tribe to which the land had been partitioned. In 1982, the U.S. District Court for the District of Arizona determined in *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), that the grazing regulations contained in part 153 of 25 CFR were invalid with respect to the 1882 reservation partitioned to both the Navajo Nation and the Hopi Tribe. The court reached that conclusion because the regulations did not provide for the concurrence of the Navajo Nation or the Hopi Tribe as required by the Relocation Act Amendments. The district court's ruling was upheld by the Ninth Circuit Court of Appeals in *Hopi Tribe* v. *Watt,* 719 F. 2d 314 (9th Cir. 1983).

As a result of the decision in *Hopi Tribe* v. *Watt, Id.,* the Bureau of Indian Affairs sought the concurrence of the Navajo Nation for the regulations, which are herein published. The concurrence of the Navajo Nation to these regulations was provided verbally by the Navajo-Hopi Land Commission and the Navajo Nation Natural Resource Committee which met jointly on June 26, 2003. Non-substantive, editorial changes have been made to the proposed regulations, which were approved by the Navajo Nation.

These regulations are issued to implement the Secretary of the Interior's responsibilities for the Navajo Partitioned Lands as mandated by the Navajo-Hopi Settlement Act, as amended by the Relocation Act Amendments, and the previously cited federal court decisions. In 1982, part 152 of 25 CFR was re-designated as part 167, Navajo Grazing Regulations, and part 153 of 25 CFR was re-designated as part 168, Hopi Partitioned Lands Grazing Regulations. All grazing permits issued for the joint Use Area under the old 25 CFR part 152, some of which dated from 1940, were canceled within one year pursuant to the Order of Compliance issued on October 14, 1972, by the U.S. District Court of the District of Arizona in *Hamilton* v. *MacDonald,* Civ. 579–PCT. From 1973 through 1978, the Bureau of Indian Affairs did not issue grazing permits for the Joint Use Area (JUA) during calculation of the range's carrying capacity and stocking rates. However, in late 1977 the Joint Use Area Administrative Office of the Bureau of Indian Affairs at Flagstaff, Arizona, completed its inventory and began issuing annual grazing permits to the residents of the JUA. These interim permits were limited to one year by order of the federal district court. Since the 1982 ruling in *Hopi* v. *Watt,* 530 F.2d 1217 (1983), declaring that the pre-1982 regulations were invalid, the Bureau of Indian Affairs has been subject to the provisions of the Navajo-Hopi Settlement Act, as amended, which require the development of new grazing regulations for the Navajo Partitioned Land with the concurrence of the Navajo Nation. These regulations are the product of that consultation.

Proposed rulemaking was published in the **Federal Register** on November 1, 1995 (60 FR 55506), and invited comments for 60 days ending January 2, 1996. To allow maximum input from the Navajo and Hopi Tribes and the public, an extension of the comment period to September 9, 1996 was published in the **Federal Register** on June 10, 1996 (61 FR 29327). A total of 74 written comments were received from individuals and attorneys representing the Navajo Nation, as well as individuals commenting on their own behalf. The comments were reviewed by the Navajo-Hopi Land Commission of the Navajo Nation Council NPL Subcommittee during the week of November 17, 1996. The suggested responses to the comments were sent to the Navajo Nation Resources Committee for further review and consideration on September 10, 1998. Comments and recommendations were adopted and incorporated into a proposed rule which was never finalized. We have reviewed the comments and recommendations, and incorporated them in the proposed rule where appropriate.

This rulemaking also incorporates the requirements of the American Indian Agricultural Resource Management Act (AIARMA)(107 Stat. 2011, 25 U.S.C. § 3703 *et seq.*), as amended. The purposes of AIARMA include carrying out the trust responsibility of the United States and promoting self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield; by authorizing the Secretary to take part in the management of Indian agricultural lands with the participation of the beneficial owners of the land in a manner consistent with the trust responsibility of the Secretary and the objectives of the beneficial owners; and by providing for the development and management of Indian agricultural land. The AIARMA requires that the Secretary conduct all land management activities on Indian agricultural lands in accordance with agricultural resource management plans, integrated resources management plans, and all tribal laws and ordinances, except where such compliance would be contrary to the trust responsibility of the United States.

Final regulations governing grazing permits for all Indian lands were promulgated in 25 CFR part 166 on January 22, 2001, and are found at 25 CFR part 166. While part 166 applies to all Indian agricultural lands, part 161 applies only to the Navajo Partitioned Lands. Both regulations implement the requirements of AIARMA.

Section-by-Section Analysis of the Proposed Rule

Subpart A, ''Definitions, Authority, Purpose and Scope,'' contains key terms used throughout the proposed regulation. These terms are consistent with those found in AIARMA. This subpart also describes the Secretary's authorities under this part.

Subpart B, ''Tribal Policies and Laws Pertaining to Permits,'' is consistent with AIARMA and makes clear that Navajo Nation laws generally apply to land under the jurisdiction of the Navajo Nation, except to the extent that those Navajo Nation laws are inconsistent with applicable federal law. Further, unless prohibited by federal law, BIA will recognize and comply with tribal laws regulating activities on the Navajo Partitioned Lands, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

Subpart C, ''General Provisions,'' lists the environmental compliance and management documents that are required by AIARMA. This subpart also discusses how carrying capacity and stocking rates are established.

Subpart D, ''Grazing Permit Requirements,'' describes the general requirements for obtaining a permit, the provisions contained in a grazing permit, the restrictions placed on permits, and other permit requirements.

Subpart E, ''Reissuance of Grazing Permits,'' sets forth eligibility and priority criteria for reissuance of cancelled grazing permits. This subpart makes clear that the Navajo Nation may prescribe eligibility requirement for grazing allocations within 180 days following the effective date of these regulations. BIA will prescribe the eligibility requirements after expiration of the 180-day period in the event that the Navajo Nation does not prescribe eligibility requirements, or in the event that satisfactory action is not taken by the Navajo Nation. This subpart also describes how new permits may be granted after the initial reissuance of permits, and sets forth the procedures

for re-issuing permits and allocating permits within each range unit.

Subpart F, ''Modifying A Permit,'' describes how permits may be transferred, assigned or modified.

Subpart G, ''Permit Violations,'' sets forth the procedures for the investigation, notification and processing of permit violations. This section also describes the process by which mediation can be used in the event of a permit violation.

Subpart H, ''Trespass,'' describes the process for trespass notification, enforcement, actions and penalties, damages and costs. This subpart is substantially similar to the general grazing regulations, 25 CFR, part 166, subpart I, and is consistent with AIARMA.

Subpart I, ''Concurrence/Appeals/Amendments,'' sets forth the procedures for the Navajo Nation to provide concurrence to BIA under this part. This subpart also states that decisions made by BIA under this part may be appealed, and that decisions made by the Navajo Nation under this part may be appealed to the appropriate hearing body of the Navajo Nation.

Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) 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 in the Executive Order.

This proposed rule describes how BIA will administer grazing permits on trust land. Thus, the impact of the rule is confined to the Federal Government and individual Indian and the Navajo Nation, 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'' under any of the preceding criteria.

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 rule making 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 because it concerns only the Navajo Nation. 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 the Navajo Nation, 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 grazing permits on trust lands owned by individual Indians and the Navajo Nation.

D. Unfunded Mandates Reform Act

The proposed implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 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 grazing permits on land held in trust for the Navajo Nation. 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 NPL grazing 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 161, Navajo Partitioned Lands Grazing Permits on lands held in trust for individual Indians and tribes. Mineral development on lands held in trust for individual Indians and the Navajo Nation are regulated under the Indian Mineral Development Act. Regulations for mineral development are provided under a separate part in 25 CFR 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 12612)

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 executives 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 on 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 grazing permits on 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 rule making 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** document and through BIA field offices, of the ramifications of this rulemaking. This will enable tribal officials and the affected tribal constituency throughout the Navajo Partitioned Lands to have meaningful and timely input in the development of the final rule. This will reinforce good intergovernmental relations with the Navajo Nation and better inform, educate and advise the Navajo Nation on compliance requirements of the rulemaking. We consulted with representatives of the Navajo Nation during the formulation of this proposed regulation. Representatives from the Navajo-Hopi Land Commission and Navajo Nation Natural Resource Committee met in consultation several times from November 2002 to June of 2003 to draft the proposed regulations. The comments received from these consultations were taken into consideration in the formulation of the following proposed NPL Grazing regulations. We have committed to consulting with the Navajo Nation in the formulation of a final rule for the Navajo Partitioned Lands Grazing regulations.

K. Paperwork Reduction Act

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).

The table showing the burden of the information collection is included below for your information.

TABLE OF BURDEN FOR 25 CFR 161

CFR Section	Number of respondents	Number of annual responses	Hourly burden per response (hours)	Total annual hourly burden	Salary: $5.00 × total hourly burden = total hourly burden cost	Federal burden per response (hours)	Total Federal annual burden hours	Salary: $18.52 × total hourly burden = total Federal burden cost
161.102	700	700				½	350	$6,482
161.206	700	700	½	350	$1,750	¼	175	3,241
161.301	700	700				¼	175	3,241
161.302	700	700	⅓	233	1,165	¼	175	3,241
161.304	700	700				¼	175	3,241
161.402	700	700	⅓	233	1,165	1	700	12,964
161.500	70	70	⅓	23	115	1	70	1,296
161.502	70	70				¼	17.5	324
161.604	35	35	½	17.5	87	1	35	648
161.606	35	35	½	17.5	87	1	35	648
161.703	35	35	½	17.5	87	1	35	648
161.704	35	35	½	17.5	88	1	35	648
161.708	10	10	½	5	25	1	10	185
161.717	10	10	1	10	50	2	20	370
161.800	700	700	¼	175	875	¼	212.5	3,936
161.801	85	85	½	42.5	213	1	85	1,575
161.802	85	85	1	85	425	½	42.5	787

TABLE OF BURDEN FOR 25 CFR 161—Continued

CFR Section	Number of respondents	Number of annual responses	Hourly burden per response (hours)	Total annual hourly burden	Salary: $5.00 × total hourly burden = total hourly burden cost	Federal burden per response (hours)	Total Federal annual burden hours	Salary: $18.52 × total hourly burden = total Federal burden cost
Totals	700	5,370	.....	1,226.5	6,132	.....	2,347.5	43,475

DOI invites comments on the information collection requirements in the proposed regulation. You may submit comments by telefacsimile at (202) 395–6566 or by e-mail at *OIRA_DOCKET@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 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. This is a new collection. OMB will assign an OMB Control Number when the collection is approved. 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.

We are collecting this information in order to properly manage the grazing permits on the Navajo Partitioned Lands in keeping with good grazing practices. We estimate that the hourly public burden for providing the information ranges from 15 minutes to 1 hour. We estimate the cost to the public to be $6,132.00 based on an hourly cost of $5.00. The requested information is submitted in order to obtain or retain a benefit, *i.e.*, a grazing permit. We do not require the public to maintain records except temporarily for those needed to complete reports. There is no need for confidentiality protections other than those which would be covered by FOIA/Privacy Act.

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.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 161.1 What definitions do I need to know?)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Public Comment Solicitation

If you wish to comment on this proposed rule, you may mail or hand-deliver your written comments to the person listed in the **ADDRESSES** section of this document. Comments may also be telefaxed to the following number: (202) 219–0006. We cannot accept electronic submissions at this time. All written comments received by the date indicated in the **DATES** section of this document will be carefully assessed and fully considered before publication of a final rule.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 25 CFR Part 161

Grazing lands, Indians-lands, Livestock.

Dated: November 6, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

For the reasons stated in the preamble, the Bureau of Indian Affairs proposes to add part 161 to chapter I of

title 25 of the Code of Federal Regulations as follows.

PART 161—NAVAJO PARTITIONED LANDS GRAZING PERMITS

Subpart A—Definitions, Authority, Purpose and Scope

Subpart B—Tribal Policies and Laws Pertaining to Permits

Subpart C—General Provisions

Subpart D—Permit Requirements

Subpart E—Reissuance of Grazing Permits

Subpart F—Modifying a Permit

Subpart G—Permit Violations

Subpart H—Trespass

Notification

Actions

Penalties, Damages, and Costs

Subpart I—Concurrence/Appeals/Amendments

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

Subpart A—Definitions, Authority, Purpose, and Scope

§ 161.1 What definitions do I need to know?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Day means a calendar day, unless otherwise specified.

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

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

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

(2) Outside Land Management District 6.

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

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

Historical Land Use: see Customary Use Area.

Improvement means any structure or excavation to facilitate management of the range for livestock.

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

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

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

Navajo Partitioned Lands (NPL) means that portion of the Former Joint Use Area awarded to the Navajo Nation under the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona, and now a separate administrative entity within the Navajo Indian Reservation.

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

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

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

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

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

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

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

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

Sheep Unit Year Long refers to the amount of forage needed to sustain one sheep unit for one year.

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

Special management area means an area for which a single management plan is developed and applied in response to special management objectives such as watershed management, fire hazard areas, or other similar concerns.

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

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

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

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

(1) Effective October 6, 1980:

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

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

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

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

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

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

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

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

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

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

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

§ 161.3 What is the purpose of this part?

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

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

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

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

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

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

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

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

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

§ 161.4 To what lands does this part apply?

The grazing regulations in this part apply to the Navajo Partitioned Lands within the boundaries of the Navajo Indian Reservation held in trust by the United States for the Navajo Nation. Contiguous areas outside of the Navajo Partitioned Lands may be included under this part, for management purposes by BIA in consultation with the affected permittees and other affected land users, and with the concurrence of the Resources Committee.

§ 161.5 Can BIA waive the application of this part?

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

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

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

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

Information that the BIA collects in connection with permits for NPL in sections 161.102, 161.206, 161.301, 161.302, 161.304, 161.402, 161.500, 161.502, 161.604, 161.606, 161.703, 161.704, 161.708, 161.717, 161.800, 161.801, and 161.802 have been reviewed and approved by the Office of Management and Budget. The OMB Control Number assigned is 1076–01XX. Please note that a federal agency may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart B—Tribal Policies and Laws Pertaining to Permits

§ 161.100 Do tribal laws apply to grazing permits?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Provide individual written notice; or

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

Subpart C—General Provisions

§ 161.200 Is an Indian agricultural resource management plan required?

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

(b) The 10-year agricultural resource management and monitoring plan must be developed through public meetings and completed within 3 years of the initiation of the planning activity. The plan must be based on the public meeting records and existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

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

(3) Establish management objectives for the resources;

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

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

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

§ 161.201 Is environmental compliance required?

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

§ 161.202 How are range units established?

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

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

§ 161.203 Are range management plans required?

Range management plans are required. BIA will:

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

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

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

(1) Goals for improving vegetative productivity and diversity;

(2) Stocking rates;

(3) Grazing schedules;

(4) Wildlife management;

(5) Needs assessment for range and livestock improvements;

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

(7) Cooperation in the implementation of range studies;

(8) Control of livestock diseases and parasites;

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

(10) Special land uses; and

(11) Water development and management.

§ 161.204 How are carrying capacities and stocking rates established?

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

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

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

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

§ 161.205 How are range improvements treated?

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

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

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

In accordance with applicable law, permittees must:

(a) Vaccinate livestock;

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

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

§ 161. 207 What livestock are authorized to graze?

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

Subpart D—Permit Requirements

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

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

§ 161.301 What will a grazing permit contain?

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

(1) Name of permit holder;

(2) Range management plan requirements;

(3) Applicable stocking rate;

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

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

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

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

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

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

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

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

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

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

(14) A provision stating that the permittee holds harmless the United States and the Navajo Nation against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials or the release or discharge of any hazardous material from the permitted premises that occur during the permit term, regardless of fault; and

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

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

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

§ 161.302 What restrictions are placed on grazing permits?

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

(a) Grazing permits should not be issued for less than 2 animal units (10 sheep units) or exceed 70 animal units (350 sheep units). However, all grazing permits issued before the adoption of this regulation will be honored and reissued if the permittee meets the eligibility and priority criteria found in § 400 of this part, and only if the carrying capacity and stocking rate as determined under §§ 204 and 403 allows.

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

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

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

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

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

§ 161.303 How long is a permit valid?

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

§ 161.304 Must a permit be recorded?

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

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

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

§ 161.306 When are permits effective?

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

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

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

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

Permittees must comply with standards of conduct and are expected to:

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

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

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

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

Subpart E—Reissuance of Grazing Permits

§ 161.400 What are the criteria for reissuing grazing permits?

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

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

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

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

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

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

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

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

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

(d) Upon the recommendation of the NPL District Grazing Committee and

Resource Committee, BIA or Navajo Nation will have authority to waive one of the eligibility or priority criteria.

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

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

(1) Additional permits become available; and

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

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

§ 161.402 What are the procedures for reissuing permits?

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

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

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

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

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

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

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

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

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

Subpart F—Modifying A Permit

§ 161.500 May permits be transferred, assigned or modified?

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

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

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

§ 161.501 When will a permit modification be effective?

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

§ 161.502 Will a special land use require permit modification?

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

Subpart G—Permit Violations

§ 161.600 What permit violations are addressed by this subpart?

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

§ 161.601 How will BIA monitor permit compliance?

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

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

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

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

§ 161.603 Can a permit provide for mediation in the event of a permit violation or dispute?

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

(a) The District Grazing Committee will conduct the mediation before the Resources Committee or BIA invoke any cancellation remedies.

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

(c) The Resources Committee decision will be final, unless it is appealed to the Navajo Nation Supreme Court on a question of law. BIA may not be bound by decisions made in these forums, but BIA will defer to any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to BIA under § 161.606.

§ 161.604 What happens if a permit violation occurs?

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

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

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

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

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

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

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

(d) Request mediation under § 161.603.

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

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

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

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

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

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

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

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

(1) Explain the grounds for cancellation;

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

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

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

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

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

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

§ 161.608 When will a permit cancellation be effective?

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

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

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

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

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

Subpart H—Trespass

§ 161.700 What is trespass?

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

§ 161.701 What is BIA's trespass policy?

BIA will:

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

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

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

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

§ 161.702 Who will enforce this subpart?

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

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

Notification

§ 161.703 How are trespassers notified of a trespass determination?

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

(1) The alleged trespasser;

(2) The possessor of trespass property; and

(3) Any known lien holder.

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

(1) The basis for the trespass determination;

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

(3) A verification of ownership of unauthorized property (*e.g.*, brands in the State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

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

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

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

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

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

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

(a) Comply with the ordered corrective actions; or

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

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

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

Actions

§ 161.706 What actions does BIA take against trespassers?

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

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

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

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

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

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

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

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

§ 161.708 How are trespassers notified of impoundments?

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

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

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

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

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

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

Following the impoundment of unauthorized livestock or other property, BIA will provide notice that the impounded property will be sold as follows:

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

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

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

Impounded livestock or other property may be redeemed by submitting proof of ownership and paying all penalties, damages, and costs under § 161.712 and completing all corrective actions identified by BIA under § 61.704.

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

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

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

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

Penalties, Damages, and Costs

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

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

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

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

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

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

(e) All other penalties authorized by law.

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

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

(b) BIA will determine the value of forage or crops consumed or destroyed based upon the average rate received per

month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of the products or property.

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

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

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

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

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

(a) Refuse to issue the permittee a permit for use, development, or occupancy of Navajo Partitioned Lands; and

(b) Forward the case for appropriate legal action.

§ 161.716 How are the proceeds from trespass distributed?

Unless otherwise provided by Navajo Nation law:

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

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

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

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

(c) Reimburse for costs associated with the enforcement.

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

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

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

Subpart I—Concurrence/Appeals/Amendments

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

(a) Actions taken by BIA under this part require concurrence of the Navajo Nation under the Settlement Act.

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

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

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

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

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

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

§ 161.801 May decisions under this part be appealed?

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

(b) All appeals of decisions by the Grazing Committee and Resource Committee will be forwarded to the appropriate hearing body of the Navajo Nation.

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

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

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H049C]

RIN 1218–AA05

Assigned Protection Factors

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of hearing.

SUMMARY: OSHA is convening an informal public hearing to receive testimony and documentary evidence on Assigned Protection Factors.

DATES: *Informal public hearing.* The Agency will hold the informal public hearing in Washington, DC beginning January 28, 2004. The hearing will commence at 10 a.m. on the first day, and at 9 a.m. on the second and subsequent days, which will be scheduled, if necessary.

Notice of Intention to Appear to provide testimony at the informal public hearing. Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than December 12, 2003. (Parties who submitted a Notice of Intention to Appear in response to the Notice of Proposed Rulemaking (NPRM) need not submit another notice.)

Hearing testimony and documentary evidence. Parties who are requesting more than 10 minutes to present their testimony or who will be submitting