

PART 162 – Leases and Permits

Subpart A – Leases and Permits

PURPOSE, DEFINITIONS, AND SCOPE

Sec.	
162.001	What is the purpose of this part?
162.002	How is this part subdivided?
162.003	What key terms do I need to know?
162.004	What leases does this part apply to?
162.005	What land, or interests in land, does this part apply to?
162.006	What types of land use agreements does this part not apply to?
162.007	What laws will apply to leases approved under this part?
162.008	Will BIA comply with tribal laws in making decisions regarding leases?

GENERAL PROVISIONS

162.009	May tribes administer this part on BIA's behalf?
162.010	When is a lease needed to authorize possession of Indian land?
162.011	When is a lease not needed to authorize possession of Indian land?
162.012	May a lease address access to the leased premises by roads or other infrastructure?
162.013	Must BIA approve permits under this part?
162.014	What is the difference between a permit that does not require BIA approval and a lease that requires BIA approval?
162.015	Must I submit permits for recordation?
162.016	May BIA approve a lease that combines tracts with different Indian landowners?
162.017	What are BIA's responsibilities in approving leases?
162.018	What are BIA's responsibilities in administering and enforcing leases?
162.019	What may BIA do if an individual or entity takes possession of or uses Indian land without an approved lease or other proper authorization?
162.020	May BIA take emergency action if the leased premises are threatened?
162.021	May decisions under this part be appealed?
162.022	Who may I contact with questions concerning the leasing process?
162.023	What documentation may BIA require in approving, administering, and enforcing leases?

Subpart B – Agricultural Leases

[See changes below, to move current General Provisions (§§ 162.100 – 162.113) to Subpart B with edits to delete those sections covered by the new General Provisions and edit the remaining sections to make them applicable only to agricultural leases. Agricultural leasing provisions (§§ 162.200 – 162.299) are unaffected by this draft.]

Subpart C—Residential Leases

Residential Leasing General Provisions

- 162.301 What types of leases does this subpart cover?
- 162.302 Is there a model residential lease form?
- 162.303 How do I obtain a residential lease?
- 162.304 How does a prospective lessee identify and contact Indian landowners to negotiate a residential lease?
- 162.305 What are the consent requirements for a residential lease on a fractionated tract?
- 162.306 Who is authorized to consent to a residential lease?
- 162.307 On whose behalf may BIA consent to a residential lease?
- 162.308 Reserved.
- 162.309 Reserved.

Lease Requirements

- 162.310 Reserved.
- 162.311 How long may the term of a residential lease run?
- 162.312 What must the lease include if it contains an option to renew?
- 162.313 Are there mandatory provisions that a residential lease must contain?
- 162.314 May improvements be made under a residential lease?
- 162.315 How must a residential lease address ownership of improvements?
- 162.316 How will BIA enforce removal requirements in a residential lease?
- 162.317 How must a residential lease describe the land?
- 162.318 Reserved.
- 162.319 Reserved.

Rental Requirements

- 162.320 How much rent must be paid under a residential lease?
- 162.321 How must the fair market value be determined before BIA will approve a residential lease?
- 162.322 May BIA waive the valuation requirement?
- 162.323 When are rental payments due under a residential lease?
- 162.324 Must a residential lease specify to whom may rental payments be made?
- 162.325 What form of payment may be accepted under a residential lease?
- 162.326 May a residential lease provide for non-monetary or varying types of compensation?
- 162.327 Will BIA notify a lessee when a payment is due under a residential lease?
- 162.328 Must a residential lease provide for rental reviews or adjustments?
- 162.329 Reserved.
- 162.330 What other types of payments are required under a residential lease?
- 162.331 What will BIA do if rental payments are not made as required by a residential lease?
- 162.332 Will late payment penalties apply to untimely rental payments under a residential lease?
- 162.333 Will any special fees be assessed on delinquent rental payments due under a residential lease?

Bonding and Insurance

- 162.334 Must a lessee or assignee provide a performance bond or for a residential lease?
- 162.335 What forms of performance bonds may be accepted under a residential lease?
- 162.336 What is the bond release process under a residential lease?
- 162.337 Must a lessee provide insurance for a residential lease?

Lease Approval

- 162.338 What documents must a lessee submit to obtain BIA approval of a residential lease?
- 162.339 What is the approval process for a residential lease?
- 162.340 When will a residential lease be effective?
- 162.341 Must residential lease documents be recorded?
- 162.342 What action may BIA take if a residential lease disapproval decision is appealed?

Amendments

- 162.343 May a lessee amend a residential lease?
- 162.344 What is the consent and approval process for an amendment of a residential lease?
- 162.345 How will BIA decide whether to approve an amendment of a residential lease?
- 162.346 What are the consent requirements for an amendment of a residential lease?

Assignments

- 162.347 May a lessee assign a residential lease?
- 162.348 What is the consent and approval process for an assignment of a residential lease?
- 162.349 How will BIA decide whether to approve an assignment of a residential lease?
- 162.350 What are the consent requirements for an assignment of a residential lease?

Subleases

- 162.351 May a lessee sublease a residential lease?
- 162.352 What is the consent and approval process for a sublease of a residential lease?
- 162.353 How will BIA decide whether to approve a sublease of a residential lease?
- 162.354 What are the consent requirements for a sublease of a residential lease?

Leasehold Mortgages

- 162.355 May a lessee mortgage a residential lease?
- 162.356 What is the consent and approval process for a leasehold mortgage under a residential lease?
- 162.357 How will BIA decide whether to approve a leasehold mortgage under a residential lease?
- 162.358 What are the consent requirements for a leasehold mortgage under a residential lease?

Effectiveness, Compliance, and Enforcement

- 162.359 When will an amendment, assignment, sublease, or leasehold mortgage under a residential lease be effective?
- 162.360 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage?
- 162.361 May BIA investigate compliance with a residential lease?
- 162.362 What will BIA do about a violation of a residential lease?
- 162.363 May a residential lease provide for negotiated remedies in the event of a violation?
- 162.364 What will BIA do if the lessee does not cure a violation of a residential lease on time?
- 162.365 How will payment rights relating to a residential lease be allocated between the Indian landowners and the lessee?
- 162.366 When will a cancellation of a residential lease be effective?
- 162.367 What will BIA do if a lessee remains in possession after a residential lease expires or is cancelled?
- 162.368 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving residential leases?
- 162.369 When will BIA issue a decision on an appeal from a residential leasing decision?
- 162.370 What happens if the lessee abandons the leased premises?
- 162.371 Reserved.
- 162.372 Reserved.

Subpart D—Business Leases

Business Leasing General Provisions

- 162.401 What types of leases does this subpart cover?
- 162.402 Is there a model business lease form?
- 162.403 How do I obtain a business lease?
- 162.404 How does a prospective lessee identify and contact Indian landowners to negotiate a business lease?
- 162.405 What are the consent requirements for a business lease on a fractionated tract?
- 162.406 Who is authorized to consent to a business lease?
- 162.407 On whose behalf may BIA consent to a business lease?
- 162.408 Reserved.
- 162.409 Reserved.

Lease Requirements

- 162.410 Reserved.
- 162.411 How long may the term of a business lease run?
- 162.412 What must the lease include if it contains an option to renew?
- 162.413 Are there mandatory provisions that a business lease must contain?
- 162.414 May improvements be made under a business lease?
- 162.415 How must a business lease address ownership of improvements?
- 162.416 How will BIA enforce removal requirements in a business lease?

- 162.417 What requirements for due diligence must a business lease include?
- 162.418 May a business lease allow compatible uses?
- 162.419 How must a business lease describe the land?

Monetary Compensation Requirements

- 162.420 How much monetary compensation must be paid under a business lease?
- 162.421 How must the fair market value be determined before BIA will approve a business lease?
- 162.422 Will BIA waive the appraisal requirement?
- 162.423 When are monetary compensation payments due under a business lease?
- 162.424 Must a business lease specify to whom may monetary compensation payments be made?
- 162.425 What form of monetary compensation payment may be accepted under a business lease?
- 162.426 May the business lease provide for non-monetary or varying types of compensation?
- 162.427 Will BIA notify a lessee when a payment is due under a business lease?
- 162.428 Must a business lease provide for compensation reviews or adjustments?
- 162.429 Reserved.
- 162.430 What other types of payments are required under a business lease?
- 162.431 What will BIA do if monetary compensation payments are not made as required by a business lease?
- 162.432 Will late payment penalties apply to untimely monetary compensation payments made under a business lease?
- 162.433 Will any special fees be assessed on delinquent monetary compensation payments due under a business lease?

Bonding and Insurance

- 162.434 Must a lessee provide a performance bond for a business lease?
- 162.435 What forms of performance bond may be accepted under a business lease?
- 162.436 What is the bond release process under a business lease?
- 162.437 Must a lessee provide insurance for a business lease?

Lease Approval

- 162.438 What documents must a lessee submit to obtain BIA approval of a business lease?
- 162.439 What is the approval process for a business lease?
- 162.440 When will a business lease be effective?
- 162.441 Must business lease documents be recorded?
- 162.442 What action may BIA take if a lease disapproval decision is appealed?

Amendments

- 162.443 May a lessee amend a business lease?
- 162.444 What is the consent and approval process for an amendment to a business lease?

- 162.445 How will BIA decide whether to approve an amendment to a business lease?
- 162.446 What are the consent requirements for an amendment to a business lease?

Assignments

- 162.447 May a lessee assign a business lease?
- 162.448 What is the consent and approval process for an assignment of a business lease?
- 162.449 How will BIA decide whether to approve an assignment of a business lease?
- 162.450 What are the consent requirements for an assignment of a business lease?

Subleases

- 162.451 May a lessee sublease a business lease?
- 162.452 What is the consent and approval process for a sublease of a business lease?
- 162.453 How will BIA decide whether to approve a sublease of a business lease?
- 162.454 What are the consent requirements for a sublease of a business lease?

Leasehold Mortgages

- 162.455 May a lessee mortgage a business lease?
- 162.456 What is the consent and approval process for a leasehold mortgage under a business lease?
- 162.457 How will BIA decide whether to approve a leasehold mortgage under a business lease?
- 162.458 What are the consent requirements for a leasehold mortgage under a business lease?

Effectiveness, Compliance, and Enforcement

- 162.459 When will an amendment, assignment, sublease, or leasehold mortgage under a business lease be effective?
- 162.460 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage under a business lease?
- 162.461 May BIA investigate compliance with a business lease?
- 162.462 What will BIA do about a violation of a business lease?
- 162.463 May a business lease provide for negotiated remedies in the event of a violation?
- 162.464 What will BIA do if the lessee does not cure a violation of a business lease on time?
- 162.465 How will payment rights relating to a business lease be allocated between the Indian landowners and the lessee?
- 162.466 When will a cancellation of a business lease be effective?
- 162.467 What will BIA do if a lessee remains in possession after a business lease expires or is cancelled?
- 162.468 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving business leases?

- 162.469 When will BIA issue a decision on an appeal from a business leasing decision?
- 162.470 What happens if the lessee abandons the leased premises?
- 162.471 Reserved.
- 162.472 Reserved.

Subpart E—Wind and Solar Resource Permits and Leases

GENERAL PROVISIONS APPLICABLE TO BOTH WSR PERMITS AND LEASES

- 162.501 What types of permits and leases does this subpart cover?
- 162.502 Who must obtain a WSR permit or lease?
- 162.503 Is there a model WSR permit or lease?
- 162.504 How do I obtain a WSR permit or lease?
- 162.505 How does a prospective permittee or lessee identify and contact Indian landowners to negotiate a WSR permit or lease?
- 162.506 What are the consent requirements for a WSR permit or lease on a fractionated tract?
- 162.507 Who is authorized to consent to a WSR permit or lease?
- 162.508 On whose behalf may BIA consent to a WSR permit or lease?
- 162.509 Reserved.
- 162.510 Reserved.

WSR PERMITS

- 162.511 What is the purpose of a WSR permit?
- 162.512 How long may the term of a WSR permit run?
- 162.513 Are there mandatory provisions a WSR permit must contain?
- 162.514 May improvements be made under a WSR permit?
- 162.515 How must a WSR permit address ownership of improvements?
- 162.516 How will BIA enforce removal requirements in a WSR permit?
- 162.517 What requirements for due diligence must a WSR permit include?
- 162.518 May a WSR permit allow for compatible uses by the landowner?
- 162.519 Who owns the energy resource information obtained under the WSR permit?
- 162.520 May a permittee incorporate its WSR permit analyses into its WSR lease analyses?
- 162.521 May a WSR permit contain an option for a permittee to enter into a lease?
- 162.522 How may a permittee obtain an extension of an option period?

Monetary Compensation Requirements

- 162.523 How much compensation must be paid under a WSR permit?
- 162.524 Will BIA require an appraisal for a WSR permit?

Bonding and Insurance

- 162.525 Must a permittee provide a performance bond for a WSR permit?
- 162.526 What is the bond release process under a WSR permit?

162.527 Must a permittee provide insurance for a WSR permit?

Approval

162.528 What documents must a permittee submit to obtain BIA approval of a WSR permit?

162.529 What is the approval process for a WSR permit?

Administration

162.530 May a permittee amend a WSR permit?

162.531 May a permittee assign, subpermit, or mortgage a WSR permit?

Compliance and Enforcement

162.532 How does BIA ensure compliance with a WSR permit?

162.533 What will BIA do if a permittee does not cure a violation of a WSR permit on time?

162.534 Under what circumstance may a WSR permit be terminated or cancelled?

WSR LEASES

162.535 What is the purpose of a WSR lease?

162.536 Must I obtain a WSR permit before obtaining a WSR lease?

162.537 How long may the term of a WSR lease run?

163.538 What must the lease include if it contains an option to renew?

162.539 Are there mandatory provisions a WSR lease must contain?

162.540 May improvements be made under a WSR lease?

162.541 How must a WSR lease address ownership of improvements?

162.542 How will BIA enforce removal requirements in a WSR lease?

162.543 What requirements for due diligence must a WSR lease include?

162.544 May a WSR lease allow compatible uses?

162.545 How must a WSR lease describe the land?

Monetary Compensation Requirements

162.546 How much monetary compensation must be paid under a WSR lease?

162.547 How must the fair market value be determined before BIA will approve a WSR lease?

162.548 What is the process for obtaining BIA approval to waive the appraisal requirement?

162.549 When are monetary compensation payments due under a WSR lease?

162.550 Must a WSR lease specify to whom monetary compensation payments may be made?

162.551 What form of monetary compensation payment may be accepted under a WSR lease?

162.552 May the WSR lease provide for non-monetary or varying types of compensation?

162.553 Will BIA notify a lessee when a payment is due under a WSR lease?

162.554 Must a WSR lease provide for compensation reviews or adjustments?

- 162.555 What other types of payments are required under a WSR lease?
162.556 What will BIA do if monetary compensation payments are not made as required by a WSR lease?
162.557 Will late payment penalties apply to untimely monetary compensation payments made under a WSR lease?
162.558 Will any special fees be assessed on delinquent monetary compensation payments due under a WSR lease?

Bonding and Insurance

- 162.559 Must a lessee provide a performance bond for a WSR lease?
162.560 What forms of performance bond may be accepted under a WSR lease?
162.561 What is the bond release process under a WSR lease?
162.562 Must a lessee provide insurance for a WSR lease?

Approval

- 162.563 What documents must a lessee submit to obtain BIA approval of a WSR lease?
162.564 What is the approval process for a WSR lease?
162.565 When will a WSR lease be effective?
162.566 Must WSR lease and permit documents be recorded?
162.567 What action may BIA take if a lease disapproval decision is appealed?

Amendments

- 162.568 May a lessee amend a WSR lease?
162.569 What is the consent and approval process for an amendment to a WSR lease?
162.570 How will BIA decide whether to approve an amendment to a WSR lease?
162.571 What are the consent requirements for an amendment to a WSR lease?

Assignments

- 162.572 May a lessee assign a WSR lease?
162.573 What is the consent and approval process for an assignment of a WSR lease?
162.574 How will BIA decide whether to approve an assignment of a WSR lease?
162.575 What are the consent requirements for an assignment of a WSR lease?

Subleases

- 162.576 May a lessee sublease a WSR lease?
162.577 What is the consent and approval process for a sublease of a WSR lease?
162.578 How will BIA decide whether to approve a sublease of a WSR lease?
162.579 What are the consent requirements for a sublease of a WSR lease?

Leasehold Mortgages

- 162.580 May a lessee mortgage a WSR lease?
162.581 What is the consent and approval process for a leasehold mortgage of a WSR lease?

- 162.582 How will BIA decide whether to approve a leasehold mortgage of a WSR lease?
- 162.583 What are the consent requirements for a leasehold mortgage of a WSR lease?

Effectiveness, Compliance, and Enforcement

- 162.584 When will an amendment, assignment, sublease, or leasehold mortgage under a WSR lease be effective?
- 162.585 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease?
- 162.586 May BIA investigate compliance with a WSR lease?
- 162.587 What will BIA do about a violation of a WSR lease?
- 162.588 May a WSR lease provide for negotiated remedies in the event of a violation?
- 162.589 What will BIA do if a lessee does not cure a violation of a WSR lease on time?
- 162.590 How will payment rights relating to WSR leases be allocated between the Indian landowners and the lessee?
- 162.591 When will a cancellation of a WSR lease be effective?
- 162.592 What will BIA do if a lessee remains in possession after a WSR lease expires or is cancelled?
- 162.593 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving WSR leases?
- 162.594 When will BIA issue a decision on an appeal from a WSR leasing decision?
- 162.595 Reserved.
- 162.596 Reserved.
- 162.597 What happens if the lessee abandons the leased premises?

Subpart F—Non-Agricultural Leases

[Delete subpart F in its entirety (§ 162.600 – § 162.623) and replace with new Subpart F, as follows.]

Subpart F—Special Requirements for Certain Reservations

[Redesignate § 162.500 - § 162.503 (formerly in Subpart E) to § 162.600 – § 162.603.]

Subpart G – Records

- 162.701 Who owns the records associated with this part?
- 162.702 How must records associated with this part be preserved?
- 162.703 How does the Paperwork Reduction Act affect this part?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 380; 25 U.S.C. 393; 25 U.S.C. 393a; 25 U.S.C. 394; 25 U.S.C. 395; 25 U.S.C. 397; 25 U.S.C. 402; 25 U.S.C. 402a; 25 U.S.C. 403; 25 U.S.C. 403a; 25 U.S.C. 403b; 25 U.S.C. 403c; 25 U.S.C. 409a; 25 U.S.C. 413; 25 U.S.C. 415; 25 U.S.C. 415a; 25 U.S.C. 415b; 25 U.S.C. 415c; 25 U.S.C. 415d; 25 U.S.C. 477; 25 U.S.C. 635; 25 U.S.C. 3701 et. seq.; 25 U.S.C. 2201 et. seq.; 44 U.S.C. 2901 et. seq.; 44 U.S.C. 3101 et. seq.; 44 U.S.C. 3301 et. seq.; and 44 U.S.C. 3501 et. seq.

Subpart A—Leases and Permits

PURPOSE, DEFINITIONS, AND SCOPE

§ 162.001 What is the purpose of this part?

The purpose of this part is to:

- (a) Identify the conditions and authorities under which certain interests in Indian land may be leased or permitted and Government land may be permitted;
- (b) Describe the manner in which various types of leases may be obtained;
- (c) Identify terms and conditions that may be required in various types of leases;
- (d) Describe the policies and procedures that will be applied in the administration and enforcement of various types of leases; and
- (e) Identify special requirements that apply to leases made under special acts of Congress that apply only to certain Indian reservations.

§ 162.002 How is this part subdivided?

- (a) This part includes multiple subparts relating to:
 - (1) General Provisions (Subpart A);
 - (2) Agricultural Leases (Subpart B);
 - (3) Residential Leases (Subpart C);
 - (4) Business Leases (Subpart D);
 - (5) Wind and Solar Leases (Subpart E)
 - (6) Special Requirements for Certain Reservations (Subpart F);
 - (7) Records (Subpart G).
- (b) Subpart F identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases covered by

Subpart F are also subject to the general provisions in subparts A and G, except to the extent that subparts A and G are inconsistent with the provisions in subpart F or any act of Congress under which the lease is made.

§ 162.003 What key terms do I need to know?

10-day show cause letter means a letter notifying the lessee of the failure to pay compensation in violation of the lease and providing the lessee with 10 days to show cause why the lease should not be cancelled for non-payment of compensation.

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

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

Approval means written authorization by the Secretary or a delegated official.

Assignment means an agreement between a lessee and an assignee, whereby the assignee acquires all of the lessee's rights, and assumes all 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 § 162.009, except that this term means only the Secretary of the Interior or Bureau of Indian Affairs if the function is an inherently Federal function..

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

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

Constructive notice means public notice posted at the tribal community building and the United States Post Office, and notice published in the local newspaper(s) nearest to the affected land.

Court of competent jurisdiction means a Federal or tribal court with jurisdiction; however, if there is no tribal court with jurisdiction, then a 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.

Fair annual rental, fair market rental, or fair market value 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 by the United States and administered by BIA, not including tribal land that has been reserved for administrative purposes.

Housing for public purposes means multi-family developments and single-family residential developments (i) administered by a tribe, Tribally-Designated Housing Entity, or a tribally-sponsored not-for-profit entity; or (ii) substantially financed using a tribal, Federal, or State housing assistance program.

Immediate family means a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, member of the household, or some other special relationship recognized under tribal law.

Improvements means buildings, other structures, and associated infrastructure constructed or installed under a lease to serve the purposes of the lease.

Indian means:

(a) 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;

(b) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

(c) With respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to 25 U.S.C. 2206, any person described in paragraph (a) or (b) 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.

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

Individually-owned 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. 479a).

Interest, when used with respect to Indian land, means an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

Lease means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possession of Indian land, for a specified purpose and duration.

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 of possession to Indian land by a lease under this part.

Lessor means the beneficial owners of the trust or restricted land being leased.

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 Title and Records Office of the BIA.

Mail means mailing by U.S. Postal Service or commercial delivery service.

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

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 a person who 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, other than failure to pay compensation, and providing the lessee with a specified period of time to show cause why the lease should not be cancelled for the violation.

Orphaned minor means a minor who does not have one or more guardians duly appointed by a court of competent jurisdiction.

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.

Permit, other than a WSR 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 person or entity who has acquired a legal right of use to Indian land by a permit under this part.

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

Remainder interest means the interest of an owner who does not have use of the property until the life estate terminates.

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.

Single-family residential development means one or more single-family homes 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.

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

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

Tribally Designated Housing Entity means a tribally designated housing entity under 25 U.S.C. 4103(21).

Tribal land mean lands or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such lands reserved for BIA administrative purposes. The term also includes 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. 477).

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.

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

Trust or restricted land or trust or restricted status means any tract, or interest therein, that the United States holds in trust for the benefit of a tribe or individual Indian, or any tract, or interest therein, that an individual Indian or a tribe holds title to, but can

only alienate or encumber with the approval of the United States because of limitations contained in the conveyance instrument pursuant to 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.

Us/we/our means the Secretary of the Interior or the Bureau of Indian Affairs (BIA) and any tribe acting on behalf of the Secretary or BIA under § 162.009, except that this term means only the Secretary of the Interior or BIA if the function is an inherently Federal function.

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

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 this part no matter how “violation” or “default” is defined in the lease.

§ 162.004 What leases does this part apply to?

(a) This part applies to all new leases and subleases. Unless otherwise agreed by the parties, this part will not affect the validity or terms of an existing lease or sublease. In the event of a conflict between the terms of an existing lease or sublease and this part, the terms of the lease or sublease will govern.

(b) This subpart applies to all leases. For agricultural leases, if a provision in subpart B conflicts with a provision of this subpart, then the provision in subpart B will govern.

§ 162.005 What land, or interests in land, does this part apply to?

(a) This part applies to Indian land and Government land, including any tract in which an individual Indian or tribe owns an interest in trust or restricted status.

(b) For a tract that is subject to a life estate held by an Indian, the lease must include both the life estate interest and the remainder interest. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the lease must be paid to the life tenant under part 179 of this chapter.

(c) For a tract that is subject to a life estate held by a non-Indian, we will not lease the life estate or collect rent on behalf of the life estate holder except where:

- (1) The approved lease predates the creation of the life estate; or
- (2) Such action is necessary to preserve the value of the land or protect the remainder interests.

(d) We will not lease fee interests or collect rent on behalf of fee interest owners. The leasing of the trust and restricted interest of the Indian landowners will not be conditioned on a lease having been obtained from the owners of any fee interests.

(e) We will not consider the fee interests in a tract for purposes of any calculation under this part of the owners of the applicable percentage of interests required to consent to a lease or other agreements related to the lease.

(f) Except as provided in § 162.341, §162.441, and §162.566, regarding recording of documents, these regulations do not apply to tribal land that:

- (1) A 25 U.S.C. 477 corporate entity leases to a third party; or
- (2) Is leased under a special act of Congress authorizing leases without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such leases on behalf of the Indian landowners.

§ 162.006 What types of land use agreements does this part not apply to?

This part does not apply to:

- (a) Mineral leases, prospecting permits, or mineral development agreements as covered by parts 211, 212 and 225 of this chapter and similar parts specific to particular tribes;
- (b) Grazing permits as covered by part 166 of this chapter and similar parts specific to particular tribes;
- (c) Timber contracts as covered by part 163 of this chapter;
- (d) Contracts or agreements that encumber tribal land as covered by 25 U.S.C. 81, as amended;
- (e) Leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself;
- (f) Rights-of-way as covered by part 169 of this chapter;
- (g) Tribal land assignments and similar instruments authorizing temporary uses by tribal members, in accordance with tribal laws; and
- (h) Traders' licenses issued under part 140 of this chapter.

§ 162.007 What laws will apply to leases approved under this part?

(a) In addition to the regulations in this part, leases approved under this part are subject to:

(1) Applicable Federal laws and any specific Federal statutory requirements that are not incorporated in this part;

(2) State or local law in the absence of Federal law, if the lease so provides and if the Indian landowners have expressly agreed to the application of State or local law; and

(3) Tribal law, subject to paragraph (b).

(b) In any case in which these regulations conflict with a tribal law, the Secretary may waive the application of such regulation to tribal land, unless such waiver would constitute a violation of a Federal statute or judicial decision, or would conflict with the United States trust responsibility under Federal law.

(c) Unless expressly provided for in the lease of tribal land, any agreement to subject the lease to State or local law in the absence of Federal law is not a waiver of sovereign immunity by the tribe.

§ 162.008 Will BIA comply with tribal laws in making decisions regarding leases?

Unless contrary to Federal law, BIA will comply with tribal laws in making decisions regarding leases, including tribal laws regulating activities on leased land under tribal jurisdiction, including, but not limited to, tribal laws relating to land use, environmental protection, and historic or cultural preservation.

GENERAL PROVISIONS

§ 162.009 May tribes administer this part on BIA's behalf?

Any tribe or tribal organization that is administering programs or services under Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f et. seq.) may administer any portion of this part that is not an inherent Federal function.

§ 162.010 When is a lease needed to authorize possession of Indian land?

(a) Any person or legal entity, including an independent legal entity owned and operated by a tribe, who is not an owner of the tract must obtain a lease under this part before taking possession of the tract or a portion thereof.

(b) An Indian landowner of a fractional interest in a tract must obtain a lease from the owners of the other trust and restricted interests in the tract, under this part, unless the Indian co-owners have given the landowner permission to take or continue in possession without a lease. Landowners may wish to consider documenting such an agreement and recording it in the LTRO.

§ 162.011 When is a lease not needed to authorize possession of Indian land?

(a) An Indian landowner who owns 100 percent of the trust or restricted interests in a tract may take possession without a lease or any other prior authorization from us..

(b) A parent or guardian of a minor child who owns 100 percent of the trust interests in the land may take possession without a lease or other prior authorization from us. We may require that the parent or guardian provide evidence of a direct benefit to the minor child. When the child is no longer a minor, a lease must be obtained under this part to authorize continued possession.

§ 162.012 May a lease address access to the leased premises by roads or other infrastructure?

A lease may address access to the leased premises by roads or other infrastructure as long as such access complies with applicable statutory and regulatory requirements, including 25 CFR 169.

§ 162.013 Must BIA approve permits under this part?

(a) Permits for the use of Indian land do not require our approval, except for permits to evaluate wind or solar resources under subpart E.

(b) Permits for the use of Government land require our approval. The leasing regulations in this part will apply to such permits, as appropriate.

§ 162.014 What is the difference between a permit that does not require BIA approval and a lease that requires BIA approval?

(a) A permit grants a permittee the privilege to use Indian land. It does not grant a legal interest in Indian land. The landowner may terminate the permit at any time.

(b) The following table provides characteristics of permits versus leases.

Characteristic	Permit	Lease
<i>Term</i>	Shorter term	Longer term
<i>Scope of Use</i>	Limited use	Broader use with associated infrastructure
<i>Exclusivity of Use</i>	Access to the property for the defined purpose only; others may use the property for other purposes	Exclusive or nearly exclusive access to the property
<i>Surface Disturbance</i>	Limited surface disturbance allowed, if appropriate	More surface disturbance allowed, if appropriate
<i>Revocability</i>	Landowner may terminate at any time	Landowner may terminate under limited circumstances
<i>Permanence of Improvements</i>	Temporary improvements, if any	Permanent or temporary improvements, if any

§ 162.015 Must I submit permits for recordation?

(a) You must submit all permits to us for recordation in the LTRO.

(b) When you submit the permit to us for recordation, we will review the permit to confirm that the document meets the definition of “permit” and does not grant an interest in Indian land.

§ 162.016 May BIA approve a lease that combines tracts with different Indian landowners?

(a) We may approve a lease that combines multiple tracts of Indian land into a unit, if we determine that unitization is in the Indian landowners' best interest and consistent with the efficient administration of the land.

(b) For a lease that covers multiple tracts, the minimum consent requirements will apply to each tract separately.

(c) The rent or other compensation from a lease that covers multiple tracts will be prorated in proportion to each tract acreage contribution to the entire lease. Once prorated per tract, the rent will be distributed to the owners of each tract based upon their respective percentage interest in that particular tract.

§ 162.017 What are BIA’s responsibilities in approving leases?

(a) We will work to provide assistance to Indian landowners in leasing their land, either through negotiations or advertisement.

(b) We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, including through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f et. seq.

(c) We will promptly respond to requests for BIA approval of leases, as specified in § 162.339, §162.439, and §162.564, and requests for BIA approval of WSR permits, as specified in § 162.529.

(d) We will work to ensure that the use of the land is consistent with the landowners' wishes.

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

(a) Upon notification from the 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 § 162.362, § 162.462, and § 162.587.

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

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

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

§ 162.019 What may BIA do if an individual or entity takes possession of or uses Indian land without an approved lease or other proper authorization?

If an individual or entity takes possession of, or uses, Indian land without a lease and a lease is required, we may treat the unauthorized possession or use as a trespass. We may take action to recover possession on behalf of the Indian landowners and pursue any additional remedies available under applicable law.

§ 162.020 May BIA take emergency action if the leased premises are threatened?

(a) We may take appropriate emergency action if there is a natural disaster or if a lessee or any other individual or entity causes or threatens to cause immediate and significant harm to the leased premises during the term of a lease. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

(b) We will make reasonable efforts to notify the Indian landowners before taking emergency action. In all cases, we will notify the Indian landowners after taking emergency action by constructive notice.

§ 162.021 May decisions under this part be appealed?

Appeals from BIA decisions under this part may be taken pursuant to part 2 of this chapter, except where otherwise provided in this part.

§ 162.022 Who may I contact with questions concerning the leasing process?

The Indian landowner or prospective lessee may contact the local BIA realty office with jurisdiction over the land for answers to questions about the leasing process.

§ 162.023 What documentation may BIA require in approving, administering, and enforcing leases?

(a) BIA may require that the parties provide any pertinent environmental, technical, and financial records, reports, and other information, related to approval, administration, and enforcement of leases.

(b) Upon the request of BIA, the parties must make appropriate records, reports, or information available for inspection and duplication by the BIA. BIA will keep confidential any such information that is marked confidential or proprietary and is

exempt from public release, to the extent allowed by law. Failure to cooperate with such request, provide data, or grant access to information or records, may, at the discretion of BIA, be treated as a lease violation. All approved leases must include such disclosure provisions.

DRAFT

Subpart B—Agricultural Leases

1. Delete current § 162.100.
2. Move current § 162.101 – § 162.113 to Subpart B.
3. Amend § 162.101 to read as follows:

§ 162.101 What key terms do I need to know for this subpart?

For the purposes of this subpart:

* * *

4. Delete § 162.102 – § 162.104. Reserve the section numbers.
5. Amend § 162.105 and § 162.106 to replace “lease” with “agricultural lease” and “leasing” with “agricultural leasing” wherever they appear.
6. Amend § 162.107 to read as follows:

§ 162.107 What are BIA’s objectives in granting and approving agricultural leases?

(a) We will assist Indian landowners in leasing their land for agricultural purposes. For the purposes of §§ 162.102 through 162.256:

* * *

7. Amend § 162.108 – § 162.110 to replace “lease” with “agricultural lease” wherever it appears.
8. Amend § 162.111 to read as follows:

§ 162.111 Who owns the records associated with this subpart?

(a) Records associated with this subpart are the property of the United States if they:

* * *

(b) Records associated with this subpart not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this subpart are the property of the tribe.

9. Amend the heading of § 162.112 to replace “part” with “subpart.”
10. Amend § 162.113 to replace “part” with “subpart” wherever it appears.

Subpart C—Residential Leases

Residential Leasing General Provisions

§ 162.301 What types of leases does this subpart cover?

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon) on Indian land, for housing purposes. Leases covered by this subpart would authorize the construction or use of:

- (1) A single-family residence; and
- (2) Housing for public purposes.

(b) Leases for other residential development (for example, single-family residential developments that are not housing for public purposes and multi-family developments) are covered under subpart D of this part.

§ 162.302 Is there a model residential lease form?

We will make available one or more model lease forms that satisfy the formal requirements of this part. Use of a model lease form is not mandatory, provided all requirements of this part are met. If a model lease form is not used, we will assist the Indian landowners in drafting lease provisions that conform to the requirements of this part.

§ 162.303 How do I obtain a residential lease?

- (a) Persons interested in obtaining a residential lease must:
- (1) Directly negotiate with the Indian landowners for a lease;
 - (2) Obtain the consent of the required percentage of landowners, for fractionated tracts;
 - (3) Submit the information required by § 162.338;

(4) Submit the lease, and required information and analyses, to the BIA office with jurisdiction over the lands covered by the residential lease for our review and approval.

(b) Generally, residential leases will not be advertised for competitive bid.

§ 162.304 How does a prospective lessee identify and contact Indian landowners to negotiate a residential lease?

(a) Prospective lessees may submit a written request to us to obtain the following information for the purpose of negotiating a residential lease:

- (1) Names and addresses of the Indian landowners or their representatives;
- (2) Information on the location of the parcel;
- (3) The percentage of undivided interest owned by each Indian landowner.

(b) We may assist prospective lessees in contacting the Indian landowners or their representatives for the purpose of negotiating a lease, upon request.

(c) We will assist the landowners in those negotiations, upon their request.

§ 162.305 What are the consent requirements for a residential lease on a fractionated tract?

(a) Except in Alaska, the owners of the following percentages of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a residential 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...
(1) One to five,	90 percent;
(2) Six to 10,	80 percent;
(3) 11 to 19,	60 percent;
(4) 20 or more,	Over 50 percent.

(b) Leases in Alaska require consent of all of the Indian landowners in the tract.

(c) If the lessee is also an Indian landowner, their consent will be included in the percentages in paragraph (a).

(d) Where owners of the applicable percentages in paragraph (a) consent to a lease document, that lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document, except that the lease document will bind a non-consenting Indian tribe only 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 shall be construed to affect the sovereignty of the Indian tribe.

(e) We will determine the number of owners of, and interests in, undivided interests, for the purposes of calculating the percentages in paragraph (a) based on our records on the date on which the lease is submitted to us for approval.

§ 162.306 Who is authorized to consent to a residential lease?

(a) Indian tribes, adult Indian landowners, or emancipated minors, may consent to a residential lease of their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

(1) An adult with legal custody acting on behalf of his or her minor children;

(2) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction recognized to act on behalf of an individual Indian landowner;

(3) We, under the circumstances in § 162.307;

(4) An adult or legal entity who has been given a written power of attorney that:

(i) Meets all of the formal requirements of any applicable tribal or state law;

(ii) Identifies the attorney-in-fact and the land to be leased; and

(iii) Describes the scope of the power granted and any limits thereon.

(c) Where tribal land is subject to a tribal land assignment, the individual assignee and tribe must both consent to the lease.

§ 162.307 On whose behalf may BIA consent to a residential lease?

BIA may give written consent to a residential lease, and that consent must be counted in the percentage ownership described in § 162.305, on behalf of:

(a) The individual owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined;

(b) Individuals whose whereabouts are unknown to us, after we make a reasonable attempt to locate such individuals;

(c) Individuals who are found to be non compos mentis, or determined to be an adult in need of assistance or under legal disability as defined in part 115 of this chapter;

(d) Orphaned minors who do not have guardians duly appointed by a court of competent jurisdiction;

(e) Individuals who have given us a written power of attorney to lease their land; and

(f) The individual landowners of a fractionated tract where:

(1) We have given the Indian landowners written notice of our intent to consent to a lease on their behalf;

(2) The Indian landowners are unable to agree upon a lease during a three-month negotiation period following the notice; and

(3) The land is not being used by an Indian landowner under § 162.011.

§ 162.308 Reserved.

§ 162.309 Reserved.

Lease Requirements

§ 162.310 Reserved.

§ 162.311 How long may the term of a residential lease run?

(a) A residential lease must provide for a definite lease term, as well as any option to renew.

(b) Unless otherwise provided by statute or paragraph (c) applies, the maximum term may not exceed 50 years. The lease may provide for a primary term of less than 50 years with a provision for one or more renewals, so long as the maximum term, including all renewals, does not exceed 50 years.

(c) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(d) A residential lease may not:

- (1) Be extended by holdover; or
- (2) Provide a right of first refusal or any other type of preference with respect to a new lease.

(e) BIA will not approve a lease if the lease term would commence more than one year after the date of the approval.

§ 162.312 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease must specify:

- (1) The time and manner in which the option must be exercised or is automatically effective;
 - (2) That confirmation of the renewal will be submitted to us;
 - (3) Whether landowner consent to the renewal is required;
 - (4) That the lessee must provide notice to the landowner and any mortgagees of the renewal;
 - (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term; and
 - (6) That any change in the terms of the lease will be considered an amendment subject to consent and BIA approval requirements pursuant to § 162.344.
- (b) We must record any renewal of a lease in the Land Titles and Records Office.

§ 162.313 Are there mandatory provisions that a residential lease must contain?

- (a) All residential leases must identify:
 - (1) The tract or parcel of land being leased;
 - (2) The purpose of the lease;
 - (3) The parties to the lease;
 - (4) The term of the lease;
- (5) The owner being represented and the authority under which such action is being taken, where one executes a lease in a representative capacity;
- (6) The citation of the statute that authorizes our approval;
- (7) Evidence of appropriate authority to execute a lease, if the lessee is an entity other than an individual;
- (8) The authorized uses of the leased premises;

(9) Who is responsible for constructing, owning, operating, and managing improvements;

(10) Payment requirements and late payment penalties;

(11) Insurance provisions under § 162.337; and

(12) Bonding requirements under § 162.334. 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) All residential 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) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;

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

(4) The lessee must comply with all applicable Federal, tribal, State and local laws, ordinances, rules, regulations, and other legal requirements;

(5) The lessee indemnifies and 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 (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(6) 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, unless the liability or cost arises from the gross negligence or willful misconduct of the Indian landowner (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(7) In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the remains or artifacts will cease and BIA will contact its archeologist and the tribe who has jurisdiction to determine disposition;

(8) BIA has the right, at any reasonable time during the term of the lease, to enter upon the leased premises for inspection and compliance; and

(9) Unless otherwise indicated, this is a lease of the trust interests in the property described and is not a lease of any undivided fee interests. All rental payments by the lessee will be distributed to the trust landowners only. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(c) We may treat any provision of a lease, sublease, amendment, assignment, or leasehold mortgage that is in violation of Federal law as a violation of the lease.

§ 162.314 May improvements be made under a residential lease?

(a) The lessee may construct improvements under a residential lease if the residential lease generally describes the type and location of the improvements to be constructed.

(b) The lessee must provide notice to the Indian landowners of the construction of any major improvements not generally described in the lease. We will treat any attempt

by the lessee to construct improvements, without the necessary consent, as a lease violation.

§ 162.315 How must a residential lease address ownership of improvements?

(a) A residential lease must specify who will own any improvements the lessee constructs during the lease term. In addition, the lease must indicate whether each specific improvement the lessee constructs will, upon the expiration or termination of the lease:

(1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and BIA and become the property of the Indian landowner; or

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

(3) Be disposed of by other means.

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

(c) Any permanent improvements on the leased land shall be subject to 25 CFR 1.4 and, in addition, shall not be subject to any fee, tax, assessment, levy, or other such charge imposed by any State or political subdivision thereof.

§ 162.316 How will BIA enforce removal requirements in a residential lease?

We may take appropriate enforcement action on behalf of the Indian landowner to ensure removal of the improvements or restoration of the premises at the lessee's

expense. We may take such enforcement action after termination or expiration of the lease.

§ 162.317 How must a residential lease describe the land?

(a) A residential lease must describe the leased premises by reference to an official or certified survey pursuant to §162.338(h) of this part.

(b) If the tract is fractionated, we will describe the undivided tract interest in the leased premises.

§ 162.318 Reserved.

§ 162.319 Reserved.

Rental Requirements

§ 162.320 How much rent must be paid under a residential lease?

(a) A residential lease must require payment of not less than fair market rental unless paragraphs (b) or (c) of this section permit a lesser amount.

(b) We may approve a negotiated lease of tribal land, or of any undivided tribal interest in a fractionated allotment, that provides for the payment of nominal rent, or at less than a fair market rental, if the tribe provides a tribal authorization with an explanation of why approval will serve the tribe's best interest.

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

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

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

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

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

(2) The landowners execute a written waiver of the right to receive fair market rental.

(d) Where the owners of the applicable percentage of interests consent to a residential lease on behalf of all the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, including those on whose behalf we have consented, receive fair market rental.

§ 162.321 How must the fair market value be determined before BIA will approve a residential lease?

(a) We will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market value of the land before we approve a lease, unless the lease is for nominal or less than fair market value, and we waive the requirement pursuant to § 162.322.

(b) We will either prepare a market analysis, appraisal, or other appropriate valuation method or use an approved market analysis, appraisal, or other appropriate valuation method from the Indian landowner or lessee.

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

- (1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214;
- (2) Complies with Department policies; and
- (3) Considers only those improvements on the land that are owned by the Indian landowners.

§ 162.322 May BIA waive the valuation requirement?

We may waive the valuation requirement when:

- (a) 100 percent of the landowners submit to us a written statement for individually-owned land or the tribe submits a tribal authorization for tribal owned land explaining the basis for the request and their willingness to accept nominal or less than fair market rental; and
- (b) We determine that the waiver is in the best interest of the landowners, taking into consideration the landowners' written statement or tribal authorization.

§ 162.323 When are rental payments due under a residential lease?

- (a) A residential lease must specify the dates on which all payments are due.
- (b) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.

§ 162.324 Must a residential lease specify to whom rental payments may be made?

- (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 when there are 10 or fewer beneficial owners and 100 percent of the beneficial owners agree to receive payment from the lessee.

(1) If the lease provides that the lessee will directly pay the Indian landowners, the lease must also require that the lessee provide us with certification of payment.

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

(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 otherwise provided in the lease, 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, unless 100 percent of the beneficial owners agree to suspend direct pay and provide us with documentation of their agreement.

§ 162.325 What form of payment may be accepted under a residential 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, we will accept:

(1) Money orders;

(2) Personal checks;

(3) Certified checks;

(4) Cashier's checks; or

(5) Electronic funds transfer payments.

(c) We will not accept cash, foreign currency, or third-party checks.

(d) The preferred method of payment is electronic funds transfer payments.

§ 162.326 May a residential lease provide for non-monetary or varying types of compensation?

(a) With our approval, the lease may provide for:

(1) Alternative forms of rental, including, but not limited to in-kind consideration; or

(2) Varying types of compensation at specific stages during the life of the lease.

(b) We will approve alternative forms of rental and varying types of compensation if we determine that it is in the best interest of the Indian landowners.

§ 162.327 Will BIA notify a lessee when a payment is due under a residential lease?

We may issue invoices to a lessee in advance of the dates on which payments are due under a residential lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such invoices are not issued, delivered, or received.

§ 162.328 Must a residential lease provide for rental reviews or adjustments?

(a) For a residential lease with a term of five years or less, the parties may agree in the lease to provide for periodic reviews of the adequacy of rent in the lease. For a residential lease with a term of more than five years, a review of the adequacy of rent must occur at least every fifth year, in the manner specified in the lease, unless the conditions in paragraph (b) are met. The lease must specify:

(1) When adjustments take effect;

(2) Who is authorized to make adjustments;

(3) What the adjustments are based on; and

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

(b) A review of the adequacy of rent is not required if we determine it is in the best interest of the landowners not to require a review based on circumstances including, but not limited to, where the lease provides for payment of less than fair market rental.

(c) When a review results in the need for adjustment of rent, we must approve the adjustment and landowners must consent to the adjustment in accordance with § 162.305.

§ 162.329 Reserved.

§ 162.330 What other types of payments are required under a residential lease?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.315(c). 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. Failure to make such payments will be treated as a violation of the lease.

§ 162.331 What will BIA do if rental payments are not made as required by a residential lease?

(a) A lessee's failure to pay rent in the time and manner required by a residential lease is a violation of the lease, and we will issue a 10-day show cause letter.

(1) If the lease requires that rental payments be made to us, we will send the lessee and its sureties a 10-day show cause letter promptly following the date on which the payment was due.

(2) If the lease provides for payment directly to the Indian landowners, we will send the lessee and its sureties a 10-day show cause letter promptly following the date on which we receive actual notice of non-payment from the landowners.

(b) If a lessee fails to provide adequate proof of payment as required in the 10-day show cause letter, and the amount due is not in dispute:

(1) We may:

(i) Cancel the lease; and

(ii) Invoke any other remedies available under the lease or applicable law, including collection on any available performance bond or referral of the debt to the Department of the Treasury for collection.

(2) We may take action to recover the unpaid rent and any associated late payment charges:

(i) We do not have to cancel the lease or give any further notice to the lessee before taking action to recover any unpaid rent; and

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

§ 162.332 Will late payment penalties apply to untimely rental payments made under a residential lease?

Late payment penalties will apply as specified in the lease. The failure to pay such amounts will be treated as a lease violation.

§ 162.333 Will any special fees be assessed on delinquent rental payments due under a residential lease?

The following special fees may be assessed if rent is not paid in the time and

manner required, in addition to late payment penalties that must be paid to the Indian landowners under the lease. The following special fees may be assessed to cover administrative costs incurred by the United States in the collection of the debt.

The lessee will pay...	For...
(a) \$50.00	Dishonored checks.
(b) \$15.00	Processing of each notice or demand letter.
(c) 18% of balance due	Treasury processing following referral for collection of delinquent debt.

Bonding and Insurance

§ 162.334 Must a lessee or assignee provide a performance bond for a residential lease?

(a) Except as provided in (f), the lessee must provide a performance bond in an amount sufficient to secure the contractual obligations including:

(1) No less than the highest annual rental specified in the lease, if the rent is paid annually, or other amount established by BIA, if the rent is to be paid on a non-annual schedule;

(2) The construction of any required improvements for housing for public purposes;

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

(4) The restoration and reclamation of the premises leased for housing for public purposes, to their condition at the commencement of the lease term or some other specified condition.

(b) The performance bond must be deposited with us and made payable only to us, and may not be modified without our approval.

(c) The lease must provide that we may adjust security or performance bond requirements at any time to reflect changing conditions.

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

(e) The surety must provide notice to us at least 60 days before canceling a performance bond so that we may notify the lessee of its obligation to provide a substitute performance bond. Failure to provide a substitute performance bond will be a violation of the lease.

(f) We may waive the requirement for a performance bond if the waiver is in the best interest of the landowner or if the lease is for less than fair market rental or nominal rent.

§ 162.335 What forms of performance bonds may be accepted under a residential lease?

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

(1) Cashiers' checks;

(2) Certificates of deposit issued by federally insured financial institution authorized to do business in the United States;

(3) Irrevocable letters of credit issued by federally insured financial institution authorized to do business in the United States;

(4) Negotiable Treasury securities; or

(5) Surety bond issue by a company approved by the U.S. Department of Treasury;

(b) All forms of performance bonds must:

(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 lessee violates the lease;

(3) Be irrevocable during the term of the performance bond; and

(4) Be automatically renewable during the term of the lease.

§ 162.336 What is the bond release process under a residential lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee must submit a written request for a performance bond release to BIA.

(b) Upon receipt of a request under paragraph (a), BIA will release the performance bond to the lessee unless we determine that the bond must be redeemed to fulfill the contractual obligations.

§ 162.337 Must a lessee provide insurance for a residential lease?

A lessee must provide insurance necessary to protect the interests of the Indian landowners and in an amount sufficient to protect all insurable improvements on the premises.

(a) Such insurance may include property, crop, liability and/or 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.

Approval

§ 162.338 What documents must a lessee submit to obtain BIA approval of a residential lease?

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

- (a) A lease executed by the Indian landowner and the lessee that complies with the requirements of this part;
- (b) An valuation, if required under § 162.321;
- (c) Organizational documents, certificates, filing records, and resolutions or other authorization documents, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the lease will be enforceable and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;
- (d) A performance bond, where required;
- (e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law;
- (f) Reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal land use requirements;
- (g) A preliminary site plan identifying the proposed location of residential development, roads and utilities, and a construction schedule showing tentative commencement and completion dates for those improvements, if applicable;
- (h) An official or certified survey of the leased premises that includes the legal description of the land encumbered by the lease and a description of each tract of trust or

restricted land in the lease and the acreage of each. The survey must conform to DOI Standards for Indian Trust Land Boundary Evidence;

(i) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a);
and

(j) Any additional documentation we may require.

§ 162.339 What is the approval process for a residential lease?

(a) Before we approve a residential 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) Ensure compliance with all applicable laws and ordinances;
- (3) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a);
- (4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and
- (5) If the lease is a negotiated lease, defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible.

(b) When we receive a residential lease proposal and all of the supporting documents that conform to this part, we will approve, disapprove, or return the submission for revision within 30 days of the date of the approving official's receipt of the documents.

(1) We may notify the parties that we will be extending the initial 30-day time period by an additional 30 days if we are unable to take action on the lease in the initial 30-day time period.

(2) If after the extension period we are still unable to take action on the lease, we may request an additional extension from the parties.

(3) If the parties do not agree to allow the extension under paragraph (b)(2), or if we fail to meet any deadline under this section, then the parties may take appropriate action under part 2 of this chapter.

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

(d) Any residential lease issued under the authority of the Native American Housing Assistance and Self-Determination Act, 25 U.S.C 4211(a), must be approved by us and by the affected tribe.

§ 162.340 When will a residential lease be effective?

(a) A residential lease will be effective on the date that we approve the lease, notwithstanding any appeal that may be filed under part 2 of this chapter.

(b) The obligations of the parties to a residential lease may be made effective between the parties on some past or future date, by the terms of the lease. , ,

(c) We will provide copies of approved residential leases to the lessee, and make copies available to the Indian landowners upon request.

§ 162.341 Must residential lease documents be recorded?

(a) A residential lease, amendment, assignment, leasehold mortgage, and sublease must be recorded in our Land Titles and Records Office with jurisdiction over the leased land. We will record the lease or other document immediately following our approval.

(b) The tribe must record the following leases in the Land Title and Records Office with jurisdiction over the leased 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 under certain conditions.

§ 162.342 What action may BIA take if a residential lease disapproval decision is appealed?

If the lessee appeals our decision to disapprove a lease, assignment, amendment, sublease, or leasehold mortgage, then BIA may take the actions in paragraph (a) and (b).

(a) The official who issued the disapproval decision may approve a short-term lease of the land to protect the landowner from the financial consequences of the delay involved in the appeal. Our approval of a short-term lease in these circumstances is immediately effective and may be appealed under part 2 of this chapter.

(b) The official to whom the appeal is made may require the lessee to post an appeal bond in an amount necessary to protect the Indian landowners against financial losses and damage to trust resources likely to result from the delay caused by an appeal. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter. The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

Amendments

§ 162.343 May a lessee amend a residential lease?

A lessee may amend a residential lease by meeting the consent requirements contained in § 162.346 and obtaining our approval of the amendment under § 162.345.

§ 162.344 What is the consent and approval process for an amendment of a residential lease?

(a) Regardless of whether the parties negotiate the terms of the amendment together or the lessee proposes an amendment to the landowners, the lessee must promptly send a proposed amendment to the landowners (or their designee, if the lease grants one individual or entity the authority to approve amendments on behalf of all landowners pursuant to § 162.346).

(b) The landowners have 30 days from receipt of the amendment to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed amendment or other documentation of the landowners' consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the amendment to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the amendment or notify the parties in writing that we need additional time to review the amendment.

(1) Our letter notifying the parties that we need additional time to review the amendment must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the amendment.

(2) If we fail to send either a determination or notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the amendment is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for amendments that are deemed approved.

(3) Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.345 How will BIA decide whether to approve an amendment of a residential lease?

(a) We may only disapprove a residential lease amendment if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease; or

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

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

§ 162.346 What are the consent requirements for an amendment of a residential lease?

(a) The owners must consent to an amendment of a residential lease in the same percentages and manner as a new residential lease pursuant to § 162.305, unless the requirements in paragraph (1) or (2) are met.

(1) The approved residential lease authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consent to an amendment.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all the formal requirements of any applicable tribal or State law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

(b) Unless specifically authorized in the lease, the written power of attorney, or court document, an Indian landowner's designated representative may not negotiate or consent to an amendment that would:

- (1) Reduce the payment obligations or terms to the Indian landowners;
- (2) Increase or decrease the lease area; or
- (3) Terminate or change the term of the lease.

Assignments

§ 162.347 May a lessee assign a residential lease?

(a) A lessee may assign a residential lease by meeting the consent requirements contained in § 162.350 and obtaining our approval under § 162.349, unless the conditions in paragraph (b) are met.

(b) If a sale or foreclosure under an approved mortgage of the leasehold interest occurs and the mortgagee is the purchaser, the mortgagee/purchaser may assign the leasehold interest without meeting the consent requirements or obtaining our approval, as long as the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease.

(c) The assignee must also agree in writing that any lessee to whom it transfers the lease will be another member of the tribe, a person who is eligible to be a member, a Tribal Housing Authority (or other Tribally-Designated Housing Entity), or the tribe. If no tribal member or person who is eligible to be a member or Tribal Housing Authority (or other Tribally-Designated Housing Entity) or the tribe wishes to lease the property, the lease may be transferred to another Indian, consistent with tribal law. If no Indian wishes to lease the property, the lease may be transferred to a non-Indian, consistent with tribal law.

§ 162.348 What is the consent and approval process for an assignment of a residential lease?

(a) The lessee must promptly send a proposed assignment to the landowners (or their designee, if the lease grants one individual or entity the authority to approve assignments on behalf of all landowners pursuant to § 162.350).

(b) The landowners have 30 days from receipt of the assignment to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed assignment or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the assignment to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the assignment or notify the parties in writing that we need additional information. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.349 How will BIA decide whether to approve an assignment of a residential lease?

(a) We may only disapprove an assignment of a residential lease if:

(1) The required consents have not been obtained from the parties to the lease or the lessee's mortgagees or sureties;

(2) The lessee is in violation of the lease; or

(3) The assignee does not agree to be bound by the terms of the lease; 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 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 bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease or assignment.

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

§ 162.350 What are the consent requirements for an assignment of a residential lease?

The Indian landowners must consent to an assignment in the same percentages and manner as a new lease, unless the requirements in paragraph (a) or (b) are met.

(a) The approved residential lease authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consent to an assignment.

(b) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all the formal requirements of any applicable tribal or State law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Subleases

§ 162.351 May a lessee sublease a residential lease?

A lessee may sublease a residential lease by meeting the consent requirements contained in § 162.354 and obtaining our approval of the sublease under § 162.353.

§ 162.352 What is the consent and approval process for a sublease of a residential lease?

(a) The lessee must promptly send the proposed sublease of the residential lease to the landowners (or their designee, if the lease grants one individual or entity the authority to approve subleases on behalf of all landowners pursuant to § 162.354).

(b) The landowners have 30 days from receipt of the sublease to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed sublease or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the sublease to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the sublease or notify the parties in writing that we need additional time to review the sublease.

(1) Our letter notifying the parties that we need additional time to review the sublease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(2) If we fail to send either a determination or notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the sublease is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for subleases that are deemed approved.

(3) Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.353 How will BIA decide whether to approve a sublease of a residential lease?

(a) We may only disapprove a sublease of a residential lease if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

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

(3) The lessee will not remain liable under the lease;

(4) The sublessee does not agree to be bound by the terms of the lease; or

(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 will consider whether:

(1) The value of any part of the leased premises not covered by the sublease would be adversely affected; and

(2) If a performance bond is required, the sublessee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable

against the sublessee, and that the sublessee will be able to perform its obligations under the lease or sublease.

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

§ 162.354 What are the consent requirements for a sublease of a residential lease?

(a) The Indian landowners must consent to a sublease of a residential lease in the same percentages and manner as a new residential lease under § 162.305, unless the requirements in paragraph (1) or (2) are met.

(1) The approved residential lease authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consent to a sublease.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all the formal requirements of any applicable tribal or State law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Leasehold Mortgages

§ 162.355 May a lessee mortgage a residential lease?

A lessee may mortgage a residential lease by meeting the consent requirements contained in § 162.358 and obtaining our approval of the leasehold mortgage under § 162.357.

§ 162.356 What is the consent and approval process for a leasehold mortgage under a residential lease?

(a) The lessee must promptly send the leasehold mortgage to the landowners (or their designee, if the lease grants one individual or entity the authority to approve leasehold mortgages on behalf of all landowners pursuant to § 162.358).

(b) The landowners have 30 days from receipt of the leasehold mortgage to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed leasehold mortgage or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the leasehold mortgage to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the leasehold mortgage or notify the parties in writing that we need additional time to review the leasehold mortgage.

(1) Our letter notifying the parties that we need additional time to review the leasehold mortgage must identify our concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the leasehold mortgage.

(2) If we fail to send either a determination or notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the

leasehold mortgage is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for leasehold mortgages that are deemed approved.

(3) Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.357 How will BIA decide whether to approve a leasehold mortgage under a residential lease?

(a) We may only disapprove a leasehold mortgage under a residential lease if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The leasehold mortgage covers more than the lessee's interest in the leased premises or encumbers unrelated collateral; or

(3) 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)(3) of this section, we will consider whether:

(1) The lessee's ability to comply with the lease would be adversely affected by any new loan obligation;

(2) Any lease provisions would be modified by the leasehold mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the

event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the lessee.

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

§ 162.358 What are the consent requirements for a leasehold mortgage under a residential lease?

(a) The Indian landowners must consent to a leasehold mortgage under a residential lease in the same percentages and manner as a new lease, unless the requirements in paragraph (1) or (2) are met.

(1) The approved residential lease authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consent to a leasehold mortgage.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction appoints an individual, to act on behalf of those landowners. The power of attorney document must meet all the formal requirements of any applicable tribal or State law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Effectiveness, Compliance, and Enforcement

§ 162.359 When will an amendment, assignment, sublease, or leasehold mortgage under a residential lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage under a residential lease will be effective upon our approval, notwithstanding any appeal that may

be filed under part 2 of this chapter, unless approval is not required under § 162.011 or § 162.347(b), or the conditions in paragraph (b) apply. We will provide copies of approved documents to the party requesting approval, and upon request, to other parties to the agreement.

(b) If the amendment, sublease, or leasehold mortgage was deemed approved pursuant to § 162.344(d)(2), § 162.352(d)(2), or § 162.356(d)(2), the amendment, sublease or leasehold mortgage becomes effective 45 days from the date the parties mailed or delivered the document to us for our review.

§ 162.360 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage?

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

§ 162.361 May BIA investigate compliance with a residential lease?

(a) We may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the lessee is in compliance with the requirements of the lease.

(b) If the Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation.

162.362 What will BIA do about a violation of a residential lease?

(a) If we determine there has been a violation of the conditions of a residential lease, we will promptly send the lessee and its sureties and any mortgagee a notice of

violation. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 10 business days of the receipt of a notice of violation, the lessee must:

- (1) Cure the violation and notify us in writing that the violation has been cured;
- (2) Dispute our determination that a violation has occurred; or
- (3) Request additional time to cure the violation.

(c) If a violation is determined to have occurred, we will make a reasonable attempt to notify the Indian landowners.

(d) We may order the lessee to stop work.

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

§ 162.363 May a residential lease provide for negotiated remedies in the event of a violation?

(a) A residential 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 the parties with the power to terminate the lease, BIA approval of the termination is not required and the termination is effective without BIA cancellation. The parties must notify us of the termination so that we may record it in the Land Titles and Records Office.

(b) A residential lease of individually-owned 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 landowners of the applicable

percentage of interests under § 162.305 of this part. If the lease provides the parties with the power to terminate the lease, BIA approval of the termination is required and the termination is not effective without subsequent BIA cancellation. BIA will record the cancellation in the Land Titles and Records Office.

(c) The parties must notify any surety or mortgagee of a termination of a residential lease.

(d) Negotiated remedies will apply in addition to or instead of the cancellation remedy available to us, as specified in the lease.

(e) A residential lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, 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 proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.364 What will BIA do if the lessee does not cure a violation of a residential lease on time?

(a) If the lessee does not cure a violation of a residential lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

- (1) We should cancel the lease;
- (2) The Indian landowners wish to invoke any remedies available to them under the lease; or
- (3) The lessee should be granted additional time in which to cure the violation.

(b) If we decide to cancel the lease, we will send the lessee and its sureties and any mortgagees a cancellation letter within 5 business days of our decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:

- (1) Explain the grounds for cancellation;
 - (2) If applicable, notify the lessee of the amount of any unpaid rent or late payment charges due under the lease;
 - (3) Notify the lessee of their 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) Require any other action BIA deems necessary to protect the Indian landowners.
- (c) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond.

§ 162.365 How will payment rights relating to a residential lease be allocated between the Indian landowners and the lessee?

The residential 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, the Indian landowners will be entitled to receive such payments.

§ 162.366 When will a cancellation of a residential lease be effective?

(a) A cancellation involving a residential 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 be stayed if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the lessee must continue to pay rent and comply with the other terms of the lease.

§ 162.367 What will BIA do if a lessee remains in possession after a residential lease expires or is cancelled?

If a lessee remains in possession after the expiration or cancellation of a residential lease, we may treat the unauthorized possession as a trespass under applicable law.

§ 162.368 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving residential leases?

(a) Except as provided in paragraph (b), the appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

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

BIA will issue a decision on an appeal from a leasing decision within 30 days of receipt of all pleadings.

§ 162.370 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.

§ 162.371 Reserved.

§ 162.372 Reserved.

Subpart D—Business Leases

Business Leasing General Provisions

§ 162.401 What types of leases does this subpart cover?

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon) on Indian land, including:

- (1) Leases for residential purposes that are not covered in subpart C;
- (2) Leases for business purposes that are not covered in subpart E;
- (3) Leases for public, religious, educational, and recreational purposes; and
- (4) Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) Leases covered by this subpart may authorize the construction of single-purpose or mixed use projects designed for use by any number of lessees or occupants.

§ 162.402 Is there a model business lease form?

There is no model business lease because of the need for flexibility in negotiating and writing business leases; however, we may provide other guidance, such as checklists for what provisions must be included in a lease and sample language for certain provisions. Additionally, we may assist the landowners, upon their request, in developing appropriate lease provisions that conform to the requirements of this part.

§ 162.403 How do I obtain a business lease?

- (a) Persons interested in obtaining a business lease must:
- (1) Directly negotiate with Indian landowners for a lease;
 - (2) Obtain the consent of the landowners of the applicable percentage of interests, for fractionated tracts;

(3) Submit the information required by § 162.438, including information to facilitate BIA's analysis under applicable environmental and cultural resource requirements;

(4) 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, business leases will not be advertised for competitive bid.

§ 162.404 How does a prospective lessee identify and contact Indian landowners to negotiate a business lease?

(a) Prospective lessees may submit a written request to us to obtain the following information for the purpose of negotiating a lease:

- (1) Names and addresses of the Indian landowners or their representatives;
- (2) Information on the location of the parcel;
- (3) The percentage of undivided interest owned by each Indian landowner.

(b) We may assist prospective lessees in contacting the Indian landowners or their representatives for the purpose of negotiating a lease, upon request.

(c) We will assist the landowners in those negotiations, upon their request.

§ 162.405 What are the consent requirements for a business lease on a fractionated tract?

(a) Except in Alaska, the owners of the following percentage of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a business 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...
---	---

(1) One to five,	90 percent;
(2) Six to 10,	80 percent;
(3) 11 to 19,	60 percent;
(4) 20 or more,	Over 50 percent.

(b) Leases in Alaska require consent of all of the Indian landowners in the tract.

(c) If the lessee is also an Indian landowner, their consent will be included in the percentages in paragraphs (a) and (b).

(d) Where owners of the applicable percentages in paragraph (a) consent to a lease document, that lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document, except that the lease document will bind a non-consenting Indian tribe only 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 shall be construed to affect the sovereignty of the Indian tribe.

(e) We will determine the number of owners of, and interests in, undivided interests, for the purposes of calculating the percentages in paragraph (a) based on our records on the date on which the lease is submitted to us for approval.

§ 162.406 Who is authorized to consent to a business lease?

(a) Indian tribes, adult Indian landowners, or emancipated minors, may consent to a business lease of their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

(1) An adult with legal custody acting on behalf of his or her minor children;

(2) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction recognized to act on behalf of an individual Indian landowner;

(3) Any person who is authorized to practice before the Department of the Interior under 43 CFR part 1;

(4) We, under the circumstances in § 162.407; or

(5) An adult or legal entity who has been given a written power of attorney that:

(i) Meets all of the formal requirements of any applicable tribal or state law; and

(ii) Identifies the attorney-in-fact and the land to be leased; and

(iii) Describes the scope of the power granted and any limits thereon.

(c) Where tribal land is subject to a tribal land assignment, the individual assignee and tribe must both consent to the lease.

§ 162.407 On whose behalf may BIA consent to a business lease?

BIA may give written consent to a business lease, and that consent must be counted in the percentage ownership described in § 162.405, on behalf of:

(a) The individual owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined;

(b) Individuals whose whereabouts are unknown to us, after we make a reasonable attempt to locate such individuals;

(c) Individuals who are found to be non compos mentis, or determined to be an adult in need of assistance or under legal disability as defined in part 115 of this chapter;

(d) Orphaned minors who do not have guardians duly appointed by a court of competent jurisdiction;

(e) Individuals who have given us a written power of attorney to lease their land;
or

(f) The individual landowners of a fractionated tract where:

(1) We have given the Indian landowners written notice of our intent to consent to a lease on their behalf;

(2) The Indian landowners are unable to agree upon a lease during a three month negotiation period following the notice; and

(3) The land is not being used by an Indian landowner under § 162.011.

§ 162.408 Reserved.

§ 162.409 Reserved.

Lease Requirements

§ 162.410 Reserved.

§ 162.411 How long may the term of a business lease run?

(a) A business lease must provide for a definite term, as well as any option to renew. Unless authorized by 25 U.S.C. 415(a), or other Federal statute, a business lease may have:

- (1) An initial term not to exceed 25 years; and
- (2) One renewal period not to exceed 25 years.
- (b) The lease term, including any renewal, must be reasonable, given the:
 - (1) Purpose of the lease;
 - (2) Type of financing; and
 - (3) Level of investment.

(c) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(d) The lease may not:

(1) Be extended by holdover; or

(2) Provide a right of first refusal or any other type of preference with respect to a new lease.

(e) BIA will not approve a lease if the lease term would commence more than one year after the date of the approval.

§ 162.412 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to us;

(3) Whether landowner consent to the renewal is required;

(4) That the lessee must provide notice to the landowner and any mortgagees of the renewal;

(5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term; and

(6) That any change in the terms of the lease will be considered an amendment subject to consent and BIA approval requirements pursuant to § 162.444.

(b) We must record any renewal of a lease in the Land Title and Records Office.

§ 162.413 Are there mandatory provisions that a business lease must contain?

(a) All business leases must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the lease;

(3) The parties to the lease;

- (4) The term of the lease;
 - (5) The owner being represented and the authority under which such action is being taken, where one executes a lease in a representative capacity;
 - (6) The citation of the statute that authorizes our approval;
 - (7) Evidence of appropriate authority to execute a lease, if the lessee is an entity other than an individual;
 - (8) The authorized uses of the leased premises;
 - (9) Who is responsible for constructing, owning, operating, and managing improvements pursuant to § 162.415;
 - (10) Payment requirements and late payment penalties;
 - (11) Due diligence provisions under § 162.417 (unless the lease is for religious, educational, or recreational purposes);
 - (12) Insurance provisions under § 162.437; and
 - (13) Bonding requirements under § 162.434. 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) All business 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) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;
 - (3) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(4) The lessee must comply with all applicable Federal, tribal, State and local laws, ordinances, rules, regulations, and other legal requirements;

(5) The lessee indemnifies and 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 (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(6) 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, unless the liability or cost arises from the gross negligence or willful misconduct of the Indian landowner (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(7) In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the remains or artifacts will cease and BIA will contact its archeologist and the tribe who has jurisdiction over the land to determine disposition;

(8) BIA has the right, at any reasonable time during the term of the lease, to enter upon the leased premises for inspection;

(9) Unless otherwise indicated, this is a lease of the trust interests in the property described and is not a lease of any undivided fee interests. All rental payments by the

lessee will be distributed to the trust landowners only. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(c) We may treat any provision of a lease, sublease, amendment, assignment, or leasehold mortgage that is in violation of Federal law as a violation of the lease.

§ 162.414 May improvements be made under a business lease?

The lessee may construct improvements under a business lease if the business lease:

- (a) Specifies, or provides for the development of, a plan that describes the type and location of any improvements to be built by the lessee; and
- (b) Provides a schedule for construction of the improvements.

§ 162.415 How must a business lease address ownership of improvements?

(a) A business lease must specify who will own any improvements the lessee builds during the lease term and may specify that any improvements the lessee builds may be conveyed to the Indian landowners during the lease term. In addition, the lease must indicate whether each specific improvement the lessee builds will, upon the expiration or termination of the lease:

- (1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and BIA, 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 close as possible to their condition before construction of such improvements; or
- (3) Be disposed of by other specified means.

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

(c) Any permanent improvements on the leased land shall be subject to 25 CFR 1.4 and, in addition, shall not be subject to any fee, tax, assessment, levy, or other such charge imposed by any State or political subdivision thereof.

§ 162.416 How will BIA enforce removal requirements?

(a) We may take appropriate enforcement action on behalf of the Indian landowner to ensure removal of the improvements or restoration of the premises at the lessee's expense. We may take such enforcement action after termination or expiration of the lease.

(b) A business lease may also contain alternative provisions for disposal of the leasehold improvements

§ 162.417 What requirements for due diligence must a business lease include?

(a) If improvements are to be built, the business lease must include due diligence requirements that require the lessee to complete construction of any improvements within the schedule specified in the lease. The lessee must provide the Indian landowners and BIA good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction, if construction does not occur, or is not expected to be completed, within the time period specified in the lease.

(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 § 162.464.

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

§ 162.418 May a business lease allow compatible uses?

A business lease may provide for the landowner to use the leased premises for other noncompeting uses compatible with the purpose of the business lease. Any such use by the landowner will not reduce or offset the monetary compensation for the business lease.

§ 162.419 How must a business lease describe the land?

(a) A business lease must describe the leased premises by reference to an official or certified survey pursuant to § 162.438(j) of this part.

(b) If the tract is fractionated we will describe the undivided trust interest in the leased premises.

Monetary Compensation Requirements

§ 162.420 How much monetary compensation must be paid under a business lease?

(a) The lease must require the initial payment of not less than fair market rental, based on a fixed amount, a percentage of the projected income, or some other method unless paragraphs (c) and (e) 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 negotiated lease of tribal land, or of any undivided tribal interest in a fractionated allotment, that provides for the payment of nominal rent, or less

than a fair market rental, if the tribe provides a tribal authorization with an explanation of why approval will serve the tribe's best interest.

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

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

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

(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; or

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

(2) The landowners execute a written waiver of the right to receive fair market rental.

(d) Where the owners of the applicable percentage of interests under § 162.405 of this part execute a business lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, including those on whose behalf we have consented, receive a fair market rental.

(e) 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 landowners' best interest. The lease must specify the amount of the rental and the applicable periods.

§ 162.421 How must the fair market value be determined before BIA will approve a business lease?

We will use an appraisal to determine the fair market value of land before we approve a lease, unless we approve another type of valuation pursuant to paragraph (d).

(a) We will either prepare an appraisal or use an approved appraisal from the Indian landowner or lessee.

(b) We will approve an appraisal for use only if it:

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

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

(3) Considers only those improvements on the land if they are owned by the Indian landowners.

(c) Upon receipt of a tribal authorization, we may use some other type of valuation for a business lease on tribal land, if it conforms to USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

§ 162.422 May BIA waive the appraisal requirement?

BIA will not waive the appraisal requirement for business leases.

§ 162.423 When are monetary compensation payments due under a business lease?

(a) A business lease must specify the dates on which all payments are due.

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

§ 162.424 Must a business lease specify to whom monetary compensation payments may be made?

(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 when there are 10 or fewer beneficial owners and 100 percent of the beneficial owners agree to receive payment directly from the lessee.

(1) If the lease provides that the lessee will directly pay the Indian landowners, the lease must also require that the lessee provide us with certification of payment.

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

(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 otherwise provided in the lease, rental 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 unless 100 percent of the beneficial owners agree to suspend direct pay and provide us with documentation of their agreement.

§ 162.425 What form of monetary compensation payment may be accepted under a business 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, we will accept:

- (1) Money orders;
- (2) Certified checks;
- (3) Cashier's checks; or
- (4) Electronic funds transfer payments.

(c) We will not accept cash, personal checks, foreign currency, or third-party checks.

(d) The preferred method of payment is electronic funds transfer payments.

§ 162.426 May the business lease provide for non-monetary or varying types of compensation?

(a) With our approval, the lease may provide for:

(1) Alternative forms of rental, including but not limited to in-kind consideration;

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 and payments based on income during an operational period.

(b) We will approve alternative forms of rental and varying types of compensation if we determine that it is in the best interest of the Indian landowners.

§ 162.427 Will BIA notify a lessee when a payment is due under a business lease?

We may issue invoices to a lessee in advance of the dates on which payments are due under a business lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such invoices are not issued, delivered, or received.

§ 162.428 Must a business lease provide for compensation reviews or adjustments?

(a) A review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease, unless the conditions in paragraph (b) are met.

The lease must specify:

- (1) When adjustments take effect;
- (2) Who is authorized to adjustments;
- (3) What the adjustments are based on; and
- (4) How disputes arising from the adjustments are resolved.

(b) A review of the adequacy of compensation is not required if we determine it is in the best interest of the landowners not to require a review based on circumstances including, but not limited to, the following:

- (1) The lease provides for payment of less than fair market rental; or
- (2) The lease is for religious, educational, recreational, or other purposes.

(c) When a review results in the need for adjustment of compensation, we must approve the adjustment and landowners must consent to the adjustment in accordance with § 162.405.

§ 162.429 Reserved.

§ 162.430 What other types of payments are required under a business lease?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.415(c). 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. Failure to make such payments will be treated 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 as to how to allocate payment of the operation and maintenance charges; however, each will remain jointly and severally liable for the entire amount.

§ 162.431 What will BIA do if monetary compensation payments are not made as required by a business lease?

(a) A lessee's failure to pay monetary compensation in the time and manner required by a business lease is a violation of the lease, and we will issue a 10-day show cause letter.

(1) If the lease requires that rental payments be made to us, we will send the lessee and its sureties a 10-day show cause letter promptly following the date on which the payment was due.

(2) If the lease provides for payment directly to the Indian landowners, we will send the lessee and its sureties a 10-day show cause letter promptly following the date on which we receive actual notice of non-payment from the landowners.

(b) If a lessee fails to provide adequate proof of payment as required in the 10-day show cause letter, and the amount due is not in dispute:

(1) We may:

(i) Cancel the lease; and

(ii) Invoke any other remedies available under the lease or applicable law, including collection on any available performance bond or referral of the debt to the Department of the Treasury for collection.

(2) We may take action to recover the unpaid compensation and any associated late payment charges;

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

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

§ 162.432 Will late payment penalties apply to untimely monetary compensation payments made under a business lease?

Late payment penalties will apply as specified in the lease. The failure to pay such amounts will be treated as a lease violation.

§ 162.433 Will any special fees be assessed on delinquent monetary compensation payments due under a business lease?

The following special fees may be assessed if compensation is not paid in the time and manner required, in addition to late payment penalties that must be paid to the Indian landowners under a lease. The following special fees may be assessed to cover administrative costs incurred by the United States in the collection of the debt.

The lessee will pay...	For...
(a) \$50.00	Dishonored checks.
(b) \$15.00	Processing of each notice or demand letter.
(c) 18% of balance due	Treasury processing following referral for collection of delinquent debt.

Bonding and Insurance

§ 162.434 Must a lessee provide a performance bond for a business lease?

(a) Except as provided in (f), the lessee must provide a performance bond in an amount sufficient to secure the contractual obligations including:

(1) No less than the highest annual rental specified in the lease, if compensation is paid annually, or other amount established by BIA, if the compensation is to be paid on a non-annual schedule;

(2) The construction of any required 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 commencement of the lease term or some other specified condition.

(b) The performance bond must be deposited with us and made payable only to us, and may not be modified without our approval.

(c) The lease must provide that we may adjust security or performance bond requirements at any time to reflect changing conditions.

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

(e) The surety must provide notice to us at least 60 days before canceling a performance bond so that we may notify the lessee of its obligation to provide a substitute performance bond. Failure to provide a substitute performance bond will be a violation of the lease.

(f) We may waive the requirement for a performance bond, if a waiver is in the best interest of the landowner.

§ 162.435 What forms of performance bond may be accepted under a business lease?

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

(1) Certificates of deposit issued by federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bond issue by a company approved by the U.S. Department of Treasury.

(b) All forms of performance bonds must:

(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; and

(4) Be automatically renewable during the term of the lease.

§ 162.436 What is the bond release process under a business lease?

(a) Upon expiration, termination, or cancellation of the lease , the lessee may submit a written request for a performance bond release to BIA.

(b) Upon receipt of a request under paragraph (a), BIA will release the performance bond to the lessee, unless we determine that the bond must be redeemed to fulfill the contractual obligations.

§ 162.437 Must a lessee provide insurance for a business lease?

A lessee must provide insurance necessary to protect the interests of the Indian landowners and in the amount sufficient to protect all insurable improvements on the premises.

(a) Such insurance may include property, crop, liability and/or 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.

Approval

§ 162.438 What documents must a lessee submit to obtain BIA approval of a business lease?

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

(a) A lease executed by the Indian landowner and the lessee that complies with the requirements of this part;

(b) An appraisal under § 162.421;

(c) Organizational documents, certificates, filing records, and resolutions or other authorization documents, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the lease will be enforceable

and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(d) A performance bond, where required:

(e) Statement from appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

(g) A restoration and reclamation 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 weed infestation and erosion (any modifications to the plan must be submitted to BIA), if appropriate;

(h) Documents that demonstrate the lessee's technical and financial capability to construct, operate, maintain, and terminate the proposed project and the lessee's history in successfully designing, constructing, or obtaining the funding for the proposed project, if appropriate;

(i) A preliminary plan of development that describes the type and location of any improvements the lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements;

(j) An official or a certified survey of the leased premises that includes the legal description of the land encumbered by the lease and a description of each tract of trust or

restricted land in the lease and the acreage of each. The survey must conform to DOI Standards for Indian Trust Land Boundary Evidence;

(k) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a);
and

(l) Any additional documentation we may require.

§ 162.439 What is the approval process for a business lease?

(a) Before BIA approves a business lease, BIA 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) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a).
- (4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and
- (5) If the lease is a negotiated lease, defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible.

(b) When we receive a business lease and all of the supporting documents that conform to this part, we will approve, disapprove, or return the submission for revision within 60 days of the date of the approving official's receipt of the documents.

(1) We may notify the parties that we will be extending the initial 60-day time period by an additional 60 days if we are unable to take action on the lease in the initial 60-day time period.

(2) If after the extension period we are still unable to take action on the lease, we may request an additional extension from the parties.

(3) If the parties do not agree to allow the extension under paragraph (b)(2) or if we fail to meet any deadline under this section, then the parties may take appropriate action under part 2 of this chapter.

(c) Any lease approval or disapproval determination and the basis for the determination, along with notification of appeal rights under part 2 of this chapter, will be made in writing and will be sent to the parties to the lease.

§ 162.440 When will a business lease be effective?

(a) A business lease will be effective on the date on which we approve the lease, notwithstanding any appeal that may be filed under part 2 of this chapter.

(b) The obligations of the parties to a business lease may be made effective between the parties on some past or future date, by the terms of a lease.

(c) We will provide copies of approved business leases to the lessee, and make copies available to the Indian landowners upon request.

§ 162.441 Must business lease documents be recorded?

(a) A business lease, amendment, assignment, leasehold mortgage, and sublease must be recorded in our Land Titles and Records Office with jurisdiction over the leased land. We will record the lease or other document immediately following our approval.

(b) The tribe must record the following leases in the Land Title and Records Office with jurisdiction over the leased lands, even though BIA approval is not required:

(1) Leases of tribal land 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 under certain conditions.

§ 162.442 What action may BIA take if a lease disapproval decision is appealed?

If the lessee appeals our decision to disapprove a lease, assignment, amendment, sublease or leasehold mortgage, then BIA may take the actions in paragraph (a) and (b).

(a) The official who issued the disapproval decision may approve a short-term lease of the land to protect the landowner from the financial consequences of the delay involved in the appeal. Our approval of a short-term lease in these circumstances is immediately effective and may be appealed under part 2 of this chapter.

(b) The official to whom the appeal is made may require the lessee to post an appeal bond in an amount necessary to protect the Indian landowners against financial losses and damage to trust resources likely to result from the delay caused by an appeal. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter. The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

Amendments

§ 162.443 May a lessee amend a business lease?

A lessee may amend a business lease by meeting the consent requirements contained in § 162.446 and obtaining BIA approval of the amendment under § 162.445.

§ 162.444 What is the consent and approval process for an amendment to a business lease?

(a) Regardless of whether the parties negotiate the terms of the amendment together or the lessee proposes an amendment to the landowners, the lessee must promptly send a proposed amendment to the landowners (or their designee, if the lease grants one individual or entity the authority to approve amendments on behalf of all landowners pursuant to § 162.446).

(b) The landowners have 30 days from receipt of the amendment to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed amendment or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the amendment to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) and the completion of any required environmental reviews to make a determination whether to approve the amendment or notify the parties in writing that we need additional time to review the amendment.

(1) Our letter notifying the parties that we need additional time to review the amendment must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the amendment.

(2) If we fail to send either a determination or a notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the amendment is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for amendments that are deemed approved.

(3) Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

(c) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.445 How will BIA decide whether to approve an amendment to a business lease?

(a) We may only disapprove a business lease amendment if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease; or

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

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

§ 162.446 What are the consent requirements for an amendment to a business lease?

(a) The owners must consent to an amendment in the same percentages and manner as a new lease, unless the requirements in paragraph (1) or (2) are met.

(1) The approved business lease authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an amendment.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or state law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

(b) Unless specifically authorized in the lease, the written power of attorney, or court document, an Indian landowner's designated representative may not negotiate or consent to an amendment that would:

- (1) Reduce the payment obligations or terms to the Indian landowners;
- (2) Increase or decrease the lease area; or
- (3) Terminate or change the term of the lease.

Assignments

§ 162.447 May a lessee assign a business lease?

(a) A lessee may assign a business lease by meeting the consent requirements contained in § 162.450 and obtaining our approval of the assignment under § 162.449, unless the conditions in paragraph (b) or (c) are met.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining BIA approval of the assignment, as long as the lessee notifies BIA of the assignment within 90 days:

- (1) Not more than two distinct legal entities specified in the lease; or
- (2) The lessee's wholly owned subsidiaries.

(c) If a sale or foreclosure under an approved mortgage of the leasehold interest occurs and the mortgagee is the purchaser, the mortgagee/purchaser may assign the

leasehold interest without meeting the consent requirements or obtaining BIA approval, as long as the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease.

§ 162.448 What is the consent and approval process for an assignment of a business lease?

(a) The lessee must promptly send a proposed assignment to the landowners (or their designee, if the lease grants one individual or entity the authority to approve assignments on behalf of all landowners pursuant to § 162.450).

(b) The landowners have 30 days from receipt of the assignment to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed assignment or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the assignment to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the assignment or notify the parties that we need additional information. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.449 How will BIA decide whether to approve an assignment of a business lease?

(a) We may only disapprove an assignment of a business lease if:

(1) The required consents have not been obtained from the parties to the lease or the lessee's mortgagees or sureties;

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

(3) The assignee does not agree to be bound by the terms of the lease; 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 value of any part of the leased premises not covered by the assignment would be adversely affected;

(2) If a performance bond is required, the assignment has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease or assignment; and

(3) The Indian landowners may receive income derived by the lessee from the assignment, under the terms of the lease.

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

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

(a) The Indian landowners must consent to an assignment of a business lease in the same percentages and manner as a new business lease pursuant to § 162.405, unless the requirements in paragraph (1) or (2) are met.

(1) The approved business lease authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an assignment.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or state law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Subleases

§ 162.451 May a lessee sublease a business lease?

A lessee may sublease a business lease by meeting the consent requirements contained in § 162.454 and obtaining our approval of the sublease under § 162.453.

§ 162.452 What is the consent and approval process for a sublease of a business lease?

(a) The lessee must promptly send the proposed sublease to the landowners (or their designee, if the lease grants one individual or entity the authority to approve subleases on behalf of all landowners pursuant to § 162.454).

(b) The landowners have 30 days from receipt of the sublease to notify the lessee an us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed sublease or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the sublease to the landowners.

(d) BIA have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the sublease or notify the parties in writing that we need additional time to review the sublease.

(1) Our letter notifying the parties that we need additional time to review the sublease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(2) If we fail to send either a determination or a notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the sublease is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for subleases that are deemed approved.

(3) Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.453 How will BIA decide whether to approve a sublease of a business lease?

(a) We may only disapprove a sublease of a business lease if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

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

(3) The lessee will not remain liable under the lease;

(4) The sublessee does not agree to be bound by the terms of the lease; or

(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 requirement by paragraph (a)(5) of this section, we will consider whether:

(1) The value of any part of the leased premises not covered by the sublease would be adversely affected;

(2) If a performance bond is required, the sublessee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the sublessee, and that the sublessee will be able to perform its obligations under the lease or sublease; and

(3) The Indian landowners may receive income derived by the lessee from the sublease, under the terms of the lease.

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

§ 162.454 What are the consent requirements for a sublease of a business lease?

The Indian landowners must consent to a sublease of a business lease in the same percentages and manner as a new business lease pursuant to § 162.405, unless the requirements in paragraph (a) or (b) are met.

(a) The approved business lease authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a sublease.

(b) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or state law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Leasehold Mortgages

§ 162.455 May a lessee mortgage a business lease?

A lessee may mortgage a business lease by meeting the consent requirements contained in § 162.458 and obtaining our approval of the leasehold mortgage under § 162.457.

§ 162.456 What is the consent and approval process for a leasehold mortgage under a business lease?

(a) The lessee must promptly send the leasehold mortgage to the landowners (or their designee, if the lease grants one individual or entity the authority to approve leasehold mortgages on behalf of all landowners pursuant to § 162.458.

(b) The landowners have 30 days from receipt of the leasehold mortgage to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed leasehold mortgage or other documentation on of the landowner's consent, if any, and any other pertinent information for us to review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of leasehold mortgage to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the leasehold mortgage or notify the parties in writing that we need additional time to review the leasehold mortgage.

(1) Our letter notifying the parties that we need additional time to review the leasehold mortgage must identify our concerns and invite the parties to respond within 15 dyas. We have 60 days from sending the notification to make a determination whether to approve or disapprove the leasehold mortgage.

(2) If we fail to send either a determination or a notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the leasehold mortgage is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for leasehold mortgages that are deemed approved.

(3) Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.457 How will BIA decide whether to approve a leasehold mortgage under a business lease?

(a) We may only disapprove a leasehold mortgage under a business lease if:

(1) The required consents have not been obtained from the parties to the lease under and the lessee's sureties;

(2) The leasehold mortgage covers more than the lessee's interest in the leased premises or encumbers unrelated collateral; or

(3) 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)(3) of this section, we will consider whether:

(1) The lessee's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would be modified by the leasehold mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the lessee.

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

§ 162.458 What are the consent requirements for a leasehold mortgage under a business lease?

(a) The Indian landowners must consent to a leasehold mortgage under a business lease in the same percentages and manner as a new business lease unless the requirements in paragraph (1) or (2) are met.

(1) The approved business lease authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction appoints an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or State law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Effectiveness, Compliance, and Enforcement

§ 162.459 When will an amendment, assignment, sublease, or leasehold mortgage under a business lease be effective?

An amendment, assignment, sublease, or leasehold mortgage under a business lease will be effective when approved, notwithstanding any appeal that may be filed under part 2 of this chapter, unless approved under § 162.011 or § 162.447(b) or the conditions in paragraph (b) apply. We will provide copies of approved documents to the party requesting approval and, upon request, to the other parties to the agreement.

(b) If the amendment, sublease, or leasehold mortgage was deemed approved pursuant to § 162.444(d)(2), § 162.452(d)(2), or § 162.456(d)(2), the amendment,

sublease, or leasehold mortgage becomes effective 45 days from the date the parties mailed or delivered the document to us for our review.

§ 162.460 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease?

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

§ 162.461 May BIA investigate compliance with a business lease?

(a) We may enter the leased premises at any reasonable time, without prior notice, 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 the Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation.

§ 162.462 What will BIA do about a violation of a business lease?

(a) If we determine there has been a violation of the conditions of a business lease, we will promptly send the lessee and its sureties and any mortgagee a notice of violation. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 10 business days of the receipt of a notice of violation, the lessee must:

- (1) Cure the violation and notify us in writing that the violation has been cured;
- (2) Dispute our determination that a violation has occurred; or
- (3) Request additional time to cure the violation.

(c) If a violation is determined to have occurred, we will make a reasonable attempt to notify the Indian landowners.

(d) We may order the lessee to stop work.

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

§ 162.463 May a business lease provide for negotiated remedies in the event of a violation?

(a) A business 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 the parties with the power to terminate the lease, BIA approval of the termination is not required and the termination is effective without BIA cancellation. The parties must notify us of the termination so that we may record it in the Land Titles and Records Office.

(b) A business lease of individually-owned 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 applicable percentage of Indian landowners under § 162.405 of this part. If the lease provides the parties with the power to terminate the lease, BIA approval of the termination is required and the termination is not effective without subsequent BIA cancellation. BIA will record the cancellation in the Land Titles and Records Office.

(c) The parties must notify any surety or mortgagee of a termination of a WSR lease.

(d) Negotiated remedies will apply in addition to or instead of the cancellation remedy available to us, as specified in the lease.

(e) A business lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, 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 proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.464 What will BIA do if the lessee does not cure a violation of a business lease on time?

(a) If the lessee does not cure a violation of a business lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

- (1) We should cancel the lease;
- (2) The Indian landowners wish to invoke any remedies available to them under the lease; or
- (3) The lessee should be granted additional time in which to cure the violation.

(b) If we decide to cancel the lease, we will send the lessee and its sureties and any mortgagees a cancellation letter within 5 business days of our decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. 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 their 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) Require any other action BIA deems necessary to protect the Indian landowners.

(c) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond.

§ 162.465 How will payment rights relating to a business lease be allocated between the Indian landowners and the lessee?

The business lease may allocate rights to payment for insurance proceeds, trespass damages, compensation awards, settlement funds, and other payments between the Indian landowners and the lessee. If not specified in the lease, the Indian landowners or lessees will be entitled to receive such payments.

§ 162.466 When will a cancellation of a business lease be effective?

(a) A cancellation involving a business 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 be stayed if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a

cancellation decision is stayed, the lessee must continue to pay compensation and comply with the other terms of the lease.

§ 162.467 What will BIA do if a lessee remains in possession after a business lease expires or is cancelled?

If a lessee remains in possession after the expiration or cancellation of an business lease, we may treat the unauthorized possession as a trespass under applicable law.

§ 162.468 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving business leases?

(a) Except as provided in paragraph (b), the appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

§ 162.469 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 60 days of receipt of all pleadings.

§ 162.470 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.

§ 162.471 Reserved.

§ 162.472 Reserved.

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Subpart E—Wind and Solar Resource Permits and Leases

**GENERAL PROVISIONS APPLICABLE TO BOTH WSR PERMITS AND
LEASES**

§ 162.501 What types of permits and leases does this subpart cover?

Permits and leases covered by this subpart authorize activities associated with the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure on trust or restricted land that are designed to evaluate and use wind and/or solar resources (WSR) to generate electricity. This subpart covers facilities designed to supply electricity for resale on a for-profit or non-profit basis, supply electricity to a utility grid serving the public generally, and community-scale projects. If the generation of electricity is solely to support a use under approved under subpart B, Agricultural Leases; subpart C, Residential Leases; or subpart D Business Leases, for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed by subpart B, C, or D, as appropriate.

§ 162.502 Who must obtain a WSR permit or lease?

(a) Except as provided in § 162.011, anyone seeking to conduct activities associated with the evaluation of wind and/or solar resources on trust or restricted land must obtain a WSR permit. A tribe that installs wind evaluation equipment on its tribal land does not need a WSR permit under this part.

(b) Except as provided in § 162.011, anyone seeking to conduct activities associated with the development of wind and/or solar resources on trust or restricted land must obtain a WSR lease.

§ 162.503 Is there a model WSR permit or lease?

There is no model WSR lease or permit because of the need for flexibility in negotiating and writing WSR leases and permits; however, we may provide other guidance, such as checklists for what provisions must be included in a lease and sample language for certain provisions. Additionally, we may assist the landowners, upon their request, in developing appropriate permit or lease provisions that conform to the requirements of this part.

§ 162.504 How do I obtain a WSR permit or lease?

Persons interested in obtaining a WSR permit or lease must:

- (a) Directly negotiate with the Indian landowners for a permit to evaluate resources and/or a lease to develop the resources;
- (b) Obtain the consent of the required percentage of landowners, for fractionated tracts;
- (c) Submit the information required by § 162.528 and § 162.563, including information to facilitate BIA's analysis under environmental and cultural resource requirements;
- (d) Submit the permit or lease, and required information and analyses, to the BIA office with jurisdiction over the lands covered by the WSR permit or lease for our review and approval.

§ 162.505 How does a prospective permittee or lessee identify and contact Indian landowners to negotiate a WSR permit or lease?

- (a) Prospective permittees or lessees may submit a written request to us to obtain the following information for the purpose of negotiating a permit or lease:
 - (1) Names and addresses of the Indian landowners or their representatives;

(2) Information on the location of the parcel; and

(3) The percentage of undivided interest owned by each Indian landowner.

(b) We may assist prospective permittees or lessees in contacting the Indian landowners or their representatives for the purpose of negotiating a WSR lease, upon request.

(c) We will assist the landowners in those negotiations, upon their request.

§ 162.506 What are the consent requirements for a WSR permit or lease on a fractionated tract?

(a) Except in Alaska, the owners of the following percentage of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a WSR permit or 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:
(1) One to five,	90 percent;
(2) Six to 10,	80 percent;
(3) 11 to 19,	60 percent;
(4) 20 or more,	More than 50 percent.

(b) Leases in Alaska require consent of all of the Indian landowners in the tract.

(c) If the permittee or lessee is also an Indian landowner, their consent will be included in the percentages in paragraph (a).

(d) Where owners of the applicable percentages in paragraph (a) consent to a lease document, that lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document, except that the lease document will bind a non-consenting Indian tribe only 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 shall be construed to affect the sovereignty of the Indian tribe.

(e) We will determine the number of owners of, and interests in, undivided interests, for the purposes of calculating the percentages in paragraph (a) based on our records on the date on which the lease is submitted to us for approval.

§ 162.507 Who is authorized to consent to a WSR permit or lease?

(a) Indian tribes, adult Indian landowners, or emancipated minors, may consent to a WSR permit or lease of their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

- (1) An adult with legal custody acting on behalf of his or her minor children;
 - (2) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction recognized to act on behalf of an individual Indian landowner;
 - (3) Any person who is authorized to practice before the Department of the Interior under 43 CFR part 1;
 - (4) We, under the circumstances in § 162.508; or
 - (5) An adult or legal entity who has been given a written power of attorney that:
 - (i) Meets all of the formal requirements of any applicable tribal or state law; and
 - (ii) Identifies the attorney-in-fact and the land to be permitted or leased; and
 - (iii) Describes the scope of the power granted and any limits thereon.
- (c) Where tribal land is subject to a tribal land assignment, the individual assignee and tribe must both consent to the lease.

§ 162.508 On whose behalf may BIA consent to a WSR permit or lease?

BIA may give written consent to a permit or lease, and that consent must be counted in the percentage ownership described in paragraph 162.506, on behalf of:

(a) The individual owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined;

(b) Individuals whose whereabouts are unknown to us, after we make a reasonable attempt to locate such individuals;

(c) Individuals who are found to be non compos mentis, or determined to be an adult in need of assistance or under legal disability as defined in part 115 of this chapter;

(d) Orphaned minors who do not have guardians duly appointed by a court of competent jurisdiction;

(e) Individuals who have given us a written power of attorney to lease their land;
or

(f) The individual landowners of a fractionated tract where:

(1) We have given the Indian landowners written notice of our intent to consent to a lease on their behalf;

(2) The Indian landowners are unable to agree upon a lease during a three month negotiation period following the notice; and

(3) The land is not being used by one of the Indian landowners under § 162.011.

§ 162.509 Reserved.

§ 162.510 Reserved.

WSR PERMITS

§ 162.511 What is the purpose of a WSR permit?

A WSR permit allows the permittee to use trust or restricted lands for purpose of evaluating wind and/or solar resources. The permittee may use information collected under the permit to assess the potential for wind and/or solar energy development, and determine future placement and type of wind and solar energy technology to use in developing the energy resource potential of the permitted area.

§ 162.512 How long may the term of a WSR permit run?

(a) A WSR permit must provide for a definite term, as well as any option to renew.

Permits for WSR project evaluation purposes may have:

- (1) An initial term that is no longer than 3 years; and
- (2) One renewal period not to exceed 3 years.

(b) The exercise of the option to renew must be in writing and the permit must specify:

- (1) The time and manner in which the option must be exercised; and
- (2) Additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term.

§ 162.513 Are there mandatory provisions a WSR permit must contain?

(a) All WSR permits must identify:

- (1) The tract or parcel of land being permitted;
- (2) The purpose of the permit;
- (3) The parties to the permit;
- (4) The term of the permit;

(5) The owner being represented and the authority under which such action is being taken, where one executes a permit in a representative capacity;

- (6) The citation of the statute that authorizes our approval;
- (7) Evidence of appropriate authority to execute a permit, if the permittee is an entity other than an individual;
- (8) The authorized uses of the permitted premises;
- (9) Who is responsible for constructing, owning, operating, and managing improvements, pursuant to § 162.515;
- (10) Payment requirements and late payment penalties; and
- (11) Due diligence requirements, pursuant to § 162.517;
- (b) All WSR permits must include the provisions:
 - (1) The permit may not be assigned or subpermitted;
 - (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligence use or waste of permitted premises;
 - (3) The obligations of the permittee 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;
 - (4) Nothing in the permit would prevent or delay termination of Federal trust responsibilities for the land during the permit's term;
 - (5) The permittee must comply with all applicable Federal, tribal, State and local laws, ordinances, rules, regulations, and other legal requirements;
 - (6) The permittee indemnifies and holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the permittee's use of the permitted premises, unless the permittee would be prohibited by law from making such an agreement;

(7) In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of any activity associated with this permit, all activity in the immediate vicinity of the remains or artifacts will cease, and BIA will contact its archeologist and the tribe who has jurisdiction to determine disposition; and

(8) BIA has the right, at any reasonable time during the term of the permit, to enter upon the permitted premises for inspection.

§ 162.514 May improvements be made under a WSR permit?

(a) A WSR permit anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind and/or solar resource capacity and potential effects of development. These facilities and associated infrastructure are considered improvements. A resource evaluation plan must be submitted with the permit pursuant to § 162.528(g).

(b) If any of the following changes are made to the resource evaluation plan, the Indian landowners must approve the revised plan and the permittee must submit the revised plan to BIA:

- (1) Location of improvements;
- (2) Type of improvements; or
- (3) Delay of 30 days or more in any phase of development.

§ 162.515 How must a WSR permit address ownership of improvements?

(a) A WSR permit must specify who will own any improvements the permittee installs during the permit term. In addition, the permit must indicate whether any improvements the permittee installs:

(1) Will remain on the premises upon expiration or termination of the permit whether or not there is conversion of the permit to a lease, in a condition satisfactory to the Indian landowners and BIA;

(2) May be conveyed to the Indian landowners during the permit term;

(3) Will be removed within a time period specified in the permit, at the permittee's expense, with the permitted premises to be restored as close as possible to their condition before installation of such improvements; or

(4) Will be disposed of by other specified means.

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

(c) Any permanent improvements on the leased land shall be subject to 25 CFR 1.4 and, in addition, shall not be subject to any fee, tax, assessment, levy, or other such charge imposed by any State or political subdivision thereof.

§ 162.516 How will BIA enforce removal requirements in a WSR permit?

(a) We may take appropriate enforcement action on behalf of the Indian landowner to ensure removal of the improvements or restoration of the premises at the permittee's. We may take such enforcement action after termination or expiration of the permit.

§ 162.517 What requirements for due diligence must a WSR permit include?

(a) A WSR permit must require the permittee to undertake the following due diligence:

(1) Install testing and monitoring facilities within 12 months after the effective date of the WSR permit or other period designated in the permit and consistent with the plan of development; and

(2) Provide the Indian landowners and BIA with an explanation as to good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities, if installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1).

(b) Failure of the permittee to comply with the due diligence requirements of the permit is a violation of the permit and may lead to cancellation of the permit and transfer of ownership of energy resource information collected under the permit to the Indian landowner under § 162.519.

§ 162.518 May a WSR permit allow for compatible uses by the landowner?

The permit may provide for the landowner to use the permitted premises for other noncompeting uses compatible with the purpose of the WSR permit. This may include the right to lease the permitted premises for other compatible purposes. Any such use by the landowner will not reduce or offset the monetary compensation for the WSR permit.

§ 162.519 Who owns the energy resource information obtained under the WSR permit?

(a) The permit must specify the ownership of any energy resource information the permittee obtains during the permit term.

(b) Unless otherwise specified in the permit, the energy resource information the permittee obtains through the permitted activity becomes the property of Indian

landowner at the termination or expiration of the permit or upon failure by the permittee to diligently install testing and monitoring facilities on the permitted premises in accordance with § 162.517.

(c) The permittee must make the energy resource information available to the BIA upon request. BIA will keep confidential any such information that is marked confidential or proprietary and is exempt from public release, to the extent allowed by law.

§ 162.520 May a permittee incorporate its WSR permit analyses into its WSR lease analyses?

Any analyses a permittee uses to bring a permitted activity into compliance with applicable Federal, tribal, state, and local laws, ordinances, rules, regulations and any other legal requirements may be incorporated by reference, as appropriate, into the analyses of a proposed WSR lease.

§ 162.521 May a WSR permit contain an option for the permittee to enter into a lease?

(a) A WSR permit may provide for an option period following the expiration of the permit term during which time the permittee and the Indian landowner have the option to enter into a WSR lease if:

- (1) The option period is no more than 3 years, except as provided in § 162.522;
- (2) The intent to install energy resource development facilities is stated at the time of the initial permit application;
- (3) The WSR lease will be limited to the land covered by the WSR permit, or a portion thereof;

- (4) The permit imposes due diligence requirements on the permittee;
 - (5) The permit states the circumstances in which the option period may be terminated; and
 - (6) The WSR lease will be the direct result of energy resource information gathered from the WSR permitted activities.
- (b) During the option period, the permittee has the exclusive right to negotiate in good faith with the Indian landowners for a WSR lease.
- (c) During the option period, the Indian landowner may only negotiate with the permittee for a WSR lease.
- (d) Our approval of a WSR permit that contains an option to enter into a lease does not guarantee or imply our approval of any WSR lease.

§ 162.522 How may a permittee obtain an extension of an option period?

- (a) A permittee may request extension of the option period for a term of no more than 3 years.
- (b) We will approve the extension if:
- (1) The parties agree in writing to the extension and have already submitted a proposed WSR lease to us for approval; and
 - (2) The extension is necessary for us to complete the lease approval process.

Monetary Compensation Requirements

§ 162.523 How much compensation must be paid under a WSR permit?

- (a) Except as provided in paragraph (b), compensation for the WSR permit will be based on the total acreage of land included in the WSR permit and will not vary based

on the location of the WSR permit. Fees will be established at least every 3 years by Federal Register notice, and will consist of a per-acre fee and a minimum total fee.

(b) We may approve a negotiated permit of tribal land, or of any undivided tribal interest in a fractionated allotment, that provides for an alternative fee structure or the payment of nominal compensation if the tribe provides a tribal authorization with an explanation of why approval will serve the tribe's best interest.

(c) The parties may negotiate an alternative fee structure or provide for nominal compensation if:

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

(i) The permittee is a member of the landowners' immediate family;

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

(iii) The permit is for religious, educational, recreational, cultural, or other public purposes; and

(2) The landowners execute a written waiver of the right to receive fair market rental.

(d) A permit must specify the date on which compensation will be due.

(e) Failure to make timely payments is a violation of the permit and may lead to cancellation of the permit.

(f) Lease compensation requirements contained at §§ 162.549 through 162.558, also apply to permits, except that the permittee only has 5 days to respond to the show-cause letter.

§ 162.524 Will BIA require an appraisal for a WSR permit?

BIA will not require an appraisal for a WSR permit.

Bonding and Insurance

§ 162.525 Must a permittee provide a performance bond for a WSR permit?

The permittee must provide a performance bond in accordance with § 162.559 through § 162.561 (leasing bond provisions).

§ 162.526 What is the bond release process under a WSR permit?

(a) Upon expiration, termination, or cancellation of the permit, the permittee must submit a written request for a performance bond release to BIA.

(b) Upon receipt of a request under paragraph (a), BIA will release the performance bond to the unless we:

(1) Determine that the performance bond must be redeemed to fulfill contractual obligations; or

(2) Receive written agreement of the parties to an extension of the performance bond through the option period, if the permit includes an option period.

(c) The parties may also agree to extend and increase a permit performance bond for use as the required lease performance bond pursuant to § 162.559.

§ 162.527 Must a permittee provide insurance for a WSR permit?

A permittee must provide insurance necessary to protect the interests of Indian landowners and in the amount sufficient to protect all insurable improvements on the permitted premises.

(a) Such insurance may include property, crop, liability and/or 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) Permit insurance may be increased and extended for use as the required lease insurance.

Approval

§ 162.528 What documents must a permittee submit to obtain BIA approval of a WSR permit?

A permittee must submit the following documents to us to obtain BIA approval of a WSR permit:

(a) A permit executed by the Indian landowners and the permittee that complies with the requirements of this part;

(b) Organizational documents, certificates, filing records, and resolutions or other authorization documents, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the permit will be enforceable and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(c) A performance bond, where required under § 162.525;

(d) Proof of insurance, under § 162.527;

(e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

(g) A resource evaluation plan that describes the type and location of any improvements to be installed by the permittee to evaluate the resources and a schedule showing the tentative commencement and completion dates for installation of those improvements;

(h) A restoration and reclamation 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 weed infestation and erosion (any modifications to the plan must be submitted to BIA);

(i) An official or certified survey of the permitted premises that includes the legal description of the land encumbered by the permit and a description of each tract of trust or restricted land in the lease and the acreage of each. The survey must conform to DOI Standards for Indian Trust Land Boundary Evidence;

(j) Documents that demonstrate the permittee's technical and financial capability to construct, operate, maintain, and terminate resource evaluation facilities and the permittee's history in successfully designing, constructing, or obtaining the funding for a resource evaluation project (for example, financial capability may demonstrated by: documents evidencing permittee's actual ownership, development, or management of a successful similarly-sized project within the last 5 years; or an estimate of the capital investment necessary for the project together with an explanation of how the permittee intends to finance the project);

(k) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a);
and

- (1) Any additional documentation we may require

§ 162.529 What is the approval process for a WSR permit?

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

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

(b) When we receive a WSR permit and all of the supporting documents that conform to this part, we will approve, disapprove, or return the submission for revision, within 20 days of the date of the approving official's receipt of the documents.

(c) In reviewing a permit for approval, we will defer to the landowners' determination that the permit is in their best interest, to the maximum extent possible.

(d) Any permit approval or disapproval determination and the basis for the determination, along with notification of rights to appeal the determination under part 2 of this chapter, will be made in writing and will be sent to the parties

Administration

§ 162.530 May a permittee amend a WSR permit?

A permittee may amend a WSR permit by meeting the consent requirements of § 162.506 through § 162.508 and obtaining our approval of the amendment pursuant to § 162.569 and § 162.570.

§ 162.531 May a permittee assign, subpermit, or mortgage a WSR permit?

A permittee may not assign, subpermit, or mortgage a WSR permit.

Compliance and Enforcement

§162.532 How does BIA ensure compliance with a WSR permit?

(a) If we determine that a WSR permit has been violated, we will promptly send the permittee and its sureties a notice of violation. We may also order the permittee to stop work. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 5 days of the receipt of the notice of violation, the permittee must:

- (1) Cure the violation and notify us in writing that the violation has been cured;
- (2) Dispute our determination that a violation has occurred; or
- (3) Request additional time to cure the violation.

(c) If we determine that a violation has occurred, we will make a reasonable attempt to notify the Indian landowners.

§ 162.533 What will BIA do if a permittee does not cure a violation of a WSR permit on time?

(a) If the permittee does not cure a violation of a WSR permit within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

- (1) We should cancel the permit, or

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

(3) We should invoke any other remedies available to us under the permit, including collecting on any available performance bond.

(b) If we decide to cancel the permit, we will send the permittee and its sureties and any mortgagees a cancellation letter within 5 business days of our decision. The cancellation letter must be sent to the permittee by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:

- (1) Explain the grounds for cancellation;
- (2) If applicable, notify the permittee of the amount of any unpaid compensation or late payment charges due under the permit;
- (3) Notify the permittee of their right to appeal under part 2 of this chapter;
- (4) Order the permittee 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 permittee to take any other action we deem necessary to protect the Indian landowners.

(c) The cancellation will not be effective until 31 days after the permittee receives a cancellation letter from us, or 41 days from the date the letter is mailed, whichever is earlier.

(d) The cancellation decision will be stayed if the permittee files an appeal unless the cancellation is made immediately effective under part 2 of this chapter. While a

cancellation decision is stayed, the permittee must continue to pay compensation and comply with the other terms of the permit.

(e) Nothing in this part affects BIA's ability to take emergency action to protect the permitted premises under § 162.020.

§ 162.534 Under what circumstances may a WSR permit be terminated or cancelled?

(a) A permit must state whether, and under what conditions, a landowner may terminate a WSR permit.

(b) We may cancel the permit if we have determined cancellation is appropriate under § 162.523 (failure to make timely payments) or § 162.533 (failure to cure a violation within the requisite time).

WSR LEASES

§ 162.535 What is the purpose of a WSR lease?

A WSR lease authorizes a lessee to conduct activities related to the installation, operation, and maintenance of wind and solar energy resource development projects. This includes activities on trust or restricted land. Activities include installing instrumentation facilities, and infrastructure associated with the generation and transmission of electricity and other related activities, including, but not limited to, monitoring of environmental impacts or effects of other authorized land uses.

§ 162.536 Must I obtain a WSR permit before obtaining a WSR lease?

You may enter into a WSR lease independent of a WSR permit. While you may enter into a lease as a direct result of energy resource information gathered from a WSR

permitted activity, obtaining a WSR permit is not a precondition to entering into a WSR lease.

§ 162.537 How long may the term of a WSR lease run?

(a) A WSR lease must provide for a definite lease term, as well as any option to renew. Unless authorized by 25 U.S.C. 415(a), or other Federal statute, leases for WSR development purposes may have:

- (1) An initial term not to exceed 25 years; and
- (2) One renewal period not to exceed 25 years.

(b) The lease term, including any renewal, must be reasonable, given the

- (1) Purpose of the lease;
- (2) Type of financing; and
- (3) Level of investment.

(c) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(d) The lease may not:

- (1) Be extended by holdover; or
- (2) Provide a right of first refusal or any other type of preference with respect to a new lease.

(e) BIA will not approve a lease if the lease term would commence more than one year after the date of approval.

§ 162.538 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease must specify:

- (1) The time and manner in which the option must be exercised or is automatically effective;
- (2) That confirmation of the renewal will be submitted to us;
- (3) Whether landowner consent to the renewal is required;
- (4) That the lessee must provide notice to the landowner and any mortgagees of the renewal;
- (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term; and
- (6) That any change in the terms of the lease will be considered an amendment subject to consent and BIA approval requirements pursuant to § 162.569
- (b) We must record any renewal of a lease in the Land Titles and Records Office.

§ 162.539 Are there mandatory provisions a WSR lease must contain?

- (a) All WSR leases must identify:
 - (1) The tract or parcel of land being leased;
 - (2) The purpose of the lease;
 - (3) The parties to the lease;
 - (4) The term of the lease;
 - (5) The owner being represented and the authority under which such action is being taken, where one executes a lease in a representative capacity;
 - (6) The citation of the statute that authorizes our approval;
 - (7) Evidence of appropriate authority to execute a lease, if the lessee is an entity other than an individual;
 - (8) The authorized uses of the leased premises;

(9) Who is responsible for constructing, owning, operating, and managing, WSR equipment, roads, transmission lines and related facilities;

(10) Who is responsible for evaluating property for viability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements with the local utility; and transferring generated electricity to the utilities grid;

(11) Payment requirements and late payment penalties;

(12) Due diligence requirements, pursuant to § 162.543;

(13) Insurance provisions; and

(14) Bonding requirements under § 162.559. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety or guarantor for any legal instrument that directly affects their obligations and liabilities.

(b) All WSR 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) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;

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

(4) The lessee must comply with all applicable Federal, tribal, State and local laws, ordinances, rules, regulations, and other legal requirements;

(5) The lessee indemnifies and 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 (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(6) In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the remains or artifacts will cease and BIA will contact its archeologist and the tribe that has jurisdiction to determine disposition;

(7) BIA has the right, at any reasonable time during the term of the lease, to enter upon the leased premises for inspection; and

(8) Unless otherwise indicated, this is a lease of the trust interests in the property described and is not a lease of any undivided fee interests. All rental payments by the lessee will be distributed to the trust landowners only. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(c) We may treat any provision of a lease, sublease, assignment, amendment or mortgage that is in violation of Federal law as a violation of the lease.

§ 162.540 May improvements be made under a WSR lease?

(a) A WSR lease anticipates the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity. These facilities and associated infrastructure are considered improvements. A resource development plan must be submitted with the permit pursuant to § 162.563(g).

(b) If any of the following changes are made to the resource development plan, the Indian landowner must approve the revised plan and the lessee must submit the revised plan to BIA:

- (1) Location of improvements;
- (2) Type of improvements; or
- (3) Delay of 30 days or more in any phase of development.

§ 162.541 How must a WSR lease address ownership of improvements?

(a) A WSR lease must specify who will own any improvements the lessee installs during the lease term and may specify that any improvements the lessee installs may be conveyed to the Indian landowners during the lease term. In addition, the lease must indicate whether each specific improvement the lessee installs will, upon the expiration or termination of the lease:

- (1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and BIA and become the property of the Indian landowner;
- (2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as close as possible to their condition before installation of such improvements; or
- (3) Be disposed of by other specified means.

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

§ 162.542 How will BIA enforce removal requirements in a WSR lease?

We may take appropriate enforcement action on behalf of the Indian landowner to ensure removal of the improvements or restoration of the premises at the lessee's expense. We may take such enforcement action after termination or expiration of the lease.

§ 162.543 What requirements for due diligence must a WSR lease include?

(a) A WSR lease must include due diligence requirements that require the lessee to:

(1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe contained in the resource development plan;

(2) Provide the Indian landowners and BIA good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation, if installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1);

(3) Maintain all on-site electrical generation equipment and facilities in accordance with the design standards in the resource development plan; and

(4) Repair, place into service, or remove from the site within 30 days any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for any continuous period of 3 months.

(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 § 162.589.

§ 162.544 May a WSR lease allow compatible uses?

The lease may provide for the landowner to use the leased premises for other noncompeting uses compatible with the purpose of the WSR lease. This may include the right to lease the premises for other compatible purposes. Any such use by the landowner will not reduce or offset the monetary compensation for the WSR lease.

§ 162.545 How must a WSR lease describe the land?

(a) A WSR lease must describe the leased premises by reference to an official or certified survey pursuant to § 162.563(i) of this part.

(b) If the tract is fractionated, we will describe the undivided trust interest in the leased premises.

Monetary Compensation Requirements

§ 162.546 How much monetary compensation must be paid under a WSR lease?

(a) The lease must require payment of not less than fair market rental, based on a fixed amount, a percentage of the projected gross income, megawatt capacity fee, or some other method unless paragraphs (b), (c), or (e) 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 negotiated lease of tribal land, or of any undivided tribal interest in a fractionated allotment, that provides for the payment of nominal rent, or less than a fair market rental, if the tribe provides a tribal authorization with an explanation of why approval will serve the tribe's best interest.

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

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

(i) The lessee is a member of the landowners' immediate family as defined in § 162.003;

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

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

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

(2) The landowners execute a written waiver of the right to receive fair market rental.

(d) Where the owners of the applicable percentage of interests under §162.506 of this part grant a WSR lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, including those on whose behalf we have consented, receive a fair market rental.

(e) We may approve a lease that provides for the payment of less than a fair market rental during the periods before the generation and transmission of electricity begins, if we determine it is in the landowners' best interest. The lease must specify the amount of the compensation and the applicable periods.

§ 162.547 How must the fair market value be determined before BIA will approve a WSR lease?

We will use an appraisal to determine the fair market value of land before we approve a lease, unless we approve another type of valuation pursuant to paragraph (d) or, if the lease is for nominal or less than fair market rental, we waive the requirement pursuant to § 162.548.

(a) We will either prepare an appraisal or use an approved appraisal from the Indian landowner or lessee.

(b) We will approve an appraisal for use only if it:

- (1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214;
 - (2) Complies with Department policies regarding appraisals, including third-party appraisals; and
 - (3) Considers only those improvements on the land that are owned by the Indian landowners.
- (c) Upon receipt of a tribal authorization, we may use some other type of valuation for a WSR lease on tribal land, if it conforms to USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

§ 162.548 What is the process for obtaining BIA approval to waive the appraisal requirement?

(a) Landowners who want to waive the requirement for an appraisal must submit a written statement to us explaining the basis for the request and their willingness to accept nominal or less than fair market rental. Upon receipt of the written statement, we will transmit the request to our Office of Indian Energy and Economic Development (IEED), who will respond to the landowners with an estimated timeframe for completion of an economic analysis. If the landowner decides to pursue a waiver, the landowner must submit a written request for the economic analysis to IEED. IEED will then prepare an economic analysis of the project.

(b) We will approve a waiver of the appraisal requirement if we determine that the waiver is in the best interest of the landowners, taking into consideration the landowners' written statement and the economic analysis completed by IEED.

§ 162.549 When are monetary compensation payments due under a WSR lease?

(a) A WSR lease must specify the dates on which all payments are due.

(b) Unless otherwise provided in the lease, 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.

§ 162.550 Must a WSR lease specify to whom monetary compensation payments may be made under a WSR lease?

(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 when there are 10 or fewer beneficial owners and 100 percent of the beneficial owners agree to receive payment directly from the lessee.

(1) If the lease provides that the lessee will directly pay the Indian landowners, the lease must also require that the lessee provide us with certification of payment.

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

(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 otherwise provided in the lease, 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, unless 100 percent of the beneficial owners agree to suspend direct pay and provide us with documentation of their agreement.

§ 162.551 What form of monetary compensation payment may be accepted under a WSR 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, we will accept:

- (1) Money orders;
- (2) Certified checks;
- (3) Cashier's checks; or
- (4) Electronic funds transfer payments.

(c) We will not accept cash, foreign currency, or third-party checks.

(d) The preferred method of payment is electronic funds transfer payments.

§ 162.552 May the WSR lease provide for non-monetary or varying types of compensation?

(a) With our approval, the lease may provide for:

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

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

(b) We will approve alternative forms of rental and varying types of consideration if we determine that it is in the best interest of the Indian landowners.

§ 162.553 Will BIA notify a lessee when a payment is due under a WSR lease?

We may issue invoices to a lessee in advance of the dates on which payments are due under a WSR lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such invoices are not delivered or received.

§ 162.554 Must a WSR lease provide for compensation reviews or adjustments?

(a) A review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease, unless the conditions in paragraph (b) are met. The lease must specify:

- (1) When adjustments take effect;
- (2) Who is authorized to make adjustments;
- (3) What the adjustments are based on; and
- (4) How to resolve disputes arising from the adjustments.

(b) A review of the adequacy of compensation is not required if we determine it is in the best interest of the landowners not to require a review based on circumstances including, but not limited to, the following:

- (1) The lease provides for payment of less than fair market rental; or
- (2) The lease is for religious, educational, recreational, or other purposes.

(c) When a review results in the need for adjustment of compensation, we must approve the adjustment and landowners must consent to the adjustment in accordance with § 162.506.

§ 162.555 What other types of payments are required under a WSR lease?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.515(c). 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. Failure to make such payments will be treated as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, such as grazing, the lessees may agree among themselves as to how to allocate payment of the operation and maintenance charges; however, each will remain jointly and severally liable for the entire amount.

§ 162.556 What will BIA do if monetary compensation payments are not made as required by a WSR lease?

(a) A lessee's failure to pay monetary compensation in the time and manner required by a WSR lease is a violation of the lease, and we will issue a 10-day show cause letter.

(1) If the lease requires that payments be made to us, we will send the lessee and its sureties a 10-day show cause letter promptly following the date on which the payment was due.

(2) If the lease provides for payment directly to the Indian landowners, we will send the lessee and its sureties a 10-day show cause letter promptly following the date on which we receive actual notice of non-payment from the landowners.

(b) If a lessee fails to provide adequate proof of payment as required in the 10-day show cause letter, and the amount due is not in dispute:

(1) We may:

(i) Cancel the lease; and

(ii) Invoke any other remedies available under the lease or applicable law, including collection on any available performance bond or referral of the debt to the Department of the Treasury for collection.

(2) We may take action to recover the unpaid compensation and any associated late payment charges:

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

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

§ 162.557 Will late payment penalties apply to untimely monetary compensation payments made under a WSR lease?

Late payment penalties will apply as specified in the lease. The failure to pay such amounts will be treated as a lease violation.

§ 162.558 Will any special fees be assessed on delinquent monetary compensation payments due under a WSR lease?

The following special fees may be assessed, 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. These special fees are in addition to late payment penalties that must be paid to the Indian landowners under the lease.

The lessee will pay...	For...
(a) \$50.00	Dishonored checks.
(b) \$15.00	Processing of each notice or demand letter.
(c) 18% of balance due	Treasury processing following referral for collection of delinquent debt.

Bonding and Insurance

§ 162.559 Must a lessee provide a performance bond for a WSR lease?

(a) Except as provided in (f), the lessee must provide a performance bond in an amount sufficient to secure the contractual obligations including:

(1) No less than the highest annual rental specified in the lease, if the compensation is paid annually, or other amount established by BIA, if the compensation is to be paid on a non-annual schedule;

(2) The performance and payment for the installation of any required 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 commencement of the lease term or some other specified condition.

(b) The performance bond must be deposited with us and made payable only to us, and may not be modified without our approval.

(c) The lease must provide that we may adjust security or performance bond requirements at any time to reflect changing conditions.

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

(e) The surety must provide notice to us at least 60 days before canceling a performance bond so that we may notify the lessee of its obligation to provide a

substitute performance bond. Failure to provide a substitute performance bond will be a violation of the lease.

(f) We may waive the requirement for a performance bond, if a waiver is in the best interest of the landowner or if the lease is for less than fair market value or nominal rent.

§ 162.560 What forms of performance bond may be accepted under a WSR lease?

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

(1) Certificates of deposit issued by federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bond issue by a company approved by the U.S. Department of Treasury;

(b) All forms of performance bonds must:

(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 terms of the lease;

(3) Be irrevocable during the term of the performance bond; and

(4) Be automatically renewable during the term of the lease.

§ 162.561 What is the bond release process under a WSR lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee must submit a written request for a performance bond release to BIA.

(b) Upon receipt of the request under paragraph (a), BIA will release the performance bond to the lessee unless we determine that the performance bond must be redeemed to fulfill the contractual obligations.

§ 162.562 Must a lessee provide insurance for a WSR lease?

A lessee must provide insurance when necessary to protect the interests of Indian landowners and in the amount sufficient to protect all insurable improvements on the leased premises.

(a) Such insurance may include property, crop, liability and/or 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.

Approval

§ 162.563 What documents must a lessee submit to obtain BIA approval of a WSR lease?

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

(a) A lease executed by the Indian landowner and the lessee that complies with the requirements of this part;

(b) An appraisal under § 162.547;

(c) Organizational documents, certificates, filing records, and resolutions or other authorization documents, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the lease will be enforceable

and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(d) A performance bond, where required;

(e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance applicable Federal and tribal environmental and land use requirements;

(g) A resource development plan that describes the type and location of any improvements the lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;

(h) A restoration and reclamation 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 weed infestation and erosion (any modifications to the plan must be submitted to BIA);

(i) An official or a certified survey of the leased premises that includes the legal description of the land encumbered by the lease and a description of each tract of trust or restricted land in the lease and the acreage of each. The survey must conform to DOI Standards for Indian Trust Land Boundary Evidence;

(j) Documents that demonstrate the lessee's technical and financial capability to construct, operate, maintain, and terminate resource development facilities and the lessee's history in successfully designing, constructing, or obtaining the funding for a

resource development project (for example, financial capability may demonstrated by: documents evidencing lessee's actual ownership, development, or management of a successful similarly-sized project within the last 5 years; or an estimate of the capital investment necessary for the project together with an explanation of how the lessee intends to finance the project);

(k) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a);
and

(l) Any additional documentation we may require.

§ 162.564 What is the approval process for a WSR lease?

(a) Before we approve a WSR 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) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a);
- (4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and
- (5) If the lease is a negotiated lease, defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible.

(b) When we receive a WSR lease proposal and all of the supporting documents that conform to this part, we will approve, disapprove, or return the submission for revision within 60 days of the date of the approving official's receipt of the documents.

(1) We may notify the parties that we will be extending the initial 60-day time period by an additional 60 days if we are unable to take action on the lease in the initial 60-day time period.

(2) If after the extension period we are still unable to take action on the lease, we may request an additional extension from the parties.

(3) If the parties do not agree to allow the extension under paragraph (b)(2) or if we fail to meet any deadline under this section, then the parties may take appropriate action under part 2 of this chapter.

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

§ 162.565 When will a WSR lease be effective?

(a) A WSR lease will be effective on the date on which we approve the lease, notwithstanding any appeal that may be filed under part 2 of this chapter.

(b) The obligations of the parties to a WSR lease may be made effective between the parties on some past or future date, by the terms of the lease. \

(c) We will provide copies of approved WSR leases to the lessee, and make copies available to the Indian landowners upon request.

§ 162.566 Must WSR lease and permit documents be recorded?

(a) A WSR lease, amendment, assignment, leasehold mortgage, sublease, and permit must be recorded in our Land Titles and Records Office with jurisdiction over the leased land. We will record the lease, permit, or other document immediately following our approval.

(b) The tribe must record the following leases in the Land Title and Records Office 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.

§ 162.567 What action may BIA take if a lease disapproval decision is appealed?

If the lessee appeals our decision to disapprove a lease, assignment, amendment, sublease or leasehold mortgage, then BIA may take the actions in paragraph (a) and (b).

(a) The official who issued the disapproval decision may approve a short-term lease of the land to protect the landowner from the financial consequences of the delay involved in the appeal. Our approval of a short-term lease in these circumstances is immediately effective and may be appealed under part 2 of this chapter.

(b) The official to whom the appeal is made may require the lessee to post an appeal bond in an amount necessary to protect the Indian landowners against financial losses and damage to trust resources likely to result from the delay caused by an appeal. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter. The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

Amendments

§ 162.568 May a lessee amend a WSR lease?

A lessee may amend a WSR lease by meeting the consent requirements contained in § 162.571 and obtaining our approval of the amendment under § 162.570.

§ 162.569 What is the consent and approval process for an amendment to a WSR lease?

(a) Regardless of whether the parties negotiate the terms of the amendment together or the lessee proposes an amendment to the landowners, the lessee must promptly send the amendment to the landowners (or their designee, if the lease grants one individual or entity the authority to approve amendments on behalf of all landowners pursuant to § 162.571).

(b) The landowners have 30 days from receipt of the amendment to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties to the lease are responsible for resolving any objections.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed amendment or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of amendment to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) and the completion of any required environmental reviews to make a determination whether to approve the amendment or notify the parties in writing that we need additional time to review the amendment.

(1) Our letter notifying the parties that we need additional time to review the amendment must identify our initial concerns and invite the parties to respond within 15

days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the amendment.

(2) If we fail to send either a determination or a notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the amendment is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for amendments that are deemed approved.

(3) Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.570 How will BIA decide whether to approve an amendment to a WSR lease?

(a) We may only disapprove a WSR lease amendment if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease; or

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

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

§ 162.571 What are the consent requirements for an amendment to a WSR lease?

(a) The owners must consent to an amendment in the same percentages and manner as a new lease, unless the requirements in paragraph (1) or (2) are met.

(1) The approved WSR lease authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an amendment.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or state law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

(b) Unless specifically authorized in the lease, the written power of attorney, or court document, an Indian landowner's designated representative may not negotiate or consent to an amendment that would:

- (1) Reduce the payment obligations or terms to the Indian landowners;
- (2) Increase or decrease the lease area; or
- (3) Terminate or change the term of the lease.

Assignments

§ 162.572 May a lessee assign a WSR lease?

(a) A lessee may assign a WSR lease by meeting the consent requirements contained in § 162.575 and obtaining our approval of the assignment under § 162.574, unless the conditions in paragraph (b) or (c) are met.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining BIA approval of the assignment, as long as the lessee notifies BIA of the assignment within 90 days:

(1) Not more than two distinct legal entities specified in the lease; or

(2) The lessee's wholly owned subsidiaries.

(c) If a sale or foreclosure under an approved mortgage of the leasehold interest occurs and the mortgagee is the purchaser, the mortgagee/purchaser may assign the leasehold interest without meeting the consent requirements or obtaining our approval, as long as the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease.

§ 162.573 What is the consent and approval process for an assignment of a WSR lease?

(a) The lessee must promptly send the proposed assignment to the landowners (or their designee, if the lease grants one individual or entity the authority to approve assignments on behalf of all landowners pursuant to § 162.575).

(b) The landowners have 30 days from receipt of the assignment to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties are responsible for resolving any objections

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed assignment or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the assignment to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the assignment or notify the parties that we need

additional information. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.574 How will BIA decide whether to approve an assignment of a WSR lease?

(a) We may only disapprove an assignment of a WSR lease if:

(1) The required consents have not been obtained from the parties to the lease or the lessee's mortgagees or sureties;

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

(3) The assignee does not agree to be bound by the terms of the lease; 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 will consider whether:

(1) The value of any part of the leased premises not covered by the assignment would be adversely affected;

(2) If a performance bond is required, the assignee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease or assignment; and

(3) The Indian landowners may receive income derived by the lessee from the assignment, under the terms of the lease.

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

§ 162.575 What are the consent requirements for an assignment of a WSR lease?

(a) The Indian landowners must consent to an assignment in the same percentages and manner as a new lease, unless the requirements in paragraph (1) or (2) are met.

(1) The approved WSR lease authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an assignment.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or state law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Subleases

§ 162.576 May a lessee sublease a WSR lease?

A lessee may sublease a WSR lease by meeting the consent requirements contained in § 162.579 and obtaining our approval of the sublease under § 162.578.

§ 162.577 What is the consent and approval process for a sublease of a WSR lease?

(a) The lessee must promptly send the proposed sublease to the landowners (or their designee, if the lease grants one individual or entity the authority to approve subleases on behalf of all landowners pursuant to § 162.579).

(b) The landowners have 30 days from receipt of the sublease to notify the lessee and us of any objections in writing or they are deemed to have consented. The lessee and the landowner are responsible for resolving any objection by the landowner.

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed sublease or other documentation of the landowner's consent, if any, and any other pertinent information to us for review. Where the landowners are deemed to have consented under paragraph (b), the lessee must also provide proof of mailing of the sublease to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the sublease or notify the parties to the sublease and landowners in writing that we need additional time to review the sublease.

(1) Our letter notifying parties that we need additional time to review the sublease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(2) If we fail to send either a determination or a notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the sublease is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for subleases that are deemed approved.

(3) Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.578 How will BIA decide whether to approve a sublease of a WSR lease?

(a) We will only disapprove a sublease of a WSR lease if:

(1) The required consents have not been obtained from the parties to the lease and the lessee's mortgagees or sureties;

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

(3) The lessee will not remain liable under the lease;

(4) The sublessee does not agree to be bound by the terms of 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 will consider whether:

(1) The value of any part of the leased premises not covered by the sublease would be adversely affected;

(2) The sublessee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the sublessee, and that the sublessee will be able to perform its obligations under the lease or sublease; and

(3) The Indian landowners may receive income derived by the lessee from the sublease, under the terms of the lease.

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

§ 162.579 What are the consent requirements for a sublease of a WSR lease?

(a) The Indian landowners must consent to a sublease in the same percentages and manner as a new lease, unless the requirements in paragraph (1) or (2) are met.

(1) The approved WSR lease authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a sublease.

(2) One or more landowners may designate an attorney-in-fact, or a court of competent jurisdiction may appoint an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or state law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Leasehold Mortgages

§ 162.580 May a lessee mortgage a WSR lease?

A lessee may mortgage a WSR lease by meeting the consent requirements contained in § 162.583 and obtaining our approval of the leasehold mortgage under § 162.582.

§ 162.581 What is the consent and approval process for a leasehold mortgage of a WSR lease?

(a) The lessee must promptly send the leasehold mortgage to the landowners (or their designee, if the lease grants one individual or entity the authority to approve leasehold mortgages on behalf of all landowners pursuant to § 162.583).

(b) The landowners have 30 days from receipt of the leasehold mortgage to notify the lessee and us of any objections in writing or they are deemed to have consented. The parties are responsible for resolving any objections..

(c) At the expiration of the 30-day period, or upon written consent of the landowners, the parties must submit a copy of the executed leasehold mortgage or other documentation of the landowner's consent, if any, and any other pertinent information for us to review. Where the landowners are deemed to have consented under paragraph (b),

the lessee must also provide proof of mailing of the leasehold mortgage to the landowners.

(d) We have 30 days from receipt of the documents in paragraph (c) to make a determination whether to approve the leasehold mortgage or notify the parties in writing that we need additional time to review the leasehold mortgage.

(1) Our letter notifying the parties that we need additional time to review the leasehold mortgage must identify our concerns and invite the parties to respond within 15 days. We have 60 days from sending the notification to make a determination whether to approve or disapprove the leasehold mortgage.

(2) If we fail to send either a determination or a notification within 30 days from receipt of the documents in paragraph (c) or 30 days from sending the notification, the leasehold mortgage is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for leasehold mortgages that are deemed approved.

(3) Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(e) If we fail to meet any of the deadlines in this section, the lessee or landowners may take appropriate action under part 2 of this chapter.

§ 162.582 How will BIA decide whether to approve a leasehold mortgage of a WSR lease?

(a) We may only disapprove a leasehold mortgage under a WSR lease if:

(1) The required consents have not been obtained from the parties to the lease under or the lessee's sureties;

(2) The leasehold mortgage covers more than the lessee's interest in the leased premises collateral or encumbers unrelated collateral; or

(3) 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)(3) of this section, we will consider whether:

(1) The lessee's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would be modified by the leasehold mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the lessee.

§ 162.583 What are the consent requirements for a leasehold mortgage of a WSR lease?

(a) The Indian landowners must consent to a leasehold mortgage in the same percentages and manner as a new lease, unless the requirements in paragraph (1) or (2) are met.

(1) The approved WSR lease authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

(2) One or more landowners designate an attorney-in-fact, or a court of competent jurisdiction appoints an individual, to act on behalf of those landowners. The power of attorney document must meet all of the formal requirements of any applicable tribal or State law, identify the attorney-in-fact, the land to be leased, describe the scope of power given and any limits on the attorney-in-fact's powers.

Effectiveness, Compliance, and Enforcement

§ 162.584 When will an amendment, assignment, sublease, or leasehold mortgage under a WSR lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage under a WSR lease will be effective when approved, notwithstanding any appeal that may be filed under part 2 of this chapter, unless approval is not required under § 162.011 or the conditions in paragraph (b) apply. We will provide copies of approved documents to the party requesting approval and, upon request, to the other parties to the agreement.

(b) If the amendment, sublease, or leasehold mortgage was deemed approved pursuant to § 162.569(d)(2), § 162.577(d)(2), or § 162.581(d)(2), the amendment, sublease, or leasehold mortgage becomes effective 45 days from the date the parties mailed or delivered the document to us for our review.

§ 162.585 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease?

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

§ 162.586 May BIA investigate compliance with a WSR lease?

(a) We may enter the leased premises at any reasonable time, without prior notice, 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 the Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation.

§ 162.587 What will BIA do about a violation of a WSR lease?

(a) If we determine there has been a violation of the conditions of WSR lease, we will promptly send the lessee and its sureties and any mortgagee a notice of violation. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 10 business days of the receipt of a notice of violation, the lessee must:

- (1) Cure the violation and notify us in writing that the violation has been cured;
- (2) Dispute our determination that a violation has occurred; or
- (3) Request additional time to cure the violation.

(c) If a violation is determined to have occurred, we will make a reasonable attempt to notify the Indian landowners.

(d) We may order the lessee to stop work.

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

(f) Nothing in this part affects BIA's ability to take emergency action to protect the leased premises under § 162.020.

§ 162.588 May a WSR lease provide for negotiated remedies in the event of a violation?

(a) A WSR lease of tribal land may provide the 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 the parties with the power to terminate the lease, BIA approval of the termination is not required and the termination is effective without BIA cancellation. The parties must notify us of the termination so that we may record it in the Land Titles and Records Office.

(b) A WSR lease of individually-owned 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 applicable percentage of Indian landowners under § 162.506 of this part. If the lease provides the parties with the power to terminate the lease, BIA approval of the termination is required and the termination is not effective without subsequent BIA cancellation. BIA will record the cancellation in the Land Titles and Records Office.

(c) The parties must notify any surety or mortgagee of a termination of a WSR lease.

(d) Negotiated remedies will apply in addition to or instead of the cancellation remedy available to us, as specified in the lease.

(e) A WSR lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, 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 proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.589 What will BIA do if a lessee does not cure a violation of a WSR lease on time?

(a) If the lessee does not cure a violation of a WSR lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) We should cancel the lease;

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

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

(b) If we decide to cancel the lease, we will send the lessee and its sureties and any mortgagees a cancellation letter within 5 business days of our decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. 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 their 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) Require any other action BIA deems necessary to protect the Indian landowners.

(c) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond.

§ 162.590 How will payment rights relating to WSR leases be allocated between the Indian landowners and the lessee?

The business lease may allocate rights to payment for insurance proceeds, trespass damages, compensation awards, settlement funds, and other payments between the Indian landowners and the lessee. If not specified in the lease, the Indian landowners will be entitled to receive such payments.

§ 162.591 When will a cancellation of a WSR lease be effective?

(a) A cancellation involving a WSR 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 be stayed if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the lessee must continue to pay compensation and comply with the other terms of the lease.

§ 162.592 What will BIA do if a lessee remains in possession after a WSR lease expires or is cancelled?

If a lessee remains in possession after the expiration or cancellation of a lease, we may treat the unauthorized possession as a trespass under applicable law.

§ 162.593 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving WSR leases?

(a) Except as provided in paragraph (b), the appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions. (b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

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

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

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

(a) 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.

§ 162.596 Reserved.

§ 162.597 Reserved.

Subpart F—Special Requirements for Certain Reservations

1. Delete current Subpart F – Non-agricultural leases.
2. Redesignate current Subpart E (§ 162.500 - § 162.503) to Subpart F (§ 162.600 - § 162.603) without change.

Subpart G – Records

§ 162.701 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a Federal trust function under 25 U.S.C. 450f et. seq., including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 162.702 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that has records identified in § 162.701(a) of this part, must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 162.701(b) of this part, for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

§ 162.703 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part, have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076-0155. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.