Welcome to the Bureau of Indian Affairs’ Information Series for the HEARTH Act.

This Series provides guidance to tribes as they prepare to submit their leasing regulations to the Bureau of Indian Affairs (BIA) for review and approval by the Secretary of the Interior (Secretary) under the HEARTH Act.

This Part of the Series (Part 2) addresses the submittal process for tribal business leasing regulations.
Under the HEARTH Act, there are three general steps leading to Secretarial approval of tribal leasing regulations. Although this presentation focuses on business leasing regulations, these same three steps apply to the other types of leasing regulations tribes can submit.

**Tribal Government Drafts, Approves, and Submits its Leasing Regulations to the BIA’s Central Office**
- Regulations may address:
  - **Business Leasing**, and/or
  - Residential Leasing, and/or
  - Agricultural Leasing, and/or
  - Leasing for public, religious, educational, or recreational purposes.

**BIA and Solicitor’s Review**
- Regulations are reviewed in accordance with HEARTH Act criteria.
- Consistency with 25 CFR Part 162.
- Provides an environmental review process.
- Applies only to tribal trust land.
- Discuss review with tribe’s designated representative. Return regulations to tribe for any modifications.
- Submit final regulations to offices of the Assistant Secretary-Indian Affairs (AS-IA).

**Final Approval**
- Regulations reviewed by the AS-IA’s offices
- Regulations approved by Secretary.
- Moving forward, leases executed by the Tribe under the approved regulations, **will not** require additional BIA review or Secretarial approval.
WHY CONSIDER TRIBAL BUSINESS LEASING REGULATIONS:

• Under the Indian Long-Term Leasing Act of 1955, 25 U.S.C. § 415, and its subsequent amendments, leases of tribal trust lands generally require review by the Bureau of Indian Affairs (BIA) and approval by the Secretary of the Interior (Secretary).

• However, in support of tribal self-determination, the HEARTH Act amended 25 U.S.C. § 415, to provide federally recognized tribes the choice to opt out of the requirements for BIA review and Secretarial approval when leasing their lands.

• Under the Hearth Act, tribes are empowered to execute and approve individual leases, without further BIA review or Secretarial approval, if those leases are executed under tribal regulations that were approved by the Secretary. This provides tribes the ability to streamline the often cumbersome BIA review process and develop regulations that address unique opportunities within their community.

• The broad scope of uses offered by business leasing can encourage investment and economic development within a tribal community. Potential business uses can include, but are not limited to, shopping malls, outlets, grocery stores, restaurants, office space, light industrial uses, hotels, and resort developments.
BIA GUIDANCE MATERIALS:

Tribes that decide to draft and enact business leasing regulations and submit them to the BIA for review and approval, can benefit by first reviewing BIA’s suggested HEARTH Act guidance materials. By utilizing the guidance materials, a tribe can minimize or even avoid any revisions to their regulations during the BIA’s review process.

The following pages provide a snapshot and link to each of the suggested materials:

- Central Office’s National Policy Memorandum (NPM-TRUS-29).
- BIA’s checklist utilized in its review of tribal business regulations or the condensed version prepared with tribes in mind.

The BIA provides additional materials on the BIA’s website dedicated to HEARTH Act matters: http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm
GUIDANCE FOR TRIBES SUBMITTING BUSINESS LEASING REGULATIONS UNDER THE HEARTH ACT

THE HEARTH ACT
The Indian Long-Term Leasing Act of 1955, 25 U.S.C. § 415 including the HEARTH Act at §415(h) can be found at:


However, tribes are encouraged to utilize this with the additional guidance materials provided on the BIA’s HEARTH Act website:

http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm
GUIDANCE FOR TRIBES
SUBMITTING BUSINESS LEASING
REGULATIONS UNDER THE HEARTH ACT

BIA’s LEASING REGULATIONS
The Final Rule, 25 CFR Part 162, Subpart D Business Leases, published in the Federal Register December 5, 2012 and effective January 4, 2013 can be found at:


or on the BIA’s website dedicated to the HEARTH Act:

http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm
GUIDANCE FOR TRIBES
SUBMITTING BUSINESS LEASING
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NATIONAL POLICY MEMORANDUM
Central Office’s National Policy Memorandum (NPM-TRUS-29) can be found with other guidance materials on the HEARTH website:

http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm

The NPM is currently being revised. However, it is still valuable step-by-step guidance to determine whether completed tribal regulations are “consistent with” 25 CFR 162, as required by the HEARTH Act.
THE BIA CHECKLIST

The BIA has prepared a modified version of its review checklist for use by tribes. This four-page “condensed” version can be found with other guidance materials on the HEARTH website:

http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm

The full version used by the BIA is also posted on the website for informational purposes. However, it also contains items specific to the in-house processing at the BIA that will likely not be useful to tribes.
GUIDANCE FOR TRIBES
SUBMITTING BUSINESS LEASING
REGULATIONS UNDER THE HEARTH ACT

SUBMITTING THE REGULATIONS TO THE BIA

• Once the tribe prepares its proposed leasing regulations, they should be submitted to BIA’s Central Office in Washington, DC for review and Secretarial approval (the address and other contact information are provided at the end of this presentation).

• The package submitted to the BIA should contain:
  
  – A cover letter that includes:
    
    • A request for review and approval of the regulations under the HEARTH Act;
    • Contact information for parties, with decision-making authority regarding the regulations, that the BIA is authorized to contact (i.e., tribal officers, legal counsel);
    • Any special circumstances (an urgent need for approval; a unique provision included in the regulations, etc.).
  
  – The regulations, approved by the tribe and signed by the authorized tribal parties.
    • If the tribe submits an unsigned copy, it will be reviewed, but it will not be forwarded for approval until a fully executed regulation is received.

  – If applicable, a tribal resolution authorizing the regulation.
Tribal leasing regulations are submitted to the BIA’s Deputy Bureau Director and the BIA review process begins.

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  - Agricultural Leasing, and/or
  - Leasing for public, religious, educational, or recreational purposes.

BIA and Solicitor’s Review
- Regulations are reviewed in accordance with HEARTH Act criteria.
- Consistency with 25 CFR Part 162.
- Provides an environmental review process.
- Applies only to tribal trust land.
- Discuss review with tribe’s designated representative. Return to tribe for any modifications.
- Submit final regulations to offices of the Assistant Secretary-Indian Affairs (AS-IA).

Final Approval
- Regulations reviewed by the AS-IA’s offices
- Regulations approved by Secretary.
- Moving forward, leases executed by the Tribe under the approved regulations, will not require additional BIA review or Secretarial approval.
CRITERIA FOR REVIEW OF TRIBAL BUSINESS LEASING REGULATIONS:

- Tribal leasing regulations received by the BIA’s Deputy Director of Trust Services for approval under the HEARTH Act, are concurrently reviewed by the BIA’s Realty Specialist-Hearth Act Coordinator and the Office of the Solicitor.

- Utilizing the same guidance materials provided to tribes herein, the reviewers determine if the tribal regulations meet the criteria for Secretarial approval required by the HEARTH Act:
  - Initial terms for business leases do not exceed 25 years, but may include an option to renew for up to 2 additional terms, at no more than 25 years each (a total maximum lease term of 75 years).
  - Tribal regulations apply only to tribal trust lands and not to lands held in trust for individual Indian landowners.
  - Tribal regulations do not authorize leases for the exploration, development, or extraction, of any mineral resources.
CRITERIA FOR REVIEW OF TRIBAL BUSINESS LEASING REGULATIONS (cont.):

- Must provide for an environmental review process that includes:
  - Identification and evaluation of significant effects of the proposed lease on the environment
  - A period for public notice and comment related to any significant impacts of the proposed lease on the environment
  - The tribe’s response to relevant and substantive public comments on environmental impacts prior to tribal approval of the lease
- The tribal regulations must be consistent with 25 CFR Part 162, effective January 4, 2013
  - The term “consistent” is interpreted in a manner that maximizes the deference given to the tribe.
  - Congress expressly rejected a "meets and exceeds" standard during its final deliberations. Consistency with 25 CFR Part 162.
CRITERIA FOR REVIEW OF TRIBAL REGULATIONS (cont.):

- Referring to the previously referenced guidance materials (the National Policy Memo and BIA Checklist), the regulations are reviewed for additional details such as required definitions; specifics for identifying the land to be leased; whether prohibited provisions are included, etc.

FINALIZING THE INITIAL REVIEW:

- When the BIA’s Realty Specialist-Hearth Act Coordinator and the Office of the Solicitor have completed their respective reviews, they meet to reach consensus upon any required or suggested modifications to the proposed regulations.

- Absent any required or suggested modifications, the regulations are forwarded to the offices of the Assistant Secretary-Indian Affairs (AS-IA).

- If modifications are suggested or required, Tribal representatives are contacted and the those modifications are discussed. If needed, the document is referred back to the tribe, otherwise, the document is moved forward for the AS-IA’s offices.
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APPROVAL

• When the final regulations are received at the AS-IA’s offices, they undergo a brief, final round of review in preparation for approval.

• The Assistant Secretary-Indian Affairs approves the regulations.

• With approval of the tribe’s leasing regulations, no further BIA reviews or Secretarial approvals are necessary for leases executed under those tribal regulations.
Submit tribal leasing regulations, with required tribal signatures, a cover letter requesting review and approval, and any applicable authorizing resolutions to:

Ms. Helen Riggs,
Deputy Bureau Director
BIA-Office of Trust Services
1849 C Street, NW, MS 4620-MIB
Washington, D.C. 20240

Concurrently, a PDF and Word version of the submission is emailed to:
Cynthia Morales, Realty Specialist
HEARTH Act Coordinator and Liaison
E-mail: cynthia.morales@bia.gov
Review of tribal leasing regulations is coordinated by the BIA Central Office, Division of Real Estate Services.

Cynthia Morales, Realty Specialist
HEARTH Act Coordinator and Liaison
(202) 768-4166
E-mail: cynthia.morales@bia.gov

Robin White, Associate Division Chief, Real Estate Services
1849 C Street, NW, MS 4642-MIB
Washington, D.C. 20240
Phone: 202.208.1110
E-mail: robin.white@bia.gov

Sharlene Round Face, Division Chief, Real Estate Services
1849 C Street, NW, MS 4642-MIB
Washington, D.C. 20240
Phone: 202.208.3615
E-mail: sharleneroundface@bia.gov

If you have questions about submitting tribal leasing regulations for review under the HEARTH Act, please contact Central Office’s HEARTH Act Coordinator, or your Regional or Local Realty Officer.
Thank you,
You Have Completed
The HEARTH Act
Information Series – Part 2

Please refer to our website for additional guidance materials provided in conjunction with the Bureau of Indian Affairs’ Information Series for the HEARTH Act.

http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm