



FACT SHEET
Residential, Business, and Wind & Solar Resource Leasing on Indian Land
Final Rule

The Bureau of Indian Affairs (BIA) has finalized revisions to 25 CFR 162, Leases and Permits, to replace the “non-agricultural leases” subpart with subparts specific to residential leasing, business leasing, and wind and solar resource (WSR) leasing.

Overview of the Final Rule

The final rule is a comprehensive reform of residential, business, and WSR leasing of trust or restricted land (“Indian land”). It increases the efficiency and transparency of the BIA approval process, increases flexibility in compensation and valuations, supports landowner decisions regarding the use of their land, facilitates management of direct pay, encourages BIA coordination with the Indian landowner in lease enforcement, and makes other cross-cutting changes to residential, business, and WSR leasing.

BIA Approval Process

- Eliminates BIA approval of permits for residential, business, or WSR uses of Indian land
- Specifies the process for obtaining BIA approval of leases for residential, business, and WSR purposes on Indian land
- Allows for BIA review of a proposed lease before or during preparation of National Environmental Policy Act (NEPA) documentation and any valuation to identify potential obstacles to BIA approval
- Imposes time limits on BIA to act on submitted lease documents:

BIA Approval Timelines

| Type | Action | Deadline for BIA decision: | If BIA fails to meet the deadline, then: | Section |
|---------------------|--------------------|-----------------------------|--|--------------------|
| Residential | Lease | 30 days | Parties may take action under 162.363 | 162.340 |
| | Amendment | 30 days | Deemed approved | 162.347 |
| | Assignment | 30 days | Parties may take action under 162.363 | 162.351 |
| | Sublease | 30 days | Deemed approved | 162.355 |
| | Leasehold mortgage | 20 days | Parties may take action under 162.363 | 162.359 |
| WEEL* | Lease | 20 days | Parties may take action under 162.588 | 162.530 |
| Business, WSR | Lease | 60 days + 30 days if needed | Parties may take action under 162.463 or 162.588 | 162.440 162.565 |
| Business, WSR, WEEL | Amendment | 30 days + 30 days if needed | Amendment is deemed approved | 162.447 162.572 |
| | Assignment | 30 days | Parties may take action under 162.463 or 162.588 | 162.451 162.576 |
| | Sublease | 30 days + 30 days if needed | Sublease is deemed approved | 162.455 162.580 |
| | Leasehold mortgage | 20 days | Parties may take action under 162.463 or 162.588 | 162.459 162.584 |

*Wind Energy Evaluation Lease (WEEL)

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- Establishes an administrative process for elevating an agency’s failure to act on lease documents to the BIA Regional Director and Director
- Establishes that BIA must approve lease documents unless it finds a compelling reason not to, based on certain specified findings
- Deletes the requirement for insurance or bonding for residential leases

Compensation and Valuations

- A WEEL may be for any negotiated amount and BIA will not require a valuation for a WEEL, regardless of whether the lease is on tribal or individually owned Indian land
- For residential, business, and WSR leases, the following requirements apply:
 - For tribal land, as long as the tribe provides documentation that it has determined the following to be in its best interest or the lease is for housing for public purposes:
 The lease compensation may be in any amount the tribe negotiates, and BIA will not require a valuation
 The lease may provide for alternative forms of rental, such as in-kind consideration, or varying types of compensation at specific stages of the lease
 No periodic review of the adequacy of rent or rental adjustment is required
 - For individually owned Indian land, the lease compensation must be at least fair market rental and BIA will require a valuation, unless applicable conditions are met, as summarized in the table below:

**Lease Compensation & Valuation Requirements – Individually Owned Indian Land
Residential, Business, and WSR Leases**

| Type | Fair Market Rental Required Unless: | Valuation Required Unless: | Section |
|-------------|--|---|---------|
| Residential | -100% of Indian landowners waive; or -Lessee is a co-owner residing on tract for 7 years as of INSERT DATE and no other co-owner objects to presence by INSERT DATE; or -Tribe or lessee will construct infrastructure improvements on, or serving, the leased premises and BIA determines it is in the best interest of all Indian landowners | | 162.321 |
| Business | -100% of the Indian landowners waive and BIA determines the waiver is in the landowners’ best interest, based on specified factors; or - The lease provides for less than fair market rental during pre-development or construction periods and BIA determines it is in the landowners’ best interest; | -100% of Indian landowners waive; or -Tribe or lessee will construct infrastructure improvements on, or serving, the leased premises and BIA determines it is in the best interest of all Indian landowners | 162.421 |
| WSR | -100% of the Indian landowners waive and BIA determines the waiver is in the landowners’ best interest, based on specified factors; or - The lease provides for less than fair market rental during the periods before generation and transmission of electricity begins and BIA determines it is in the landowners’ best interest; | -100% of Indian landowners waive; or -BIA determines it is in the best interest of the landowners to accept an IEED* economic analysis in lieu of an appraisal; or -Tribe or lessee will construct infrastructure improvements on, or serving, the leased premises and BIA determines it is in the best interest of all Indian landowners | 162.550 |

*Office of Indian Energy and Economic Development (IEED)

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- In addition, for leases of individually owned Indian land
The lease may provide for alternative forms of rental or varying types of compensation if BIA determines it is in the landowners' best interest
No periodic review of the adequacy of rent or rental adjustment is required if the lease is for housing for public purposes, the lease term is five years or less, the lease provides for automatic adjustments, or BIA determines it is in the landowners' best interest not to require review or adjustment based on certain specified factors.

Direct Pay

- Allows for direct pay (for residential, business, WEEL, or WSR leases) only where there are 10 or fewer landowners, and all landowners consent to direct pay
- Continues direct pay unless and until 100% of the owners agree to discontinue direct pay or certain circumstances occur allowing discontinuation with regard to one specific landowner

Lease Compliance and Enforcement

- Restricts BIA's right of entry to reasonable times and upon reasonable notice, consistent with notice requirements under applicable tribal law and lease documents
- Provides that, in the event of a violation, BIA will defer to ongoing actions or proceedings provided for in the lease's negotiated remedies, as appropriate
- Provides that BIA will provide a copy of the notice of violation to the tribe for tribal land, and will provide constructive notice to Indian landowners for individually owned Indian land
- Requires BIA to consult with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, to determine what action to take if the lessee does not cure a violation within the requisite time period

Other Cross-Cutting Changes

- Clarifies when a BIA-approved lease of Indian land is required
- Incorporates "sliding scale" consent requirements established by the Indian Land Consolidation Act, as amended by the American Indian Probate Reform Act
- Clarifies that a lease of Indian land may include provisions requiring the lessee to give a preference to qualified tribal members, based on their political affiliation with the tribe
- Clarifies what laws and taxes apply to leases approved under 25 CFR 162

NOTE

This fact sheet is intended as an overview and summary of the final rule, rather than a replacement for or supplement to the rule. If this fact sheet is, in any way, inconsistent with the text of the final rule at 25 CFR 162, the text of the final rule governs. Additionally, there may be provisions in the final rule that the reader may deem significant that were not included here. Please refer to the final rule at 77 FR XXXXX.

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Appendix - Subparts Affected

This final rule replaces *Subpart F, Non-agricultural leases*, with the following:

- A new *Subpart C, Residential Leases*
- A new *Subpart D, Business Leases*
- A new *Subpart E, Wind and Solar Resource (WSR) Leases*

The final rule also updates other subparts to:

- Revise *Subpart A, General Provisions*
- Move existing *Subpart E, Special Requirements for Certain Indian Reservations*, to Subpart F
- Create a new *Subpart G, Records*.

The final rule does not affect *Subpart B, Agricultural Leases*. Subpart B may be revised at a later time. In addition, to ensure that changes to *Subpart A, General Provisions*, do not affect agricultural lease regulations, the final rule moves some of the current *Subpart A, General Provisions* sections to Subpart B, where they apply only to agricultural leases. Minor edits were made to these General Provisions to delete redundancies and clarify that they now apply only to agricultural leases.

The table below shows where current sections of the regulation are in the final rule.

Location of Current Sections in Final Rule

| Current | | | Final | | |
|-----------|----------------------|--|-----------|----------------------|---|
| -- | -- | -- | Subpart A | §§ 162.001 – 162.029 | General Provisions |
| Subpart A | §§ 162.100 - 162.113 | General Provisions | Subpart B | §§ 162.101 – 162.113 | Agricultural Leases (With edits and deletions as required) |
| Subpart B | §§ 162.200 - 162.256 | Agricultural Leases | Subpart B | §§ 162.200 – 162.256 | Agricultural Leases |
| Subpart C | -- | Residential Leases [Reserved] | Subpart C | §§ 162.301 – 162.374 | Residential Leases |
| Subpart D | -- | Business Leases [Reserved] | Subpart D | §§ 162.401 – 162.474 | Business Leases |
| -- | -- | -- | Subpart E | §§ 162.501 – 162.599 | Wind and Solar Resource Leases |
| Subpart E | §§ 162.500 - 162.503 | Special Requirements for Certain Indian Reservations | Subpart F | §§ 162.600 – 162.603 | Special Requirements for Certain Indian Reservations |
| Subpart F | §§ 162.600 - 162.623 | Non-Agricultural Leases | -- | -- | (Deleted) |
| --- | --- | --- | Subpart G | §§ 162.701 – 162.703 | Records |