



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

OCT 16 2023

Dear Tribal Leader:

The Department of the Interior (Department) is revising its Agricultural Leasing regulations found at 25 CFR Part 162 Subpart B. The purpose of Part 162 Subpart B is to promote the self-determination of Indian Tribes by providing for the management of Indian agricultural and related renewable resources consistent with Tribal goals and priorities for conservation, multiple use, and sustained yield. 25 U.S.C. § 3702(1). A copy of the proposed draft regulations, including corresponding proposed changes to other Subparts, is enclosed for consideration.

These regulations will address leases of agricultural land suited or used to produce crops, livestock, or other agricultural products, including for farming and grazing purposes and business leases on agricultural land that support the surrounding agricultural community, where appropriate.

To support Indian Tribes and individual Indian landowners, proposed updates to the regulations primarily include the following provisions:

- Make Subpart B—Agricultural Leases consistent with Subpart C—Residential Leases, Subpart D—Business Leases, and Subpart E—Wind and Solar Resource Leases;
- Account for enforcement of Tribal laws on leased land;
- Allow for leases with a “reasonable annual rental,” a rental rate less than fair market rental or appraised value that meets minimum landowner expectations for lease income and preserves or builds future value of the land for agricultural purposes;
- Authorize Tribal laws and policies to supersede or modify these regulations in certain circumstances; and
- Clarify that an agricultural lease may allow conservation practices not explicitly described in the lease or listed in the appropriate stipulations or conservation plans incorporated into an agricultural lease, especially if such practices, as adopted, ensure maximum eligibility for participation in Federal agriculture and conservation programs.

The Department will consult with Indian Tribes on the proposed draft regulations on the following dates:

Date	Time	Location
Monday, November 13, 2023	9:00 am – 12:00 pm CT	Osage Casino Hotel – Tulsa Walnut Room 951 West 36th St N, Tulsa, OK 74127
Wednesday, November 15, 2023	9:00 am – 12:00 pm CT	Virtual on Zoom Please pre-register at: https://www.zoomgov.com/meeting/register/vJltdeisqD8uGv64I2XgCxcpH22AGSEryXw

Friday, November 17, 2023	9:00 am – 12:00 pm CT	Holiday Inn Bismarck Missouri Room 3903 State St, Bismarck, ND 58503
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The Department welcomes your written comments on the proposed draft regulations by email to consultation@bia.gov by 11:59 ET on Friday, December 29, 2023.

If you have any questions regarding the revision of the Agricultural Leasing regulations found in 25 CFR Part 162 Subpart B, please contact Mr. Joaquin R. Gallegos, Special Assistant to the Assistant Secretary – Indian Affairs, by email at joaquin.gallegos@indianaffairs.gov.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosure

SUBPART A

§ 162.002 How is this part subdivided?

This part includes multiple subparts relating to:

- (a) General Provisions (Subpart A);
- (b) Agricultural Leases (Subpart B);
- (c) Residential Leases (Subpart C);
- (d) Business Leases (Subpart D);
- (e) Wind Energy Evaluation, Wind Resource, and Solar Resource Leases (Subpart E);
- (f) Special Requirements for Certain Reservations (Subpart F); and
- (g) Records (Subpart G).

§162.003 What key terms do I need to know?

Adult means a person who is 18 years of age or older.

Appeal bond means a bond posted upon filing of an appeal.

Agricultural land means Indian land or Government land, including farmland and rangeland, but excluding Indian forest land, that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

Agricultural lease means a lease of agricultural land for farming and/or grazing purposes.

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

Approval means written authorization by the Secretary or a delegated official or, where applicable, the “deemed approved” authorization of an amendment or sublease.

Assignment means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee’s rights, and assumes all or some of the lessee’s obligations, under a lease.

BIA means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under § 162.018.

Business day means Monday through Friday, excluding federally recognized holidays and other days that the applicable office of the Federal Government is closed to the public.

Cancellation means BIA action to end a lease.

Consent or consenting means written authorization by an Indian landowner to a specified action.

Constructive notice means notice:

- (1) Posted at the tribal government office, tribal community building, and/or the United States Post Office; and
- (2) Published in the local newspaper(s) nearest to the affected land and/or announced on a local radio station(s).

Court of competent jurisdiction means a Federal, tribal, or State court with jurisdiction.

Day means a calendar day, unless otherwise specified.

Emancipated minor means a person less than 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Equipment installation plan means a plan that describes the type and location of any improvements to be installed by the lessee to evaluate the wind resources and a schedule showing the tentative commencement and completion dates for installation of those improvements.

Fair market rental means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market, or as determined by competitive bidding.

Fee interest means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Government land means any tract, or interest therein, in which the surface estate is owned and administered by the United States, not including Indian land.

Holdover means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

Housing for public purposes means multi-family developments, single-family residential developments, and single-family residences:

- (1) Administered by a tribe or tribally designated housing entity (TDHE); or
- (2) Substantially financed using a tribal, Federal, or State housing assistance program or TDHE.

Immediate family means, in the absence of a definition under applicable tribal law, a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or member of the household.

Indian means:

- (1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;
- (2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 5129) and the regulations promulgated thereunder; and
- (3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian land means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status and includes both individually owned Indian land and tribal land.

Indian landowner means a tribe or individual Indian who owns an interest in Indian land.

Individually owned Indian land means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Interest, when used with respect to Indian land, means an ownership right to the surface estate of Indian land.

Lease means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.

Lease document means a lease, amendment, assignment, sublease, or leasehold mortgage.

Leasehold mortgage means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

Lessee means person or entity who has acquired a legal right to possess Indian land by a lease under this part. Another term for "lessee" is "tenant."

Life estate means an interest in property held only for the duration of a designated person(s)' life. A life estate may be created by a conveyance document or by operation of law.

LTRO means the Land Titles and Records Office of the BIA.

Mail means to send something by U.S. Postal Service or commercial delivery service.

Minor means an individual who is less than 18 years of age.

Mortgagee means the holder of a leasehold mortgage.

NEPA means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Nominal rental or nominal compensation means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

Non compos mentis means that the person to whom the term is applied has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

Notice of violation means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified period of time to show cause why the lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.

Orphaned minor means a minor whose parents are deceased.

Performance bond means security for the performance of certain lease obligations, as furnished by the lessee, or a guaranty of such performance as furnished by a third-party surety.

Permanent improvements means buildings, other structures, and associated infrastructure attached to the leased premises.

Permit means a written, non-assignable agreement between Indian landowners or BIA and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Indian land or Government land, for a specified purpose.

Permittee means a person or entity who has acquired a privilege to use Indian land or Government land by a permit.

Power of attorney means an authority by which one person enables another to act for him or her as attorney-in-fact.

Reasonable annual rental means a rental rate less than fair market rental or appraised value that meets minimum landowner expectations for lease income and preserves or builds future value of the land for agricultural purposes.

Remainder interest means an interest in Indian land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

Restoration and reclamation plan means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

Secretary means the Secretary of the Interior.

Single-family residence means a building with one to four dwelling units on a tract of land under a single residential lease, or as defined by applicable tribal law or other tribal authorization.

Single-family residential development means two or more single-family residences owned, managed, or developed by a single entity.

Sublease means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.

Surety means one who guarantees the performance of another.

TDHE means a tribally designated housing entity under 25 U.S.C. 4103(22), a tribally-sponsored or tribally sanctioned not-for-profit entity, or any limited partnership or other entity organized for the purpose of developing or improving low-income housing utilizing tax credits.

Termination means action by Indian landowners to end a lease.

Trespass means any unauthorized occupancy, use of, or action on any Indian land or Government land.

Tribal authorization means a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

Tribal land means any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 5124).

Tribal land assignment means a contract or agreement that conveys to tribal members or wholly owned tribal corporations any rights for the use of tribal lands, assigned by an Indian tribe in accordance with tribal laws or customs.

Tribal law means the body of non-Federal law that governs lands and activities under the jurisdiction of a tribe, including ordinances or other enactments by the tribe, and tribal court rulings.

Trust or restricted land means any tract, or interest therein, held in trust or restricted status.

Trust or restricted status means:

- (1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians; or
- (2) That one or more tribes or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

Undivided interest means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

USPAP means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

Us/we/our means the BIA.

Violation means a failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of our enforcement of a lease under this part no matter how "violation" or "default" is defined in the lease.

§ 162.008 Does this part apply to lease documents I submitted for approval before {INSERT DATE 30 DAYS AFTER PUBLICATION OF FINAL RULE}?

This part applies to all lease documents, except as provided in § 162.006. If you submitted your lease document to us for approval before {INSERT DATE 30 DAYS AFTER PUBLICATION OF FINAL RULE}, the qualifications in paragraphs (a) and (b) of this section also apply.

(a) If we approved your lease document before {INSERT DATE 30 DAYS AFTER PUBLICATION OF FINAL RULE}, this part applies to that lease document; however, if the provisions of the lease document conflict with this part, the provisions of the lease govern.

(b) If you submitted a lease document but we did not approve it before {INSERT DATE 30 DAYS AFTER PUBLICATION OF FINAL RULE}, then:

- (1) We will review the lease document under the regulations in effect at the time of your submission; and
- (2) Once we approve the lease document, this part applies to that lease document; however, if the provisions of the lease document conflict with this part, the provisions of the lease document govern.

§ 162.010 How do I obtain a lease?

- (a) This section establishes the basic steps to obtain a lease.
 - (1) Prospective lessees must:
 - (i) Directly negotiate with Indian landowners for a lease; and
 - (ii) For fractionated tracts, notify all Indian landowners and obtain the consent of the Indian landowners of the applicable percentage of interests, under § 162.012; and
 - (2) Prospective lessees and Indian landowners must:
 - (i) Prepare the required information and analyses, including information to facilitate our analysis under applicable environmental and cultural resource requirements; and
 - (ii) Ensure the lease complies with the requirements in subpart B for agricultural leases, subpart C for residential leases, subpart D for business leases, or subpart E for wind energy evaluation, wind resource, or solar resource leases; and
 - (3) Prospective lessees or Indian landowners must submit the lease, and required information and analyses, to the BIA office with jurisdiction over the lands covered by the lease, for our review and approval.
- (b) Generally, residential, business, wind energy evaluation, wind resource, and solar resource leases will not be advertised for competitive bid. As part of the negotiation of an agricultural lease, Indian landowners may advertise their land to identify potential lessees with whom to negotiate. We may also advertise land for an agricultural lease under § 162. of this part.

§ 162.012 What are the consent requirements for a lease?

- (a) For fractionated tracts:
 - (1) Except in Alaska and for agricultural leases, the owners of the following percentage of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a lease of that tract:

If the number of owners of the undivided trust or restricted interest in the tract is . . .	Then the required percentage of the undivided trust or restricted interest is . . .
(i) One to five,	90 percent;
(ii) Six to 10,	80 percent;
(iii) 11 to 19,	60 percent;

(iv) 20 or more,	Over 50 percent.
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- (2) Leases in Alaska require consent of all of the Indian landowners in the tract.
 - (3) Agricultural leases require consent of the owners of a majority of the undivided trust or restricted interests in the tract.
 - (4) If the prospective lessee is also an Indian landowner, his or her consent will be included in the percentages in paragraphs (a)(1), (2), and (3) of this section.
 - (5) Where owners of the applicable percentages in paragraphs (a)(1) and (3) of this section consent to a lease document:
 - (i) That lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document; and
 - (ii) That lease document will not bind a non-consenting Indian tribe, except with respect to the tribally owned fractional interest, and the non-consenting Indian tribe will not be treated as a party to the lease. Nothing in this paragraph affects the sovereignty or sovereign immunity of the Indian tribe.
 - (6) We will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the percentages in paragraphs (a)(1) and (3) of this section based on our records on the date on which the lease is submitted to us for approval.
- (b) Tribal land subject to a tribal land assignment may only be leased with the consent of the tribe.

§ 162.017 What taxes apply to leases approved under this part?

- (a) Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.
- (b) Subject only to applicable Federal law, activities under a lease conducted on the leased premises are not subject to any fee, tax, assessment, levy, or other charge (e.g., business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities may be subject to taxation by the Indian tribe with jurisdiction.
- (c) Subject only to applicable Federal law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests may be subject to taxation by the Indian tribe with jurisdiction.

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

- (a) Upon written notification from an Indian landowner that the lessee has failed to comply with the terms and conditions of the lease, we will promptly take appropriate action, as

specified in §§ 162.164, 162.364, 162.464, and 162.589. Nothing in this part prevents an Indian landowner from exercising remedies available to the Indian landowners under the lease or applicable law.

(b) We will promptly respond to requests for BIA approval of amendments, assignments, leasehold mortgages, and subleases, as specified in subparts B, C, D, and E.

(c) We will respond to Indian landowners' concerns regarding the management of their land.

(d) We will take emergency action as needed to preserve the value of the land under § 162.024.

§ 162.030 How will tribal laws be enforced on leased land?

(a) While the tribe is primarily responsible for enforcing tribal laws pertaining to leased land, we will:

(1) Assist in the enforcement of tribal laws;

(2) Provide notice of tribal laws to persons or entities undertaking activities on leased land, under § 162.031 of this part; and

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

(i) Be inconsistent 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 our actions by a tribal court.

(b) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 162.014 of this part, we may waive the regulations under part 1 of this chapter, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

§ 162.031 Must notice of applicable tribal laws and leasing policies be provided?

(a) A tribe must provide us with an official copy of any tribal law or leasing policy that supersedes or modifies these regulations under §§ 162.014 or 162.106 of this part. If the tribe has not already done so, we will provide notice of such a tribal law or leasing policy to affected Indian landowners and persons or entities undertaking activities on agricultural land. Such notice will be provided in the manner described in paragraphs (b) through (c) of this section.

(b) We will provide notice to Indian landowners, as to the superseding or modifying effect of any tribal leasing policy and their right to exempt their land from such a policy. Such notice will be provided by:

(1) Written notice included in a notice of our intent to lease the land, issued under § 162.013(c) of this subpart; or

(2) Public notice posted at the tribal community building or the United States Post Office, or published in the local newspaper that serves the area in which the Indian owners' land is located, at the time the tribal leasing policy is adopted.

(c) We will provide notice to persons or entities undertaking activities on agricultural land, as to the general applicability of tribal laws and the superseding or modifying effect of particular tribal laws and leasing policies.

Such notice will be provided by:

(1) Written notice included in advertisements for lease, issued under § 162.103 of this subpart; or

(2) Public notice posted at the tribal community building or the United States Post Office, or published in a local newspaper of general circulation, at the time the tribal law is enacted or the leasing policy adopted.

SUBPART B (complete replacement)

Agricultural Leasing General Provisions

§ 162.101 What types of leases does this Subpart cover?

(a) This subpart covers:

(1) Leases of agricultural land suited or used for the production of crops, livestock or other agricultural products, including for farming and grazing purposes

(2) Business leases on agricultural land that support the surrounding agricultural community, where appropriate

(b) The purpose of this subpart is to promote the self-determination of Indian tribes by providing for management of Indian agricultural and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use and sustained yield. 25 U.S.C. § 3702(1).

§ 162.102 Is there a model agricultural lease form?

There is no model agricultural lease form because of the need for flexibility in negotiating and writing agricultural leases; however, we may:

(a) Provide other guidance, such as checklists and sample lease provisions, to assist in the lease negotiation process; and

(b) Assist the Indian landowners, upon their request, in developing appropriate lease provisions or in using tribal lease forms that conform to the requirements of this part.

§ 162.103 When will the BIA advertise Indian land for agricultural leases?

(a) We will generally advertise Indian land for agricultural leasing:

(1) At the request of the Indian landowners; or

(2) Before we grant a lease under § 162.013(c) of this subpart.

(b) Advertisements will provide prospective lessees with notice of any superseding tribal laws and leasing policies that have been made applicable to the land under § 162.014 of this part, along with certain standard terms and conditions to be included in the lease. Advertisements will prohibit lessee preferences, and bidders at lease sales will not be afforded any preference, unless a preference in favor of individual Indians is required by a superseding tribal law or leasing policy.

(c) Advertisements will require sealed bids, and they may also provide for further competitive bidding among the prospective lessees at the conclusion of the bid opening. Competitive bidding should be supported, at a minimum, by a market study or rent survey that is consistent with USFAP.

§ 162.104 Who must obtain an agricultural lease?

(a) Any person or entity seeking to possess Indian land to conduct activities associated with agriculture must obtain an approved agricultural lease, except that an agricultural lease is not required if use or possession of the Indian land to conduct agricultural activities is authorized:

(1) Under § 162.005(b);

(2) By a permit from the Indian landowners under § 162.007; or

(3) By a Tribe on its land under 25 U.S.C. 81.

(b) Except as provided in §§ 162.005(b), 162.101, and paragraph (c) of this section, anyone seeking to possess Indian land to conduct activities associated with agriculture must obtain an agricultural lease.

(c) A Tribe that conducts agricultural activities on its tribal land does not need an agricultural lease under this subpart.

§ 162.105 Must agricultural land be managed in accordance with a Tribe's agricultural resource management plan?

(a) Agricultural land under the jurisdiction of a Tribe must be managed in accordance with the goals and objectives in any agricultural resource management plan developed by the Tribe, or by us in close consultation with the Tribe, under AIARMA.

(b) A ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and 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 Indian Tribe and its members and identify holistic management objectives; and
- (5) Identify actions to be taken to reach established objectives.

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

§ 162.106 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?

(a) The regulations in this subpart may be superseded or modified by tribal laws, under the circumstances described in § 162.014(b) of this part.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of tribal and individually-owned agricultural land, we will:

- (1) Waive the general prohibition against lessee preferences in leases advertised for bid under § 162.103 of this subpart, by allowing prospective Indian lessees to match the highest responsible bid (unless the tribal leasing policy specifies some other manner in which the preference must be afforded);
- (2) Waive the requirement that a lessee post a bond under § 162.134 of this subpart; or
- (3) Modify the requirement that a lessee post a bond in a form described in § 162.135 of this subpart.

(c) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of "highly fractionated undivided heirship lands" (as defined in the tribal leasing policy), we may waive or modify the three-month notice requirement in § 162.013(c) of this part, so long as:

(1) The tribal law or leasing policy adopts an alternative plan for providing notice to Indian landowners, before an agricultural lease is granted by us on their behalf; and

(2) A waiver or modification of the three-month notice requirement is needed to prevent waste, reduce idle land acreage, and ensure lease income to the Indian landowners.

(d) Tribal leasing policies of the type described in paragraphs (b) and (c) of this section will not apply to individually-owned land that has been made exempt from such laws or policies under § 162.107 of this subpart

§ 162.107 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?

(a) Individual Indian landowners may exempt their agricultural land from the application of a tribal leasing policy of a type described in §§ 162.106(b) and (c) of this subpart, if the Indian owners of at least 50% of the trust or restricted interests in the land submit a written objection to us before a lease is granted or approved.

(b) Upon our receipt of a written objection from the Indian landowners that satisfies the requirements of paragraph (a) of this section, we will notify the Tribe that the owners' land has been exempted from a specific tribal leasing policy. If the exempted land is part of a unitized lease tract, such land will be removed from the unit and leased separately, if appropriate.

(c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

Lease Requirements

§ 162.111 How long may the term of an agricultural lease run?

(a) An agricultural lease must provide for a definite term. The maximum term approved under 25 U.S.C. 415(a) may not exceed 25 years for an agricultural lease or 10 years for a grazing lease, unless a Federal statute provides for a longer maximum term (e.g., 25 U.S.C. 415(a) allows for a maximum term of 99 years for certain Tribes) or a different initial term.

(b) For tribal land, we will defer to the Tribe's determination that the lease term is reasonable. For individually owned Indian land, we will review the lease term to ensure it is reasonable, given the:

(1) Purpose of the lease;

(2) Type of financing; and

(3) Level of investment.

(c) An agricultural lease may not provide the lessee with an option to renew, and such a lease may not be renewed or extended by holdover.

§ 162.112 How can the land be used under an agricultural lease?

(a) An agricultural lease must describe the authorized uses of the leased premises. Any use of the leased premises for an unauthorized purpose, or a failure by the lessee to maintain continuous operations throughout the lease term, will be treated as a lease violation under § 162.166 of this subpart.

(b) An agricultural lease must require that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable tribal laws, leasing policies, or agricultural resource management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all agricultural leases.

(c) An agricultural lease may allow conservation practices not explicitly described in the lease or listed in the appropriate stipulations or conservation plans incorporated into an agricultural lease, especially if such practices, as adopted, ensure maximum eligibility for participation in federal agriculture and conservation programs. Permitted practices might include, but are not limited to:

- (1) Multi-species perennial cover, including the use of buffers;
- (2) Prescribed or regenerative grazing;
- (3) No-till farming;
- (4) Other commonly accepted conservation practices

§ 162.113 Are there mandatory provisions that an agricultural lease must contain?

(a) All agricultural leases must identify:

- (1) The tract or parcel of land being leased;
- (2) The purpose of the lease and authorized uses of the leased premises;
- (3) The parties to the lease;
- (4) The term of the lease;
- (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements under § 162.115;
- (6) Payment requirements and late payment charges, including interest;
- (7) Due diligence requirements under § 162.117;
- (8) Insurance requirements under § 162.137; and

(9) Bonding requirements under § 162.134. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(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.

(c) All agricultural leases must include the following provisions:

(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;

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

(3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.014;

(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;

(5) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with § 162.164, to enter the leased premises for inspection and to ensure compliance; and

(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.

(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.

(e) We may treat any provision of a lease document that violates Federal law as a violation of the lease.

§ 162.114 May permanent improvements be made under an agricultural lease?

(a) The lessee may construct permanent improvements under an agricultural lease if the agricultural lease authorizes the construction and generally describes the type and location of the permanent improvements to be constructed during the lease term.

(b) Unless otherwise provided in the lease, any specific plans for the construction of those improvements will not require the consent of the Indian owners or our approval.

§ 162.115 How must an agricultural lease address ownership of permanent improvements?

(a) An agricultural lease must specify who will own any permanent improvements the lessee constructs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Indian landowners during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee constructs will:

(1) Remain on the leased premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Indian landowners, and become the property of the Indian landowners;

(2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the permanent improvements must also provide the Indian landowners with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

§ 162.116 How will BIA enforce removal requirements in an agricultural lease?

(a) We may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

(1) In consultation with the Tribe, for tribal land or, where feasible, with Indian landowners for individually owned Indian land; and

(2) Before or after expiration, termination, or cancellation of the lease.

(b) We may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

§ 162.117 What requirements for due diligence must an agricultural lease include?

(a) If permanent improvements are to be constructed, the agricultural lease must include due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Indian landowners and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 162.167.

(c) BIA may waive the requirements in this section if such waiver is in the best interest of the Indian landowners.

§ 162.118 How must an agricultural lease describe the land?

(a) An agricultural lease must describe the leased premises by reference to an official or certified survey, if possible. If the land cannot be so described, the lease must include one or more of the following:

(1) A legal description;

(2) A survey-grade global positioning system description; or

(3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

(b) If the tract is fractionated we will identify the undivided trust or restricted interests in the leased premises.

§ 162.119 May an agricultural lease allow compatible uses?

The 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 agricultural lease and consistent with the terms of the agricultural lease. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Indian landowners will not reduce or offset the monetary compensation for the agricultural lease.

Monetary Compensation Requirements

§ 162.120 How much monetary compensation must be paid under an agricultural lease of tribal land?

(a) An agricultural lease of tribal land may allow for any payment amount negotiated by the Tribe, and we will defer to the Tribe and not require a valuation if the Tribe submits a tribal authorization expressly stating that it:

- (1) Has negotiated compensation satisfactory to the Tribe;
- (2) Waives valuation; and
- (3) Has determined that accepting such negotiated compensation and waiving valuation is in its best interest.

(b) The Tribe may request, in writing, that we determine fair market rental, in which case we will use a valuation in accordance with § 162.122. After providing the Tribe with the fair market rental, we will defer to a Tribe's decision to allow for any payment amount negotiated by the Tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require that the lease provide for fair market rental based on a valuation in accordance with § 162.122.

§ 162.121 How much monetary compensation must be paid under an agricultural lease of individually owned Indian land?

(a) An agricultural lease of individually owned Indian land must require payment of not less than fair market rental before any adjustments, based on a fixed amount, a percentage of the projected income, or some other method, unless paragraphs (b) or (c) of this section permit a lesser amount. The lease must establish how the fixed amount, percentage, or combination will be calculated and the frequency at which the payments will be made.

(b) We may approve a lease of individually owned Indian land that provides for the payment of nominal compensation, or less than a fair market rental, if:

(1) The Indian landowners execute a written waiver of the right to receive fair market rental; and

(2) We determine it is in the Indian landowners' best interest, based on factors including, but not limited to:

(i) The lessee is a member of the immediate family, as defined in § 162.003, of an individual Indian landowner;

(ii) The lessee is a co-owner in the leased tract;

(iii) A special relationship or circumstances exist that we believe warrant approval of the lease;

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

(v) We have waived the requirement for a valuation under paragraph (e) of this section;

(vi) The lessee is a cooperative or other legal entity in which the Indian Landowners directly participate in the revenues or profits generated by the lease; or

(vii) The negotiated amount is a reasonable annual rental.

(c) We may approve a lease that provides for payment of less than a fair market rental during the pre-development or construction periods, if we determine it is in the Indian landowners' best interest. The lease must specify the amount of the compensation and the applicable periods.

(d) We will require a valuation in accordance with § 162.122, unless:

(1) 100 percent of the Indian landowners submit to us a written request to waive the valuation requirement; or

(2) We waive the requirement under paragraph (e) of this section.

(e) If the owners of the applicable percentage of interests under § 162.012 of this part execute an agricultural lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, and those on whose behalf we have consented, receive a fair market rental, as determined by a valuation, unless we waive the requirement because the Tribe or lessee will construct infrastructure improvements on, or serving, the leased premises, and we determine it is in the best interest of all the landowners.

§ 162.122 How will BIA determine fair market rental for an agricultural lease?

(a) We will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before we approve an agricultural lease of individually owned Indian land or, at the request of the Tribe, for tribal land.

(b) We will either:

(1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or

(2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Indian landowners or lessee.

(c) We will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:

(1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary under 25 U.S.C. 2214; and

(2) Complies with Departmental policies regarding appraisals, including third-party appraisals.

(d) Indian landowners may use competitive bidding as a valuation method.

§ 162.123 When are monetary compensation payments due under an agricultural lease?

(a) An agricultural lease must specify the dates on which all payments are due.

(b) Unless the lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

(c) Payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

§ 162.124 Must an agricultural lease specify who receives monetary compensation payments?

(a) An agricultural lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners if:

(1) The Indian landowners' trust accounts are unencumbered;

(2) There are 10 or fewer beneficial owners; and

(3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the lessee at the start of the lease.

(c) If the lease provides that the lessee will directly pay the Indian landowners, then:

(1) The lease must include provisions for proof of payment upon our request.

(2) When we consent on behalf of an Indian landowner, the lessee must make payment to us on behalf of that landowner.

(3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(4) Unless the lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Indian landowners.

(5) Direct payments must continue through the duration of the lease, except that:

(i) The lessee must make all Indian landowners' payments to us if 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement; and

(ii) The lessee must make that individual Indian landowner's payment to us for any individual Indian landowner who dies, is declared non compos mentis, owes a debt resulting in a trust account encumbrance, or his or her whereabouts become unknown.

§ 162.125 What form of monetary compensation payment is acceptable under an agricultural lease?

(a) When payments are made directly to Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) When payments are made to us, our preferred method of payment is electronic funds transfer payments. We will also accept:

(1) Money orders;

(2) Personal checks;

(3) Certified checks; or

(4) Cashier's checks.

(c) We will not accept cash or foreign currency.

(d) We will accept third-party checks only from financial institutions or Federal agencies.

§ 162.126 May the agricultural lease provide for non-monetary or varying types of compensation?

(a) A lease may provide for the following, subject to the conditions in paragraphs (b) and (c) of this section:

(1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

(2) Varying types of compensation at specific stages during the life of the lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(b) For tribal land, we will defer to the Tribe's determination that the compensation under paragraph (a) of this section is in its best interest, if the Tribe submits a signed certification or tribal authorization stating that it has determined the compensation under paragraph (a) of this section to be in its best interest.

(c) For individually owned land, we may approve a lease that provides for compensation under paragraph (a) of this section if we determine that it is in the best interest of the Indian landowners.

§ 162.127 Will BIA notify a lessee when a payment is due under an agricultural lease?

Upon request of the Indian landowners, we may issue invoices to a lessee in advance of the dates on which payments are due under an agricultural lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

§162.128 Must an agricultural lease provide for compensation reviews or adjustments?

(a) For an agricultural lease of tribal land, unless the lease provides otherwise, a periodic review of the adequacy of compensation or adjustment is required if the lease term runs more than

five years, unless the Tribe states in its tribal certification or authorization that it has determined that not having reviews and/or adjustments is in its best interest..

(b) For an agricultural lease of individually owned Indian land, unless the lease provides otherwise, a periodic review of the adequacy of compensation or adjustment is required ifm:

(1) If the term of the lease is 5 years or less;

(2) The lease provides for automatic adjustments; or

(3) We determine it is in the best interest of the Indian landowners not to require a review or automatic adjustment based on circumstances including, but not limited to, the following:

(i) The lease provides for payment of less than fair market rental;

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

(iii) The lease provides for most or all of the compensation to be paid during the first 5 years of the lease term or before the date the review would be conducted;

(iv) The lease provides for graduated rent or non-monetary or various types of compensation;
or

(v) If the lease provides for a rental based primarily on share of the agricultural products generated by the lease, or a percentage of the income derived from the sale of agricultural products.

(c) If the conditions in paragraph (a) or (b) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease. The lease must specify:

(1) When adjustments take effect;

(2) Who can make adjustments;

(3) What the adjustments are based on; and

(4) How to resolve disputes arising from the adjustments.

(d) When a review results in the need for adjustment of compensation, the Indian landowners must consent to the adjustment in accordance with § 162.012, unless the lease provides otherwise.

§ 162.129 What other types of payments are required under an agricultural lease?

(a) The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.017. The lessee must pay these amounts to the appropriate office.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of this chapter, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. We will treat failure to make these payments as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, the lessees may agree among themselves how to allocate payment of the Indian irrigation operation and maintenance charges.

Bonding and Insurance

§ 162.134 Must a lessee provide a performance bond for an agricultural lease?

The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (f) of this section.

(a) The performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

(1) No less than:

(i) The highest annual rental specified in the lease, if compensation is paid annually; or

(ii) If the compensation is not paid annually, another amount established by BIA in consultation with the Tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land;

(2) The construction of any required permanent improvements;

(3) The operation and maintenance charges for any land located within an irrigation project; and

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

(b) The performance bond or other security:

(1) Must be deposited with us and made payable only to us, and may not be modified without our approval, except as provided in paragraph (b)(2) of this section; and

(2) For tribal land, if the lease so provides, may be deposited with the Tribe and made payable to the Tribe, and may not be modified without the approval of the Tribe.

(c) The lease must specify the conditions under which we may adjust security or performance bond requirements to reflect changing conditions, including consultation with the tribal landowner for tribal land before the adjustment.

(d) We may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The performance bond or other security instrument must require the surety to provide notice to us at least 60 days before canceling a performance bond or other security. This will allow us to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.

(f) We may waive the requirement for a performance bond or alternative form of security if either:

- (1) The lease is for religious, educational, recreational, cultural, or other public purposes; or
- (2) The Indian landowners request it and we determine a waiver is in the Indian landowners' best interest.

(g) For tribal land, we will defer, to the maximum extent possible, to the Tribe's determination that a waiver of a performance bond or alternative form of security is in its best interest.

§ 162.135 What forms of security are acceptable under an agricultural lease?

(a) We will accept a performance bond only in one of the following forms:

- (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- (3) Negotiable Treasury securities; or
- (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(b) We may accept an alternative form of security approved by us that provides adequate protection for the Indian landowners and us, including but not limited to an escrow agreement and assigned savings account.

(c) All forms of performance bonds or alternative security must, if applicable:

- (1) Indicate on their face that BIA approval is required for redemption;
- (2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if the lessee violates the lease;
- (3) Be irrevocable during the term of the performance bond or alternative security; and
- (4) Be automatically renewable during the term of the lease.

(d) We will not accept cash bonds.

§ 162.136 What is the release process for a performance bond or alternative form of security under an agricultural lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee may ask BIA in writing to release the performance bond or alternative form of security.

(b) Upon receiving a request under paragraph (a) of this section, BIA will:

(1) Confirm with the tribe, for tribal land or, where feasible, with the Indian landowners for individually owned Indian land, that the lessee has complied with all lease obligations; and

(2) Release the performance bond or alternative form of security to the lessee, unless we determine that the bond or security must be redeemed to fulfill the contractual obligations.

§ 162.137 Must a lessee provide insurance for an agricultural lease?

Except as provided in paragraph (c) of this section, a lessee must provide insurance necessary to protect the interests of the Indian landowners and in the amount sufficient to protect all insurable permanent improvements on the premises.

(a) The insurance may include property, crop, liability, and casualty insurance, depending on the Indian landowners' interests to be protected.

(b) Both the Indian landowners and the United States must be identified as additional insured parties.

(c) We may waive the requirement for insurance upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. For tribal land, we will defer, to the maximum extent possible, to the Tribe's determination that a waiver is in its best interest.

Approval

§ 162.138 What documents are required for BIA approval of an agricultural lease?

A lessee or the Indian landowners must submit the following documents to us to obtain BIA approval of an agricultural lease:

(a) A lease executed by the Indian landowners and the lessee that meets the requirements of this part;

(b) For tribal land, a tribal authorization for the lease and, if applicable, meeting the requirements of §§ 162.120(a), 162.126(b), and 162.128(a), or a separate signed certification meeting the requirements of §§ 162.126(b) and 162.128(a));

(c) A valuation, if required under § 162.120 or § 162.121;

- (d) Proof of insurance, if required under § 162.137;
- (e) A performance bond or other security, if required under § 162.134;
- (f) 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 § 162.027(b);
- (g) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;
- (h) Where the 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;
- (i) A 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;
- (j) A legal description of the land under § 162.118;
- (k) If the lease is being approved under 25 U.S.C. 415, information to assist us in our evaluation whether adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject (25 U.S.C. 415(a)); and
- (l) 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.

§ 162.139 Will BIA review a proposed agricultural lease before or during preparation of the NEPA review documentation?

Upon request of the Indian landowners, we will review the proposed agricultural lease after negotiation by the parties, before or during preparation of the NEPA review documentation and any valuation. Within 60 days of receiving the proposed lease, we will provide an

acknowledgement of the terms of the lease and identify any provisions that, based on this acknowledgment review, would justify disapproval of the lease, pending results of the NEPA review and any valuation.

§ 162.140 What is the approval process for an agricultural lease?

(a) Before we approve an agricultural lease, we must determine that the lease is in the best interest of the Indian landowners. In making that determination, we will:

- (1) Review the lease and supporting documents;
- (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
- (3) If the lease is being approved under 25 U.S.C. 415, assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a); and
- (4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements.

(b) Upon receiving an agricultural lease package, we will promptly notify the parties whether the package is or is not complete. A complete package includes all the information and supporting documents required under this subpart, including but not limited to, NEPA review documentation and valuation documentation, where applicable.

(1) If the agricultural lease package is not complete, our letter will identify the missing information or documents required for a complete package. If we do not respond to the submission of an agricultural lease package, the parties may take action under § 162.163.

(2) If the agricultural lease package is complete, we will notify the parties of the date of our receipt. Within 30 days of the receipt date, we will approve or disapprove the lease, return the package for revision, or inform the parties in writing that we need additional review time. If we inform the parties in writing that we need additional time, then:

(i) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 days of the date of the letter; and

(ii) We have 30 days from sending the letter informing the parties that we need additional time to approve or disapprove the lease.

(c) If we do not meet the deadlines in this section, then the parties may take appropriate action under § 162.163.

(d) We will provide any lease approval or disapproval and the basis for the determination, along with notification of any appeal rights under part 2 of this chapter, in writing to the parties to the lease.

(e) We will provide approved agricultural leases on tribal land to the lessee and provide a copy to the Tribe. We will provide approved agricultural leases on individually owned Indian land to the lessee, and make copies available to the Indian landowners upon written request.

§ 162.141 How will BIA decide whether to approve an agricultural lease?

(a) We will approve an agricultural lease unless:

- (1) The required consents have not been obtained from the parties to the lease;
- (2) The requirements of this subpart have not been met; or
- (3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) We will defer, to the maximum extent possible, to the Indian landowners' determination that the lease is in their best interest.

(c) We may not unreasonably withhold approval of a lease.

§ 162.142 When will an agricultural lease be effective?

(a) An agricultural lease will be effective on the date that we approve the lease, even if an appeal is filed under part 2 of this chapter.

(b) The lease may specify a date on which the obligations between the parties to the lease are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

§ 162.143 Must an agricultural lease document be recorded?

(a) Any agricultural lease document must be recorded in our LTRO with jurisdiction over the leased land.

(1) We will record the lease document immediately following our approval.

(2) If our approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the LTRO with jurisdiction over the leased land.

(b) The Tribe must record lease documents for the following types of leases in the LTRO with jurisdiction over the tribal lands, even though BIA approval is not required:

- (1) Leases of tribal land that a corporate entity leases to a third party under 25 U.S.C. 477; and
- (2) Leases of tribal land under a special act of Congress authorizing leases without our approval.

Amendments

§ 162.145 May the parties amend an agricultural lease?

The parties may amend an agricultural lease by obtaining:

- (a) The lessee's signature;
- (b) The Indian landowners' consent under the requirements in § 162.146; and
- (c) BIA approval of the amendment under §§ 162.147 and 162.148.

§ 162.146 What are the consent requirements for an amendment to an agricultural lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed amendment.

(b) The Indian landowners, or their representatives under § 162.013, must consent to an amendment of an agricultural lease in the same percentages and manner as a new agricultural lease under § 162.012, unless the lease:

(1) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the amendment within a specified period of time following the landowners' receipt of the amendment and the lease meets the requirements of paragraph (c) of this section;

(2) Authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners; or

(3) Designates us as the Indian landowners' representative for the purposes of consenting to an amendment.

(c) If the lease provides for deemed consent under paragraph (b)(1) of this section, it must require the parties to submit to us:

(1) A copy of the executed amendment or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the amendment to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

(d) Unless specifically authorized in the lease, a written power of attorney, or a court document, Indian landowners may not be deemed to have consented to, and an Indian landowner's designated representative may not negotiate or consent to, an amendment that would:

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

(2) Increase or decrease the lease area;

(3) Terminate or change the term of the lease; or

(4) Modify the dispute resolution procedures.

§ 162.147 What is the approval process for an amendment to an agricultural lease?

(a) When we receive an amendment that meets the requirements of this subpart, we will notify the parties of the date we receive it. We have 30 days from receipt of the executed amendment, proof of required consents, and required documentation to approve or disapprove the amendment or inform the parties in writing that we need additional review time. Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

(b) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 days of the date of the letter. We have 30 days from sending the letter informing the parties that we need additional time to approve or disapprove the amendment.

(c) If we do not meet the deadline in paragraph (a) or this section, or paragraph (b) of this section if applicable, the amendment is deemed approved to the extent consistent with Federal law. 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.

§ 162.148 How will BIA decide whether to approve an amendment to an agricultural lease?

(a) We may disapprove an agricultural lease amendment only if at least one of the following is true:

(1) The Indian landowners have not consented and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The requirements of this subpart have not been met; or

(5) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) We will defer, to the maximum extent possible to the Indian landowners' determination that the amendment is in their best interest.

(c) We may not unreasonably withhold approval of an amendment.

Assignments

§ 162.149 May a lessee assign an agricultural lease?

(a) A lessee may assign an agricultural lease by meeting the consent requirements in § 162.150 and obtaining our approval of the assignment under §§ 162.151 and 162.152, or by meeting the conditions in paragraphs (b) or (c) of this section.

(b) The lessee may assign the lease without our approval or meeting consent requirements if:

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

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

(3) The assignee agrees in writing that any transfer of the lease will be in accordance with applicable law under § 162.014.

§ 162.150 What are the consent requirements for an assignment of an agricultural Lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed assignment.

(b) The Indian landowners, or their representatives under § 162.013, must consent to an assignment of an agricultural lease in the same percentages and manner as a new agricultural lease under § 162.012, unless the lease:

(1) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the assignment within a specified period of time following the landowners' receipt of the assignment and the lease meets the requirements of paragraph (c) of this section;

(2) Authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners; or

(3) Designates us as the Indian landowners' representative for the purposes of consenting to an assignment.

(c) If the lease provides for deemed consent under paragraph (b)(1) of this section, it must require the parties to submit to us:

(1) A copy of the executed assignment or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the assignment to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

(d) The lessee must obtain the consent of the holders of any bonds or mortgages.

§ 162.151 What is the approval process for an assignment of an agricultural lease?

(a) When we receive an assignment that meets the requirements of this subpart, we will notify the parties of the date we receive it. If our approval is required, we have 30 days from receipt of the executed assignment, proof of required consents, and required documentation to approve or disapprove the assignment. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(b) If we do not meet any of the deadlines in this section, the lessee or Indian landowners may take appropriate action under § 162.163.

§ 162.152 How will BIA decide whether to approve an assignment of an agricultural lease?

(a) We may disapprove an assignment of an agricultural lease only if at least one of the following is true:

- (1) The Indian landowners have not consented and their consent is required;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;
- (4) The assignee does not agree to be bound by the terms of the lease;
- (5) The requirements of this subpart have not been met; or
- (6) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(6) of this section, we may consider whether:

- (1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and
- (2) If a performance bond is required, the assignee has posted the bond or security and provided supporting documents that demonstrate that:
 - (i) The lease will be enforceable against the assignee; and
 - (ii) The assignee will be able to perform its obligations under the lease or assignment.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the assignment is in their best interest.

(d) We may not unreasonably withhold approval of an assignment.

Subleases

§ 162.153 May a lessee sublease an agricultural lease?

(a) A lessee may sublease an agricultural lease by meeting the consent requirements in § 162.154 and obtaining our approval of the sublease under §§ 162.155 and 162.156, or by meeting the conditions in paragraph (b) of this section.

(b) The lessee may sublease without meeting consent requirements or obtaining BIA approval of the sublease, if:

(1) The lease provides for subleasing without meeting consent requirements or obtaining BIA approval;

(2) The sublease does not relieve the lessee/sublessor of any liability; and

(3) The parties provide BIA with a copy of the sublease within 30 days after it is executed.

§ 162.154 What are the consent requirements for a sublease of an agricultural lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed sublease.

(b) The Indian landowners, or their representatives under § 162.013, must consent to a sublease in the same percentages and manner as a new agricultural lease under § 162.012, unless the lease:

(1) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the sublease within a specified period of time following the landowners' receipt of the sublease and the lease meets the requirements in paragraph (c) of this section;

(2) Authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners; or

(3) Designates us as the Indian landowners' representative for the purposes of consenting to a sublease.

(c) If the lease provides for deemed consent under paragraph (b)(1) of this section, it must require the parties to submit to us:

(1) A copy of the executed sublease or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the sublease to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

§ 162.155 What is the approval process for a sublease of an agricultural lease?

(a) When we receive a sublease that meets the requirements of this subpart, we will notify the parties of the date we receive it. If our approval is required, we have 30 days from receipt of

the executed sublease, proof of required consents, and required documentation to approve or disapprove the sublease or inform the parties in writing that we need additional review time. Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(b) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 days of the date of the letter. We have 30 days from sending the letter informing the parties that we need additional time to approve or disapprove the sublease.

(c) If we do not meet the deadline in paragraph (a) of this section, or paragraph (b) of this section if applicable, the sublease is deemed approved to the extent consistent with Federal law. 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.

§ 162.156 How will BIA decide whether to approve a sublease of an agricultural lease?

(a) We may disapprove a sublease of an agricultural lease only if at least one of the following is true:

- (1) The Indian landowners have not consented and their consent is required;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;
- (4) The lessee will not remain liable under the lease; and
- (5) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(5) of this section, we may consider whether the value of any part of the leased premises not covered by the sublease would be adversely affected.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the sublease is in their best interest.

(d) We may not unreasonably withhold approval of a sublease.

Leasehold Mortgages

§ 162.157 May a lessee mortgage an agricultural lease?

(a) A lessee may mortgage an agricultural lease by meeting the consent requirements in § 162.158 and obtaining our approval of the leasehold mortgage under §§ 162.159 and 162.160.

(b) Refer to § 162.149(b) for how assignments resulting from a sale or foreclosure under an approved mortgage of the leasehold interest are treated.

§ 162.158 What are the consent requirements for a leasehold mortgage of an agricultural lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed leasehold mortgage.

(b) The Indian landowners, or their representatives under § 162.013, must consent to a leasehold mortgage of an agricultural lease in the same percentages and manner as a new agricultural lease under § 162.012, unless the lease:

(1) States that landowner consent is not required for a leasehold mortgage and identifies what law would apply in case of foreclosure;

(2) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the leasehold mortgage within a specified period of time following the landowners' receipt of the leasehold mortgage and the lease meets the requirements of paragraph (c) of this section;

(3) Authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners; or

(4) Designates us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

(c) If the lease provides for deemed consent under paragraph (b)(2) of this section, it must require the parties to submit to us:

(1) A copy of the executed leasehold mortgage or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the leasehold mortgage to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

§ 162.159 What is the approval process for a leasehold mortgage of an agricultural lease?

(a) When we receive a leasehold mortgage that meets the requirements of this subpart, we will notify the parties of the date we receive it. We have 20 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to approve or disapprove the leasehold mortgage. Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(b) If we do not meet the deadline in this section, the lessee may take appropriate action under § 162.163.

§ 162.160 How will BIA decide whether to approve a leasehold mortgage of an agricultural lease?

(a) We may disapprove a leasehold mortgage of an agricultural lease only if at least one of the following is true:

- (1) The Indian landowners have not consented and their consent is required;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The requirements of this subpart have not been met; or
- (4) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(4) of this section, we may consider whether:

- (1) The leasehold mortgage proceeds would be used for purposes unrelated to the leased premises; and
- (2) The leasehold mortgage is limited to the leasehold.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the leasehold mortgage is in their best interest.

(d) We may not unreasonably withhold approval of a leasehold mortgage.

Effectiveness, Compliance, and Enforcement

§ 162.161 When will an amendment, assignment, sublease, or leasehold mortgage of an agricultural lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage of an agricultural lease will be effective when approved, even if an appeal is filed under part 2 of this chapter, except:

- (1) If the amendment or sublease was deemed approved under § 162.147 or § 162.155, the amendment or sublease becomes effective 45 days from the date the parties mailed or delivered the document to us for our review or, if we sent a letter informing the parties that we need additional time to approve or disapprove the lease, the amendment or sublease becomes effective 45 days from the date of the letter informing the parties that we need additional time to approve or disapprove the lease; and
- (2) An assignment that does not require our approval under § 162.149(b) or § 162.149(c) or a sublease that does not require our approval under § 162.153(b) becomes effective on the

effective date specified in the assignment or sublease. If the assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.

(b) We will provide copies of approved documents to the party requesting approval, to the Tribe for tribal land, and upon request, to other parties to the lease document.

§ 162.162 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage of an agricultural lease?

If we disapprove an amendment, assignment, sublease, or leasehold mortgage of an agricultural lease, we will notify the parties immediately and advise the landowners of their right to appeal the decision under part 2 of this chapter.

§ 162.163 What happens if BIA does not meet a deadline for issuing a decision on an agricultural lease document?

If a Superintendent does not meet a deadline for issuing a decision on a lease, assignment, or leasehold mortgage, the parties may proceed under Part 2, subpart F, of this chapter.

§ 162.164 May BIA investigate compliance with an agricultural lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Indian landowners and to determine if the lessee is in compliance with the requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation. Such notice should be in writing, by mail, email, or personal delivery, but may be oral.

§ 162.165 May an agricultural lease provide for negotiated remedies if there is a violation?

(a) An agricultural lease of tribal land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not limited to, the power to terminate the lease. If the lease provides one or both parties with the power to terminate the lease:

(1) BIA approval of the termination is not required;

(2) The termination is effective without BIA cancellation; and

(3) The Indian landowners must notify us of the termination so that we may record it in the LTRO.

(b) An agricultural lease of individually owned Indian land may provide either or both parties with negotiated remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the Indian landowners of the majority of interests

under § 162.012 of this part. If the lease provides one or both parties with the power to terminate the lease:

(1) BIA concurrence with the termination is required to ensure that the Indian landowners of the applicable percentage of interests have consented; and

(2) BIA will record the termination in the LTRO.

(c) The parties must notify any surety or mortgagee of any violation that may result in termination and the termination of an agricultural lease.

(d) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to us, as specified in the lease. The landowners may request our assistance in enforcing negotiated remedies.

(e) An agricultural lease may provide that lease violations will be addressed by the Tribe, and that lease disputes will be resolved by a tribal court, any other court of competent jurisdiction, or by a tribal governing body in the absence of a tribal court, or through an alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing actions and proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.166 What will BIA do about a violation of an agricultural lease?

(a) In the absence of actions or proceedings described in § 162.165, or if it is not appropriate for us to defer to the actions or proceedings, we will follow the procedures in paragraphs (b) and (c) of this section.

(b) If we determine there has been a violation of the conditions of an agricultural lease, other than a violation of payment provisions covered by paragraph (c) of this section, we will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested.

(1) We will send a copy of the notice of violation to the Tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(2) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify us, and the Tribe for tribal land, in writing that the violation has been cured;

(ii) Dispute our determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) The notice of violation may order the lessee to cease operations under the lease.

(c) A lessee's failure to pay compensation in the time and manner required by an agricultural lease is a violation of the lease, and we will issue a notice of violation in accordance with this paragraph.

(1) We will send the lessees and any surety and mortgagee a notice of violation by certified mail, return receipt requested:

(i) Promptly following the date on which the payment was due, if the lease requires that payments be made to us; or

(ii) Promptly following the date on which we receive actual notice of non-payment from the Indian landowners, if the lease provides for payment directly to the Indian landowners.

(2) We will send a copy of the notice of violation to the Tribe for tribal land, or provide constructive notice to the Indian landowners for individually owned Indian land.

(3) The notice of violation will require the lessee to provide adequate proof of payment.

(d) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

§ 162.167 What will BIA do if the lessee does not cure a violation of an agricultural lease on time?

(a) If the lessee does not cure a violation of an agricultural lease within the required time period, or provide adequate proof of payment as required in the notice of violation, we will consult with the Tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, and determine whether:

(1) We should cancel the lease;

(2) The Indian landowners wish to invoke any remedies available to them under the lease;

(3) We should invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or

(4) The lessee should be granted additional time in which to cure the violation.

(b) Following consultation with the Tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, we may take action to recover unpaid compensation and any associated late payment charges.

(1) We do not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.

(2) We may still take action to recover any unpaid compensation if we cancel the lease.

(c) If we decide to cancel the lease, we will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of our decision. We will send a copy of the cancellation letter to the Tribe for tribal land, and will provide Indian landowners for individually owned Indian land with actual or constructive notice of the cancellation. The cancellation letter will:

- (1) Explain the grounds for cancellation;
- (2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;
- (3) Notify the lessee of the lessee's right to appeal under part 2 of this chapter, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;
- (4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
- (5) Order the lessee to take any other action BIA deems necessary to protect the Indian landowners.

(d) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond, and the Indian landowners may pursue any available remedies under tribal law.

§ 162.168 Will late payment charges or special fees apply to delinquent payments due under an agricultural lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(1) \$50.00	Any dishonored check.
(2) \$15.00	Processing of each notice or demand letter.

(3) The fees assessed under Department of the Treasury debt collection regulations.	Treasury processing following referral for collection of delinquent debt.
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§ 162.169 How will payment rights relating to an agricultural lease be allocated?

The agricultural lease may allocate rights to payment for insurance proceeds, trespass damages, condemnation awards, settlement funds, and other payments between the Indian landowners and the lessee. If not specified in the lease, insurance policy, order, award, judgment, or other document, the Indian landowners or lessees will be entitled to receive these payments.

§ 162.170 When will a cancellation of an agricultural lease be effective?

(a) A cancellation involving an agricultural lease will not be effective until 31 days after the lessee receives a cancellation letter from us, or 41 days from the date we mailed the letter, whichever is earlier.

(b) The cancellation decision will not be effective if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is ineffective, the lessee must continue to pay compensation and comply with the other terms of the lease.

§ 162.171 What will BIA do if a lessee remains in possession after an agricultural lease expires or is terminated or cancelled?

If a lessee remains in possession after the expiration, termination, or cancellation of an agricultural lease, we may treat the unauthorized possession as a trespass under Part 166, Subpart I, of this chapter or other applicable law in consultation with the Indian landowners. Unless the Indian landowners of the applicable percentage of interests under § 162.012 have notified us in writing that they are engaged in good faith negotiations with the holdover lessee to obtain a new lease, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under Part 166, Subpart I, of this chapter or other applicable law, such as a forcible entry and detainer action.

§ 162.172 Will BIA appeal bond regulations apply to cancellation decisions involving agricultural leases?

The appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

§ 162.173 When will BIA issue a decision on an appeal from an agricultural leasing decision?

BIA will issue a decision on an appeal from an agricultural leasing decision within 90 days of receipt of all pleadings.

§ 162.174 What happens if the lessee abandons the leased premises?

If a lessee abandons the leased premises, we will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

SUBPART C

§ 162.324 Must a residential lease specify who receives rental payments?

(a) A residential lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners if:

- (1) The Indian landowners' trust accounts are unencumbered;
- (2) There are 10 or fewer beneficial owners; and
- (3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the lessee at the start of the lease.

(c) If the lease provides that the lessee will directly pay the Indian landowners, then:

- (1) The lease must include provisions for proof of payment upon our request.
- (2) When we consent on behalf of an Indian landowner, the lessee must make payment to us on behalf of that landowner.
- (3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.
- (4) Unless the lease provides otherwise, payments may not be made payable directly to anyone other than the Indian landowners.
- (5) Direct payments must continue through the duration of the lease, except that:
 - (i) The lessee must make all Indian landowners' payments to us if 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement; and
 - (ii) The lessee must make an individual Indian landowner's payment to us for any individual Indian landowner who dies, is declared non compos mentis, owes a debt resulting in a trust account encumbrance, or his or her whereabouts become unknown.

§ 162.338 What documents are required for BIA approval of a residential lease?

A lessee or the Indian landowners must submit the following documents to us to obtain BIA approval of a residential lease:

- (a) A lease executed by the Indian landowners and the lessee that meets the requirements of this part;
- (b) For tribal land, a tribal authorization for the lease and, if applicable, meeting the requirements of §§ 162.320(a), 162.326(b), and 162.328(a), or a separate signed certification meeting the requirements of §§ 162.320(a), 162.326(b), and 162.328(a);
- (c) A valuation, if required under § 162.320 or § 162.321;
- (d) A statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the tribe;
- (e) 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 § 162.027(b);
- (f) A preliminary site plan identifying the proposed location of residential development, roads, and utilities, if applicable, unless the lease is for housing for public purposes;
- (g) A legal description of the land under § 162.317;
- (h) If the lease is being approved under 25 U.S.C. 415, information to assist us in our evaluation whether adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject (25 U.S.C. 415(a)); and
- (i) 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.

§ 162.357 May a lessee mortgage a residential lease?

(a) A lessee may mortgage a residential lease by meeting the consent requirements in § 162.358 and obtaining BIA approval of the leasehold mortgage under in §§ 162.359 and 162.360.

(b) Refer to § 162.349(b) for information on how assignments resulting from a sale or foreclosure under an approved mortgage of the leasehold interest are treated.

§ 162.363 What happens if BIA does not meet a deadline for issuing a decision on a lease document?

If a Superintendent does not meet a deadline for issuing a decision on a lease, assignment, or leasehold mortgage, the parties may follow the procedure in Part 2, subpart F, of this Chapter.

§ 162.364 May BIA investigate compliance with a residential lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Indian landowners and ensure that the lessee is in compliance with the requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation. Such notice should be in writing, by mail, email, or personal delivery, but may be oral.

§ 162.368 Will late payment charges or special fees apply to delinquent payments due under a residential lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if rent is not paid in the time and manner required, in addition to late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(1) \$50.00	Any dishonored check.
(2) \$15.00	Processing of each notice or demand letter.

(3) The fees assessed under Department of the Treasury debt collection regulations.	Treasury processing following referral for collection of delinquent debt.
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§162.372 Will BIA appeal bond regulations apply to cancellation decisions involving residential leases?

The appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

§ 162.373 When will BIA issue a decision on an appeal from a residential leasing decision?

BIA will issue a decision on an appeal from a residential leasing decision within 60 days of receipt of all pleadings.

SUBPART D

§ 162.424 Must a business lease specify who receives monetary compensation payments?

(a) A business lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners if:

- (1) The Indian landowners' trust accounts are unencumbered;
- (2) There are 10 or fewer beneficial owners; and
- (3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the lessee at the start of the lease.

(c) If the lease provides that the lessee will directly pay the Indian landowners, then:

- (1) The lease must include provisions for proof of payment upon our request.
- (2) When we consent on behalf of an Indian landowner, the lessee must make payment to us on behalf of that landowner.
- (3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.
- (4) Unless the lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Indian landowners.

(5) Direct payments must continue through the duration of the lease, except that:

(i) The lessee must make all Indian landowners' payments to us if 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement; and

(ii) The lessee must make that individual Indian landowner's payment to us for any individual Indian landowner who dies, is declared non compos mentis, owes a debt resulting in a trust account encumbrance, or his or her whereabouts become unknown.

§ 162.438 What documents are required for BIA approval of a business lease?

A lessee or the Indian landowners must submit the following documents to us to obtain BIA approval of a business lease:

(a) A lease executed by the Indian landowners and the lessee that meets the requirements of this part;

(b) For tribal land, a tribal authorization for the lease and, if applicable, meeting the requirements of §§ 162.420(a), 162.426(b), and 162.428(a), or a separate signed certification meeting the requirements of §§ 162.426(b) and 162.428(a));

(c) A valuation, if required under § 162.420 or § 162.421;

(d) Proof of insurance, if required under § 162.437;

(e) A performance bond or other security, if required under § 162.434;

(f) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the tribe;

(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 § 162.027(b);

(h) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;

(i) Where the 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) A 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 § 162.418;

(l) If the lease is being approved under 25 U.S.C. 415, information to assist us in our evaluation whether adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject (25 U.S.C. 415(a)); and

(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.

§ 162.450 What are the consent requirements for an assignment of a business lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed assignment.

(b) The Indian landowners, or their representatives under § 162.013, must consent to an assignment of a business lease in the same percentages and manner as a new business lease under § 162.012, unless the lease:

(1) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the assignment within a specified period of time following the landowners' receipt of the assignment and the lease meets the requirements of paragraph (c) of this section;

(2) Authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners; or

(3) Designates us as the Indian landowners' representative for the purposes of consenting to an assignment.

(c) If the lease provides for deemed consent under paragraph (b)(1) of this section, it must require the parties to submit to us:

(1) A copy of the executed assignment or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the assignment to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

(d) The lessee must obtain the consent of the holders of any bonds or mortgages.

§ 162.457 May a lessee mortgage a business lease?

(a) A lessee may mortgage a business lease by meeting the consent requirements in § 162.458 and obtaining our approval of the leasehold mortgage under §§ 162.459 and 162.460.

(b) Refer to § 162.449(c) for information on how assignments resulting from a sale or foreclosure under an approved mortgage of the leasehold interest are treated.

§ 162.463 What happens if BIA does not meet a deadline for issuing a decision on a lease document?

If a Superintendent does not meet a deadline for issuing a decision on a lease, assignment, or leasehold mortgage, the parties may follow the procedure in Part 2, subpart F, of this Chapter.

§ 162.464 May BIA investigate compliance with a business lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Indian landowners and to determine if the lessee is in compliance with the requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation. Such notice should be in writing, by mail, email, or personal delivery, but may be oral.

§ 162.468 Will late payment charges or special fees apply to delinquent payments due under a business lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(1) \$50.00	Any dishonored check.
(2) \$15.00	Processing of each notice or demand letter.
(3) The fees assessed under Department of the Treasury debt collection regulations	Treasury processing following referral for collection of delinquent debt.

§162.472 Will BIA appeal bond regulations apply to cancellation decisions involving business leases?

The appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

§ 162.473 When will BIA issue a decision on an appeal from a business leasing decision?

BIA will issue a decision on an appeal from a business leasing decision within 90 days of receipt of all pleadings.

SUBPART E

§ 162.553 Must a WSR lease specify who receives monetary compensation payments?

(a) A WSR lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners if:

- (1) The Indian landowners' trust accounts are unencumbered;
- (2) There are 10 or fewer beneficial owners; and
- (3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the lessee at the start of the lease.

(c) If the lease provides that the lessee will directly pay the Indian landowners, then:

- (1) The lease must include provisions for proof of payment upon our request.
- (2) When we consent on behalf of an Indian landowner, the lessee must make payment to us on behalf of that landowner.
- (3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.
- (4) Unless the lease provides otherwise, payments may not be made payable directly to anyone other than the Indian landowners.
- (5) Direct payments must continue through the duration of the lease, except that:
 - (i) The lessee must make all Indian landowners' payments to us if 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement; and
 - (ii) The lessee must make that individual Indian landowner's payment to us for any individual Indian landowner who dies, is declared non compos mentis, owes a debt resulting in a trust account encumbrance, or his or her whereabouts become unknown.

§ 162.563 What documents are required for BIA approval of a WSR lease?

A lessee or the Indian landowners must submit the following documents to us to obtain BIA approval of a WSR lease:

- (a) A lease executed by the Indian landowners and the lessee that meets the requirements of this part;

- (b) For tribal land, a tribal authorization for the lease and, if applicable, meeting the requirements of §§ 162.549(a), 162.555(b), and 162.557(a), or a separate signed certification meeting the requirements of §§ 162.555(b) and 162.557(a));
- (c) A valuation, if required under § 162.549 or § 162.550;
- (d) Proof of insurance, if required under § 162.562;
- (e) A performance bond or other security, if required under § 162.559;
- (f) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the tribe;
- (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 § 162.027(b);
- (h) A resource development plan that describes the type and location of any permanent improvements the lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;
- (i) A restoration and reclamation plan (and any subsequent modifications to the plan);
- (j) Where the 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;
- (k) A legal description of the land under § 162.547;
- (l) If the lease is being approved under 25 U.S.C. 415, information to assist us in our evaluation whether adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject (25 U.S.C. 415(a)); and
- (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.

§ 162.582 May a lessee mortgage a WSR lease?

- (a) A lessee may mortgage a WSR lease by meeting the consent requirements in § 162.583 and obtaining our approval of the leasehold mortgage under §§ 162.584 and 162.585.
- (b) Refer to § 162.574(c) for information on how assignments resulting from a sale or foreclosure under an approved mortgage of the leasehold interest are treated.

§ 162.588 What happens if BIA does not meet a deadline for issuing a decision on a lease document?

If a Superintendent does not meet a deadline for issuing a decision on a lease, assignment, or leasehold mortgage, the parties may follow the procedure in Part 2, subpart F, of this Chapter.

§ 162.589 May BIA investigate compliance with a WSR lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Indian landowners and to determine if the lessee is in compliance with the requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation. Such notice should be in writing, by mail, email, or personal delivery, but may be oral.

§ 162.593 Will late payment charges or special fees apply to delinquent payments due under a WSR lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(1) \$50.00	Any dishonored check.
(2) \$15.00	Processing of each notice or demand letter.
(3) The fee assessed under Department of the Treasury debt collection regulations.	Treasury processing following referral for collection of delinquent debt.

§ 162.597 Will BIA appeal bond regulations apply to cancellation decisions involving WSR leases?

The appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

§ 162.598 When will BIA issue a decision on an appeal from a WSR leasing decision?

BIA will issue a decision on an appeal from a WSR leasing decision within 90 days of receipt of all pleadings.