

BUSINESS LEASING ON INDIAN LANDS HANDBOOK

52 IAM 14-H



Bureau of Indian Affairs
Office of Trust Services
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Washington, DC 20240

#21-14, Issued: 9/30/21
New

FOREWORD

This handbook documents the procedures required to implement 52 IAM 14: Business Leases policy. Specifically, it documents the business leasing process to assist Bureau of Indian Affairs (BIA) management, BIA Division of Real Estate Services (DRES) staff, and support staff in providing services to Indian landowners, applicants, and the general public.

This handbook supersedes the Leasing and Permitting Chapter 4 – Business Leasing Handbook, issued March 6, 2006, and all policies and procedures related to business leasing and permitting that were previously created and distributed throughout Indian Affairs (IA).

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1.0 INTRODUCTION

1.1 Purpose

The purpose of this handbook is to standardize the business leasing process and to provide guidance that helps BIA field staff make leasing decisions within regulatory timeframes. Timely decisions result in economic development opportunities for Indian landowners in addition to other benefits.

Business leases on Indian land are negotiated and approved in accordance with 25 U.S.C. § 415, as amended, other authorizing statutes as amended by the Indian Land Consolidation Act of 2000 and the American Indian Probate Reform Act of 2004¹, and are governed by 25 CFR 162, Subpart A, General Provisions and Subpart D, Business Leases. Additional authorities and other guidance documents are listed in the accompanying policy document, 52 IAM 14: Business Leases. There are also other statutory requirements, exceptions, and restrictions for certain Tribes.

For Tribes, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) creates a voluntary, alternative land leasing process available to Tribes by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. § 415. More information about the HEARTH Act can be obtained at <https://www.bia.gov/bia/ots/hearth>. BIA will refer those seeking leases on Tribal lands to the Tribe that has HEARTH Act authority for that purpose on the land in question.

1.2 Types of Business Leases

There are many different types of business leases. For example:

- Leases for residential purposes that are not covered in 25 CFR subpart C (i.e., not single-family houses or housing for public purposes).
- Leases for business purposes that are not covered in 25 CFR subpart E (i.e., not wind energy evaluation leases or wind or solar resource leases).
- Leases for religious, educational, recreational, cultural, or other public purposes.
- Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

Industrial leases may include businesses such as storage or transport facilities, or mineral-related compressor stations, water injection wells, and disposal wells. Business leases can also be for broadband purposes. For example, business leases for broadband technology, such as wireless and telecommunications towers may be needed; and right(s)-of-ways (ROW) for fiber, digital subscriber line (DSL), cable, and broadband over power lines (BPL) may also be needed.

¹ To see a list of some of the authorizing statutes, please refer to 25 CFR 162 Subpart A, General Provisions.

BIA possesses the jurisdiction to grant ROW and approve business leases for broadband and other types of development on Indian trust land and individual restricted lands. The procedures for ROW are found in 52 IAM 9-H: Right-of-Ways on Indian Lands Handbook.

1.3 Permits

The 2013 revision to 25 CFR 162 eliminated the requirement for BIA to approve permits on Indian land. A permit is a non-assignable agreement whereby the permittee is granted a temporary, revocable privilege to use or access Indian land.² Because there is no requirement for BIA to approve permits on Indian land, neither the requirements of the National Environmental Policy Act (NEPA) nor Section 106 of the National Historic Preservation Act (NHPA) applies to these permits.

BIA will not administer or enforce permits. The landowner is responsible for collecting permit payments, rather than BIA. BIA will not collect permit income from permittees and BIA will not distribute permit income to Indian landowners. If there is a dispute regarding the permit or whether the permittees have made timely payments, the Indian landowners' remedy is with a court of competent jurisdiction.

Although BIA will not approve a permit for the use of Indian land, the permittee should ensure that permitted activities comply with all applicable environmental and cultural resource laws, and submit all permits to the appropriate BIA office so that BIA can maintain a copy of the permit in its records. If BIA determines, within 10 days of submission, that the document does not meet the definition of a "permit" and grants a legal interest in Indian land, BIA will notify the permittee that a lease is required.

² BIA can still issue permits to use Federal Government land that BIA has administrative jurisdiction over. Permits do not grant a legal interest in the land, are for a shorter term, and are for limited use.

2.0 PROCEDURES

This chapter explains the specific procedure associated with each aspect of business leasing. The actions documented throughout this chapter are directed at BIA DRES staff unless otherwise noted. The business lease process is summarized in Attachment 1: Business Lease Process Flow Chart.

2.1 Lease Proposal

This procedure includes guidance regarding initial contact with the applicant for a business lease related transaction, collecting information regarding the applicant's intent, and providing information about lease requirements and compliance to the applicant.

Step 1 - Initial Contact:

The initial contact for the proposed lease transaction may be with a landowner, a potential lessee, or both. This information will be entered into Trust Asset and Accounting Management System (TAAMS).

BIA's response during the initial contact may vary depending on the level of information the applicant has at the time of the initial contact, what information the applicant is seeking, and whether the applicant knows where the proposed business lease is going to be located.

Responses could include one of the following:

- For an applicant that is interested in a business lease but does not have enough information for BIA to start a temporary lease file or does not know the location where the business lease will be, BIA should provide the applicant with information as needed.
- For an applicant that knows the location of the proposed business lease, but does not have any additional information or documents, proceed to the next step, *Step 2 - Gather Information*.

Step 2 - Gather Information:

- 1) Gather information for the proposed business lease related transaction. The requested transaction could be initiation of a new lease, or a transaction related to an existing lease such as an amendment, assignment, or a sublease.
- 2) Enter the current legal description provided by the applicant to retrieve land status and ownership information from TAAMS.
- 3) Provide TAAMS reports, the Title Status Report (TSR), and Tract Owners Address Interest Report to the applicant, as needed.
- 4) Review the TSR to see if the land has undetermined estates or fee interest owners.

The DRES can create a temporary lease file to maintain documents relating to the proposed transaction. The proposed business lease information can also be entered into TAAMS.

Step 3 - Provide Consultation and Guidance:

- 1) Consult with the applicant on the required leasing documents needed in accordance with 25 CFR 162.438.
 - Review leasing requirements with the applicant. The applicant is responsible for submitting a complete lease package for review. BIA is responsible for ensuring that all regulatory requirements are met.
 - Discuss additional information and technical assistance on more complex requirements. This may include names, offices, and phone numbers of Department of the Interior (DOI) or Tribal staff that can further elaborate on environmental, survey, and appraisal issues.
 - Review the timelines and steps involved with the applicant and the Indian landowners regarding the transaction from start to finish.
- 2) Advise the applicant to review applicable local zoning rules, inter-agency agreements (e.g., Memoranda of Understanding and Memoranda of Agreement), and Tribal ordinances.
- 3) Advise the applicant that fee interests (any land that is not Indian land) cannot be included in a lease of Indian land and that the applicant must lease those interests from the fee owner separately (25 CFR 162.004(a)(1)-(2)).
 - Provide the applicant the mandatory provisions and suggested optional terms for incorporation in the negotiated lease (see Attachment 3: Mandatory Business Lease Provisions).
 - Advise the applicant that if an appraisal is prepared in the proper format, it will be forwarded to the Appraisal and Valuation Services Office (AVSO) for review and approval, unless the Indian landowner requests (under 43 CFR 100) that AVSO not review the appraisal.
 - Waiver of valuation, a waiver of appraisal, or in-kind consideration in-lieu of monetary value to complete the requirements for the transaction must be discussed and any agreements by the parties must be in writing.
 - Monetary compensation requirements for Tribal lands can be found at 25 CFR 162.420-29.
 - Monetary compensation requirements for individually owned Indian land can be found at 25 CFR 162.421-29.
 - Additional information can be found at 43 CFR 100 concerning minimum qualifications for appraisers employed by or under contract with an Indian Tribe or individual Indian, that will be accepted by the Department without further review or approval when the Tribe or individual Indian waives Departmental review and approval of the appraisal.

- 4) Explain the environmental compliance requirements to the applicant. Either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) will be required. Consult the Regional NEPA Coordinator for further guidance if needed.
- 5) Explain the requirements for archaeological, cultural, and historical compliance, which includes a review of documents and, generally, a field site assessment. This is completed under the umbrella of the NHPA. Additionally, consult the Regional Archeologist if further guidance is needed.
- 6) Explain additional considerations that may be relevant pursuant to 25 U.S.C. § 415, including:
 - compatibility and potential impacts of the proposed lease on surrounding properties and land use plans in effect on those lands;
 - notification to the landowner(s) of the surrounding properties;
 - environmental issues;
 - zoning, if applicable;
 - easements and ROW, ingress and egress to the leased property;
 - roads;
 - utilities;
 - conservation;
 - noise;
 - water;
 - waste disposal;
 - hazardous and contaminated materials;
 - cultural, archaeological, and historical implications;
 - traffic; and
 - air space.
- 7) Explain the terms and type of payment for any cash or in-kind consideration involving the transaction so the transaction may be processed efficiently.
 - Monetary compensation requirements for Tribal lands can be found at 25 CFR 162.420-29.
 - Monetary compensation requirements for individually owned Indian land can be found at 25 CFR 162.42-29.
- 8) Provide the applicant with all of the necessary checklists, contact information, and samples or forms that must be completed in order for the lease package to be processed (see also Attachment 2: Business Leasing Checklist). This can include:

- Checklist
- Compliance information that includes appraisal, NEPA, and NHPA compliance (environmental, historical, and cultural)
- A copy of the BIA's business leasing regulations

Step 4 - Lease Negotiation:

- 1) Explain that it is the applicant's responsibility to communicate and coordinate with the Indian landowner or Tribe to inform them of the proposed business lease project, and that this communication should be done via meetings with interested parties, sending letters, posting ads and signs, and other means as necessary. Preliminary negotiations may begin at this juncture.
- 2) Explain that the applicant must also coordinate activities with the Tribe (e.g., archaeologist, political leaders, Land Department, etc.), including the applicant's appraisers, surveyors, environmental contractors, and other parties hired by the applicant to obtain all required documents.
- 3) Create a file and enter the proposed business lease information into TAAMS. Proposed business lease information includes applicant name, tract and acreage, payment, and other proposed items.
- 4) Explain that BIA will be available for meetings and can provide guidance to the applicant, Indian landowner, Tribe, contractors (environmental, appraiser, surveyor, etc.), and other stakeholders.
 - BIA will conduct a preliminary review of documents during this part of the process to ensure that everything is being completed correctly.
 - BIA may provide landowners with information on the proposed project and discuss BIA's role and landowner rights, so landowners can make an informed decision about the project.
- 5) Ensure that negotiations are not less than fair market value (FMV) and fair annual rental, unless waived (25 CFR 162.420, .421, and .422).
 - An appraisal, market analysis, or other appropriate valuation must be completed at this point to establish FMV. If an appraisal is not provided by the applicant, BIA should request an appraisal be completed by AVSO. If an appraisal is provided by the applicant, submit the appraisal to AVSO for review and approval.
 - Trust land appraisals not prepared by AVSO must be reviewed by AVSO before approval of a trust land or resource transaction, even if the appraisal was prepared by a compacted or contracted Tribe, *unless* the Indian landowner waives the review of the appraisal under 43 CFR 100. The review of appraisals is an inherently federal function.

- Leases may be approved by the DOI Secretary at less than the FMV when a determination is made that it is in the best interest of the Indian landowner. The determination must be made in writing and becomes a part of the lease package.
- Upon a duly adopted Tribal resolution or other appropriate legal document, BIA will defer to the Tribe's negotiated compensation and not require a valuation or appraisal, unless requested by the Tribe (25 CFR 162.420).
- If requested by the Indian landowner, BIA may negotiate on their behalf.

Step 5 - Finalize Lease Proposal:

Update information in TAAMS. Ensure all information is correct and, if the lease is complete, generate the draft lease document in the Business Proposal module to create a lease in the TAAMS Business Module.

2.2 Lease Review

This procedure includes the review of the lease package to ensure that all applicable statutory and regulatory requirements are satisfied.

Step 1 - Applicant Submits Lease Package:

- 1) Within 10 calendar days of receipt of a business lease package, BIA will send a letter to the applicant acknowledging receipt.
 - In accordance with 25 CFR 162.438, a complete business lease package includes all the information and supporting documents required under BIA's leasing regulations, including, but not limited to, NEPA review documentation and valuation documentation, where applicable.
 - There may be several sets of original lease documents submitted. There is no regulation or policy guiding how many copies are submitted.
 - If the business lease package is incomplete, BIA's letter of acknowledgement will identify the missing information or documents required for a complete package. If additional information is needed, the applicant must be notified that he/she is required to submit the additional documents within 30 calendar days.
 - If the business lease package is complete, BIA must approve or disapprove the lease within 60 calendar days of the receipt date.
- 2) If BIA does not respond to the submission of a business lease package, the parties to the business lease may file a written notice to compel action with the appropriate Regional Director or the Bureau Director in accordance with 25 CFR 162.463.
- 3) Confirm receipt of any applicable administrative fees.

Step 2 - Consent:

Review the landowner consents submitted by the applicant to ensure that the required consent to lease has been met (25 CFR 162.012).

Step 3 - Mandatory Provisions:

- 1) Review the proposed lease provided by the applicant to ensure all mandatory provisions are included in the lease in accordance with 25 CFR 162.413. Any lease drafted by negotiated parties must be in a form acceptable to the Secretary and must contain mandatory lease provisions. The lease can include recommended optional lease provisions provided during earlier discussions with the applicant or other provisions negotiated by the parties (see Attachment 2: Business Leasing Checklist).
- 2) Verify that the lease has been executed by all appropriate parties.

Step 4 - Environmental Compliance:

The BIA Division of Environmental and Cultural Resource Management (DECRM) staff and the Regional Archeologist will determine the actions necessary to ensure compliance with the NEPA, NHPA, and Endangered Species Act (ESA). For additional information, see 59 IAM 3-H: National Environmental Policy Act Guidebook. The review of the environmental documents by environmental staff can occur prior to or concurrently with the review by BIA of the lease package.

Step 5 - Lands and Development:

- 1) Review the site and construction development plans to:
 - ensure there is ingress and egress to the proposed site;
 - the project schedules are appropriate; and
 - the impact on adjacent properties is considered.
- 2) Review the legal description for the subject property. Guidance is found in 25 CFR 162.418 for legal description for the lease premises. Regional Bureau of Land Management (BLM) Indian Land Surveyors (BILS) may also assist with legal description review.

Step 6 - Negotiated Terms:

- 1) Ensure that all negotiated lease terms and conditions are included in the lease language. Specifically:
 - Negotiated terms may not alter or supersede mandatory provisions that are established by statute or regulation.

- Provisions may not be allowed if they are contrary to, or in conflict with, regulations such as the conditions under which direct payment is allowed or standard late payment penalties.
 - The rental must be consistent with the agreed upon conditions between the lessee and Indian landowner.
 - The rental can be calculated as a percent of income, gross or net, or income as a Guaranteed Minimum Annual Rental (GMAR), with recommended adjustments every five years, or both. The rental could also be some other amount negotiated by the parties.
 - A business lease may provide for the Indian landowners to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the business lease and consistent with the terms of the business lease. Any such use or authorization by the Indian landowners will not reduce or offset the monetary compensation for the business lease.
- 2) BIA should seek additional guidance on the assessment of the lease if submitted documents need technical or specialized assessment. If it is a complicated lease, assistance from other offices may be required.

Step 7 - Duration:

Verify that the proposed duration of the lease complies with statutes and regulations. Business leases are generally allowed for a term of up to 25 years, but may include provisions authorizing a renewal or an extension for an additional term not to exceed 25 years, except as provided in specific statutes for individual Tribes, which may allow a term not to exceed 99 years (Long Term Leasing Act of 1955, 25 U.S.C. § 415(a), as amended, 25 CFR 162.411).

2.3 Lease Approval

Step 1 - Recommendation and Package Preparation:

- 1) Prepare the lease package to recommend approval or disapproval. BIA may not unreasonably withhold approval of a lease. BIA may disapprove a business lease, but only if at least one of the following is true:
- the Indian landowners have not consented, and their consent is required;
 - the lessee’s mortgagees or sureties have not consented;
 - the requirements of 25 CFR 162 have not been met; or
 - BIA finds a compelling reason to withhold its approval in order to protect the best interests of the Indian landowners.

BIA will defer, to the maximum extent possible, to the Indian landowners’ determination that the lease is in their best interest.

- 2) Check and ensure the package contains the following:
 - Signature pages
 - All Exhibits or Attachments
 - Written determination (with reasons) that the lease is in the best interest of the landowners
- 3) Prepare documentation for routing to the approving official.
- 4) Prepare the Decision Letter to the applicant. Additional information on the Decision Letter is discussed in *Step 2 - Decision* below.

Step 2 – Decision:

BIA will provide a decision (i.e., determination) and the basis for the determination, along with notification of any appeal rights under 25 CFR 2, in writing to the parties to the lease (e.g. “Decision Letter”). The Decision Letter must be sent via U.S. Postal Service, certified return receipt. Certified return receipt provides BIA proof of the mail date of the Decision Letter when determining whether appeals were filed timely and within the appeal period.

Step 3 - Recordation:

Enter the lease into TAAMS and record it with the Land Titles and Records Office (LTRO) with jurisdiction over the leased land immediately upon approval.

Step 4 - Distribution:

Provide copies of the approved lease to the lessee, the Tribe for Tribal land, and upon written request, to individual Indian owners or other parties to the document.

2.4 Lease Amendment

Processing subsequent lease amendments must be done in accordance with 25 CFR 162.445. BIA, or a Tribe with jurisdiction, will process amendments, as required, unless the lease specifies otherwise.

Step 1 - Review:

- 1) Notify the parties in writing of the date BIA receives the proposed lease amendment.
- 2) If additional review time is needed, BIA must notify the parties in writing. The letter must identify BIA’s initial concerns and the reason for requesting more review time and invite the parties to respond within 15 calendar days of the date of the letter. BIA has 30 calendar days to approve or disapprove the amendment starting from the date the letter is sent informing the parties that additional time is needed.

- 3) Check the lease provision regarding consents, unless the lease provides otherwise, and ensure the required consent(s) has been obtained from all parties to the lease, sureties, or their designated representative (25 CFR 162.445-46).
- 4) Check if the amendment conflicts with provisions of the business lease, if applicable; and determine how the lease is being amended, and if it is allowable under the lease provisions.
- 5) Verify the amendment is in the best interest of the Indian landowner using the same standards as required for approval of the lease.
- 6) Confirm receipt of any applicable administrative fees.

Step 2 - Decision:

- 1) Send the lease amendment to the delegated authorized official for approval.
- 2) If a decision is not rendered within 30 calendar days of receipt of a complete package, the lease amendment is deemed approved (25 CFR 162.447). Unless the lease provides otherwise, provisions of the amendment that are inconsistent with federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.
- 3) BIA's determination to approve or disapprove the amendment will be in writing and will state the basis for the decision. BIA may disapprove a business lease amendment only if at least one of the following is true:
 - the Indian landowners have not consented and their consent is required;
 - the lessee's mortgagees or sureties have not consented;
 - the lessee is in violation of the lease;
 - the requirements of 25 CFR 162 have not been met; or
 - BIA finds a compelling reason to withhold its approval in order to protect the best interests of the Indian landowner.
- 4) BIA will defer, to the maximum extent possible, to the Indian landowners' determination that the amendment is in their best interest. BIA may not unreasonably withhold approval of an amendment.

Step 3 - Recordation:

Enter the lease amendment into TAAMS and record it with the LTRO with jurisdiction over the leased land immediately upon approval.

Step 4 - Distribution:

Provide copies of the approved lease amendment to the lessee, the Tribe for Tribal land, and upon written request, to individual Indian owners or other parties to the document.

2.5 Sublease

Processing subleases must be done in accordance with 25 CFR 162.453-56. BIA, or a Tribe with jurisdiction, will process subleases as required.

Step 1 - Review:

- 1) Review the proposed sublease.
- 2) Unless otherwise specified in the lease, the Indian landowners must consent to a sublease in the same manner as they do to the initial lease. Consent cannot be unreasonably withheld.
 - Ensure the process was followed if the lease was negotiated with the deemed consent process described in 25 CFR 162.454(b) and (c). If the lease provides for deemed consent under 25 CFR 162.454 (c), the parties must submit to BIA:
 - a copy of the executed sublease or other documentation of any Indian landowners' actual consent;
 - proof of mailing of the sublease to any Indian landowners who are deemed to have consented; and
 - any other pertinent information for BIA to review.
 - A lease may provide for a sublease without further consent of the Indian landowner when:
 - the sublease is a part of a commercial or residential development;
 - the lease provides for subleasing without meeting consent requirements or BIA approval;
 - the sublease does not relieve the lessee/sublessor of any liability; and
 - the parties provide BIA with a copy of the sublease within 30 calendar days after it is executed.
 - Consent to the sublease must be obtained from any sureties if the lease requires.
- 3) Determine if:
 - The sublessee agrees to be bound by the terms of the lease. If there is any dispute between the master lease and sublease, the master lease will prevail.
 - The Indian landowner is to receive some or all of any income received by the lessee for the sublease. The master lease may contain a provision that states: "Termination of this lease, or cancellation, shall operate as an assignment of the sublease to the Lessor." If

cancelled, the lessor receives the rent. Also, the lessor may be entitled to receive a percentage or additional rents from the sublease (through master lessee/sublessor).

- The value of any part of the leased premises not covered by the sublease would be adversely affected.
 - The sublessee has provided supporting documents which demonstrate that the sublease will be enforceable against the sublessee, and that the sublessee will be able to perform its obligations under the sublease.
- 4) Ensure that the sublease does not relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the master lease.
 - 5) Ensure that the master lease is in good standing and no defaults exist.
 - 6) Ensure that the sublease includes a provision that assigns the sublease to the Indian landowner if the master lease is cancelled.
 - 7) Determine whether a legal description has been included. If it is, it should be attached as “Exhibit A”, and it should match the master lease description, or as surveyed and approved by the BILS.
 - 8) Consider the following:
 - What is the purpose of the sublease and is it stated in the master lease?
 - Do Consumer Price Index (CPI) adjustments, and CPI used, if any, match with the master lease?
 - Are there subleasehold transfer fees and encumbrance fees? Encumbrance should only be on the subleasehold and not go beyond term of the master lease, and it may not over encumber the FMV of the lease.
 - 9) Ensure the master lease contains language indicating that the master lease prevails in the event of a conflict between the sublease and the master lease.
 - 10) Confirm receipt of any applicable administrative fees.

Step 2 - Decision:

- 1) Send the sublease to the delegated authorized official for approval.
- 2) If a decision is not rendered within 30 calendar days of receipt of a complete package, the sublease is deemed approved (25 CFR 162.455). Unless the lease provides otherwise, provisions of the sublease that are inconsistent with federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

3) BIA's determination to approve or disapprove the sublease will be in writing and will state the basis for the decision. BIA may disapprove a sublease only if at least one of the following is true:

- the Indian landowners have not consented and their consent is required;
- the lessee's mortgagees or sureties have not consented;
- the lessee is in violation of the lease;
- the lessee will not remain liable under the lease;
- the requirements of 25 CFR 162 have not been met; or
- BIA finds a compelling reason to withhold its approval in order to protect the best interests of the Indian landowners.

Step 3 - Recordation:

Enter the sublease into TAAMS and record it with the LTRO with jurisdiction over the leased land immediately upon approval.

Step 4 - Distribution:

Provide copies of the approved sublease to the lessee, the Tribe for Tribal land, and upon written request, to individual Indian owners or other parties to the document.

2.6 Lease Assignment

Processing a lease assignment must be done in accordance with 25 CFR 162.449. BIA, or a Tribe with jurisdiction, will process lease assignments.

A lessee may assign a business lease by:

- meeting the consent requirements in 25 CFR 162.450 and obtaining BIA's approval of the assignment; or
- without consent or BIA approval, if the assignment is to one of the not more than three distinct legal entities specified in the lease, or to the lessee's wholly owned subsidiary, and the lessee notifies BIA of the assignment within 30 calendar days after it is executed; or
- the assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance. The assignee must agree in writing to assume all of the obligations and conditions of the lease, and that any transfer of the lease will be in accordance with applicable law under 25 CFR 162.014.

Step 1 - Review:

- 1) Notify the parties in writing of the date BIA received the assignment.
- 2) Review the proposed lease assignment (see Attachment 2: Business Leasing Checklist).

- Confirm there is a copy of notification made by the lessee to all Indian landowners of the proposed assignment unless the lease provides otherwise.

3) Confirm receipt of any applicable administrative fees.

Step 2 - Decision:

- 1) Send the lease transaction to the delegated authorized official if BIA approval is required.
- 2) If BIA's approval is required, it has 30 calendar days from receipt of the executed assignment, proof of required consents, and required documentation to approve or disapprove the assignment. If BIA does not timely approve or disapprove the assignment, the parties may file a written notice to compel action with the appropriate Regional Director or the Bureau Director in accordance with 25 CFR 162.463
- 3) BIA's determination to approve or disapprove the assignment will be in writing and will state the basis for the decision. BIA may disapprove an assignment of a business lease only if at least one of the following is true:
 - the Indian landowners have not consented and their consent is required;
 - the lessee's mortgagees or sureties have not consented;
 - the lessee is in violation of the lease;
 - the assignee does not agree to be bound by the terms of the lease;
 - the requirements of this subpart have not been met; or
 - BIA finds a compelling reason to withhold its approval in order to protect the best interests of the Indian landowners.
- 4) BIA will defer, to the maximum extent possible, to the Indian landowners' determination that the assignment is in their best interest. BIA may not unreasonably withhold approval of an assignment.

Step 3 - Recordation:

Enter the lease assignment into TAAMS and record it with the LTRO with jurisdiction over the leased land immediately upon approval.

Step 4 - Distribution:

Provide copies of the approved assignment to the lessee, the Tribe for Tribal land, and upon written request, to individual Indian owners or other parties to the document.

2.7 Leasehold Mortgages

A leasehold mortgage must be processed in accordance with 25 CFR 162.457-60. BIA, or a Tribe with jurisdiction, will administer the lease. Refer to 52 IAM 4: Processing Mortgages of Trust Properties for guidance.

2.8 Lease Option to Renew or Extend

The option to renew or extend a lease must be specified in the lease document. If the option is not specified, the applicant must contact the appropriate BIA agency to exercise the renewal or extension of the lease, if applicable. BIA, or a Tribe with jurisdiction, will administer the lease extension and renewal process. The lessee must provide all applicable documentation for review and approval.

Step 1 - Review Renewal/Extension:

- 1) Review the lease to see if it specifies a time and manner in which the renewal option will be exercised, and if it contains an automatic renewal option.
- 2) Check the lease to see if Indian landowner consents are required.
- 3) Review the lease to see if it provides for an extension. If it does not, then an amendment will be required (see section 2.4 of this handbook). The extension must not exceed the term allowed under statutes or regulations.

Step 2 - Decision:

Send the renewal or extension request to the delegated authorized official for approval.

Step 3 - Recordation:

Enter the renewal or extension into TAAMS and record it with the LTRO with jurisdiction over the leased land immediately upon approval.

Step 4 - Distribution:

Provide copies of the approved renewal request to the lessee, the Tribe for Tribal land, and upon written request, to individual Indian owners or other parties to the document.

2.9 Lease Effectiveness, Compliance, and Enforcement

A lease may be canceled if any of the provisions of the lease are violated and remain uncorrected after BIA issues a notice of violation to the lessee and its sureties pursuant to 25 CFR 162.464-67. BIA, the Bureau of Trust Funds Administration (BTFA), and the BIA Office of Trust Services (OTS) staff all participate in the monitoring of leases for financial and use compliance.

Step 1 - Investigate Non-Compliance:

Investigation of lease violations may be initiated as a result of the following:

- Site visits by DRES staff to determine compliance with the terms of the lease.
- Indian landowner notifies BIA of a lease compliance issue.
- Complaint from a neighboring landowner.
- Non-payment of lease rental.
- If a lessee abandons the leased premises, BIA will treat the abandonment as a violation of the lease.

BIA must initiate an appropriate investigation within 10 business days of notification of the potential violation. The 10 business day period begins when the BIA agency is notified or becomes aware of a potential non-compliance issue, usually for non-payment or for damages.

BIA may receive inquiries from Indian landowners regarding situations of potential trespass on Indian lands. These are not necessarily lease violations but are situations that may require BIA to investigate and respond to concerns brought forward by Indian landowners.

Step 2 - Respond to Alleged Non-Compliance/Lease Violation:

If BIA determines there has been a violation of the conditions of a business lease, BIA must:

- 1) Prepare a Notice of Violation. A 10 Day Show Cause letter is a type of Notice of Violation. The Notice must contain the following:
 - the explanation of the violation;
 - reference to any previous contact;
 - any unpaid rent, interest charges, or penalties;
 - any lease stipulations or conservation plan elements that apply;
 - if the violation is location-specific, a citation of the location; and
 - a statement that the lessee must: (1) cure the violation and notify BIA that it has been corrected; (2) dispute the violation with explanation; or (3) request additional time to cure the violation.
- 2) Send the Notice of Violation to the lessee and its sureties within 10 business days (25 CFR 162.466). A Notice of Violation is sent via the U.S. Postal Service, certified mail with return receipt requested, or hand delivered with acceptance or refusal documented. The return receipt is attached to the file copy of the Notice as a part of the official record. Law enforcement officers can deliver notices and verify delivery or refusal of the notice.
- 3) Provide constructive notice to Indian landowners of individually Indian owned land. Constructive notice means notice posted at the Tribal government office, Tribal community

building, and the United States Post Office; and published in the local newspaper(s) nearest to the affected land and/or announced on a local radio station(s).

- 4) The 10 business days during which the lessee must show cause as to why the lease should not be cancelled, or correct the violation, starts when the lessee receives notice.
- 5) Accept one of the following responses from the lessee:
 - The violation has been cured.
 - The lessee disputes the violation and the grounds for doing so.
 - An extension of time to cure the violation is requested. If additional time is granted, document the reason for the extension and have all parties agree on the timeline for completing the corrective actions and subsequent inspections.
 - Once the extended time period is over, verify that the violation has been corrected.
 - If corrections are not made according to the agreed deadline, make the violator aware of potential punitive actions (see step 6) below also).
 - A remedy has been negotiated under the terms of the lease to resolve the violation with the consent of the Indian landowner.
- 6) If a violation is not remedied within the allotted time period:
 - Notify the bonding agent and known lien holders. Under threat that the lease or bond may be lost, lien holders and bonding agents can have considerable influence on their clients.
 - Consult with the Indian landowner to determine if the lease should be cancelled or if there is another remedy that should be initiated. Any other remedy must be specifically stipulated under the lease.
 - The performance bond may be forfeited.

Step 3 - Issue a Cancellation Notice:

- 1) Issue a Cancellation Notice (i.e., “cancellation letter”) for non-compliance after the 10 business days expire unless an extension has been granted or the violation has been cured. The Cancellation Notice must include the following:
 - the reason for cancellation;
 - notification of the right to appeal pursuant to 25 CFR 2;
 - the amount of any appeal bond that must be posted if set by the official to whom the appeal is made under 25 CFR 2; and
 - an order for the lessee to vacate the property within 31 calendar days of the date of his/her receipt of the cancellation letter, if the lessee has not filed an appeal.
- 2) Send the Cancellation Notice to the lessee and sureties within five business days of the decision to cancel.

A cancellation decision is effective on the 31st day after the lessee signs receipt for the cancellation letter, or on the 41st day from the date the letter is mailed, whichever is earlier. Unless the cancellation decision is made effective immediately, it will be stayed if the lessee files an appeal. While a cancellation decision is stayed (ineffective), the lessee must continue to pay rent and comply with the other terms of the lease.

Step 4 – Recordation of Cancellation:

Enter the cancellation decision into TAAMS and record it with the LTRO with jurisdiction over the leased land immediately upon approval. If applicable, the cancellation decision may also be recorded with the county.

Step 5 - Enforcement:

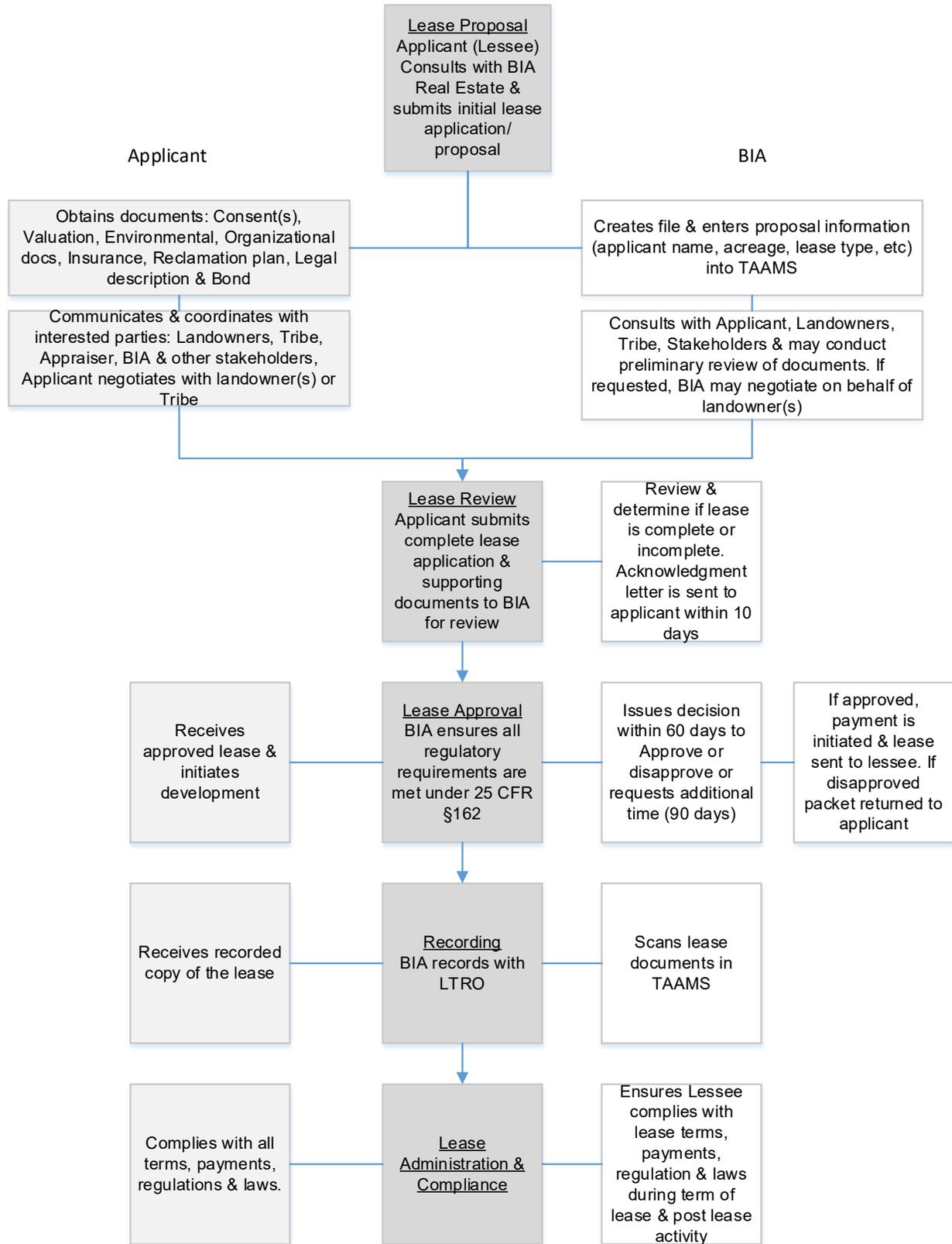
If a lessee remains in possession of the Indian land after the expiration, termination, or cancellation of a business lease, BIA may treat the unauthorized possession as a trespass under applicable law in consultation with the Indian landowners (25 CFR 162.471).

Key Terms and Definitions

Key terms and definitions are at [25 CFR 162.003](#) with the exception of the term below:

Broadband means high-speed, switched, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics, and video telecommunications using any technology such as fiber, digital subscriber line (DSL), cable modem, wireless, satellite, and broadband over power lines (BPL). Broadband means the technology underlying telecommunications services such as voice, video, and data.

ATTACHMENT 1: BUSINESS LEASE PROCESS FLOW CHART



ATTACHMENT 2: BUSINESS LEASE CHECKLIST

| LEASE PROPOSAL INFORMATION | | | |
|--|---|-------------|------------------------------------|
| No. | Description | Date | Comments |
| | BIA Contact: | | |
| | Case Initiation Received (ex: Letter of Intent, email, call) | | |
| | Provide Consultation to Applicant | | |
| | Lease No. Assigned: | | |
| | Allotment/Tract No., Section, Township & Range, Acres: | | |
| | Provide Title Status Report | | |
| | Lessor: | | |
| | Lessee: | | |
| | Encode TAAMS Realty Proposal | | TAAMS Realty Proposal Document ID: |
| | Incomplete Lease Acknowledgement Letter Sent | | |
| | Complete Lease Acknowledgement Letter Sent | | |
| | Additional Time Letter Sent | | |
| LEASE REVIEW | | | |
| DOCUMENTATION REQUIRED FOR COMPLETE LEASE PACKAGE | | | |
| No. | Description | Date | Comments |
| (a) | A lease executed by Indian landowners & lessee that meets requirements of 25 CFR 162: <ul style="list-style-type: none"> o Term o Mandatory Provisions (Attachment 2) o Rental requirements o Bonding & Insurance | | |
| (b) | For tribal land, a tribal authorization (i.e., Tribal Resolution) | | |
| | Landowner Consent - Individually Owned Land <ul style="list-style-type: none"> o Number of Owners: o Required Consent Percentage: | | |
| (c) | Valuation, if required under 162.420 or 162.421 <ul style="list-style-type: none"> o Appraisal Received: o Appraisal Reviewed by AVSO (if required) o Waiver of Valuation | | |
| (d) | Proof of Insurance, if required under 162.437 | | |
| (e) | Performance Bond or other security, if required under 162.434 | | |
| (f) | Statement from appropriate tribal authority that proposed use is in conformance with applicable tribal law, if required by the Tribe. | | |

Attachment 2 continued

| | | | |
|-----------------------|---|-------------|---------------------------------|
| (g) | Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements, including any documentation prepared under 25 CFR 162.027(b) | | |
| (h) | Restoration and reclamation plan, if appropriate | | |
| (i) | If lessee is not an entity owned and operated by the Tribe, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate | | |
| (j) | Preliminary plan of development that describes the type and location of any permanent improvements the lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate | | |
| (k) | A legal description of the land under 25 CFR 162.418 | | Legal Description Review (LDR): |
| (l) | If the lease is being approved under 25 U.S.C. § 415, information to assist us in our evaluation of the factors in 25 U.S.C. § 415(a) | | |
| (m) | If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that: (1) The representative has authority to execute a lease; (2) The lease will be enforceable against the lessee; and (3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located. | | |
| LEASE APPROVAL | | | |
| | Decision | Date | Comment |
| | Recommendation for Approval Memo for Approving Official | | |
| | Decision Letter Sent | | |
| | TAAMS Realty Proposal to Generate Lease | | |

Attachment 2 continued

| ASSIGNMENT REALTY PROPOSAL INFORMATION | | | |
|---|---|------------------------------------|---------------------|
| No. | Description | Date | Comments |
| | BIA Contact: | | |
| | Lease No. Assigned: | | |
| | Allotment/Tract No., Section, Township & Range, Acres: | | |
| | Run Title Status Report | | |
| | Lessor: | | |
| | Lessee: | | |
| | Encode TAAMS | | TAAMS Document ID: |
| | Complete Lease Acknowledgement Letter Sent | | |
| | Incomplete Lease Acknowledgement Letter Sent | | |
| DOCUMENTATION REQUIRED FOR ASSIGNMENT | | | |
| No. | Description | Date | Comments |
| | Executed Assignment submitted to the Agency for review and approval. | | |
| | Landowner Consents: In same manner and percentage of lease unless lease provides otherwise. | | 162.449 (b) and (c) |
| | 25 CFR 162.450(a), the lessee must notify all landowners unless provides otherwise. | | |
| | 25 CFR 162.452(2) Have the lessee's mortgagees or sureties consented? | | |
| | | | |
| | (BIA) NEPA, Categorical Exclusion Exception Review (CEER) . Consult NEPA. | | |
| | (BIA) Reconciliation on the Master Lease, if applicable, to ensure the lease and subleases are not in default. | | |
| ASSIGNMENT APPROVAL | | | |
| Decision | Date | Comment | |
| Recommendation for Approval Memo for Approving Official | | Attachment | |
| Assignment Signed | | Attachment | |
| TAAMS Realty Document Modified | | TAAMS Contract ID No.: | |
| ASSIGNMENT RECORDING | | | |
| Decision | Date | Comment | |
| Image Assignment in TAAMS for LTRO recording | | TAAMS Imaging Repository (TIR) Log | |
| Date Recording Completed | | | |
| Print Contract Status Report for file | | | |

Attachment 2 continued

| SUBLEASE REALTY PROPOSAL INFORMATION | | | |
|--|--|-------------|--------------------|
| No. | Description | Date | Comments |
| | BIA Contact: | | |
| | Lease No. Assigned: | | |
| | Allotment/Tract No., Section, Township & Range, Acres: | | |
| | Run Title Status Report | | |
| | Lessor: | | |
| | Lessee: | | |
| | Encode TAAMS | | TAAMS Document ID: |
| | Complete Lease Acknowledgement Letter Sent | | |
| | Incomplete Lease Acknowledgement Letter Sent | | |
| | Additional Review Time Letter | | |
| SUBLEASE REVIEW DOCUMENTATION REQUIRED FOR SUBLEASE | | | |
| No. | Description | Date | Comments |
| | Executed Sublease submitted to the Agency for review and approval. <i>Is landowner consent required? See Lease</i> ___ Legal Description attached | | |
| | 25 CFR 162.454 The lessee must notify all Indian Landowners | | |
| | Other Considerations | | |
| | Ensure the sublease contains language indicating that the master lease prevails in the event of a conflict between the sublease and the master lease. | | |
| | Sureties Consent: 25 CFR 162.456(a)(2) - Has the lessee mortgagees or sureties consented? (check for Deed of Trust) | | |
| | (BIA) NEPA - consult NEPA. | | |
| | Reconciliation on the Master Lease, if applicable, to ensure the lease and sublease are not in default. | | |
| | If applicable, Certificate of Liability Insurance | | |
| | If applicable, Corporate Documents: (Sublessee) | | |

Attachment 2 continued

| SUBLEASE APPROVAL | | | |
|---------------------------|--|-------------|---|
| | Decision | Date | Comment |
| | Recommendation for Approval Memo to Approving Official | | Attachment |
| | Sublease Signed | | Certified Return Receipt: Attachment |
| SUBLEASE RECORDING | | | |
| | Decision | Date | Comment |
| | Image Assignment in TAAMS for LTRO recording | | TAAMS Imaging Repository (TIR) Log |
| | Recording completed | | |
| | Print Contract Status Report for file | | |

ATTACHMENT 3: MANDATORY BUSINESS LEASE PROVISIONS

| §162.413 Are there mandatory provisions that a business lease must contain? | | | |
|--|---|------------|-----------------------------------|
| Chk | a) All business leases must identify: | Pg. | Comments |
| | (1) The tract or parcel of land being leased | | Land Description |
| | (2) The purpose of the lease and authorized uses of the property | | Purpose of Lease |
| | (3) The parties to the lease | | Parties |
| | (4) The term of the lease | | Term |
| | (5) The ownership of permanent improvements and the responsibility for constructing, operating, and maintaining, and managing permanent improvements under 25 CFR 162.415. | | Improvements |
| | (6) Payment requirements and late payment charges, including interest | | Rentals |
| | (7) Due diligence requirements | | Completion of Improvements |
| | (8) Insurance requirements | | Liability |
| | (9) Bonding requirements | | Bonding |
| | b) Where a representative executes a lease on behalf of an Indian landowner or lessee, the lease must identify the landowner or lessee being represented and the authority under which the action is taken. | | |
| Chk | c) All business leases must include the following provisions: | Pg. | Comments |
| | (1) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status; | | Lessee Obligations |
| | (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises; | | Unlawful Use |
| | (3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under 25 CFR <u>162.014</u> . | | Applicable Law |
| | (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, and the lessee will contact BIA and the Tribe with jurisdiction over the land to determine how to proceed and appropriate disposition; | | Archeological, Cultural, Historic |
| | (5) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with 25 CFR 162.464, to enter the leased premises for inspection and to ensure compliance; and | | Inspection |

Attachment 3 continued

| | | | |
|--|--|--|------------|
| | (6) BIA may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and Duplication. | | Accounting |
| | (7) BIA may treat any provision of a lease document that violates Federal law as a violation of the lease (in accordance with 25 CFR 162.413(e)). | | |
| | (d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions: | | |
| | (1) The lessee holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee’s use or occupation of the leased premises; and | | |
| | (2) The lessee indemnifies the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners’ negligence or willful misconduct. | | |
| | (3) We may treat any provision of a lease document that violates Federal law as a violation of the lease. | | |
| | OTHER PROVISIONS | | |
| | <p>25 CFR 162.412 Option to Renew- A proposed lease must state if there is an option to renew, and if so, provide for a definite term for the renewal period.</p> <p>25 CFR 162.412 If there is an option to renew:</p> <p>___ A definite term for the renewal period.</p> <p>___ The time and manner in which the option must be exercised or is automatically effective.</p> <p>___ Confirmation of renewal must be submitted to BIA, unless lease provides automatic renewal.</p> <p>___ Whether Indian landowner consent to the renewal is required.</p> <p>___ Lessee must provide notice of the renewal to the Indian landowners, sureties, and mortgagees.</p> <p>___ Additional consideration due upon exercise of an option to renew or start of the renewal term.</p> <p>___ Other conditions for renewal (e.g., lessee is not in violation of the lease at renewal).</p> | | |

Attachment 3 continued

| | | | |
|--|---|--|--|
| | Sublease, Assignment. Will there be Consent requirements? | | |
| | Status of subleases. Will there be Consent requirements? | | |
| | Encumbrance. Will there be Consent requirements? | | |