

Dated: May 22, 1996.  
 Ada E. Deer,  
*Assistant Secretary—Indian Affairs.*  
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 BILLING CODE 4310-02-P

## 25 CFR Part 166

RIN 1076-AD04

### General Agriculture and Range Regulations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this rule making action is to revise and rename the General Grazing Regulations to include provisions of the American Indian Agricultural Resource Management Act (AIARMA) enacted December 3, 1993. The American Indian Agricultural Resource Management Act reaffirmed many aspects of the existing Indian agriculture program and established new program direction for agriculture trespass, management planning, and agriculture education assistance.

**DATES:** Comments must be submitted on or before October 1, 1996.

**ADDRESSES:** Mail comments to: Mr. Mark Bradford, Bureau of Indian Affairs, Division of Land and Water, 1849 C Street, N.W., Mail Stop 4559 MIB, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Bradford, Bureau of Indian Affairs, Division of Land and Water, telephone (202) 208-3598.

**SUPPLEMENTARY INFORMATION:** The proposed rule was developed with the participation of the affected Indian and Alaska Native public. Bureau of Indian Affairs (BIA) and tribal representatives formed four work groups (Leasing, Trespass, Education and, Management Plans) and a steering committee. The work groups first met in March 1994. We distributed three thousand copies of the first draft of the regulations for comment on April 29, 1994. The first draft did not provide for a consolidation of the permitting provisions in 25 CFR Parts 162 and 166.

We conducted five formal hearings throughout the nation. The second draft was distributed for comment on June 28, 1994. The second draft included a cross-references summary sheet which showed how most of the permitting provisions in the existing Part 166 would be incorporated in Subpart D of the proposed Part 162, but it did not include the text of the proposed Subpart D. Input from these meetings and

feedback from initial drafts were considered and addressed in this proposed rule.

The AIARMA was enacted on December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), and amended on November 2, 1994 (108 Stat. 4572). Section 102(a) of the AIARMA requires that all "land management activities"—defined in Section 4(12)(D) to include the "administration and supervision of agricultural leasing and permitting activities, including a determination of proper land use, \* \* \* appraisal, advertisement, negotiation, contract preparation, collecting, recording, and distributing lease rental receipts"—conform to agricultural resource management plans, integrated resource management plans, and all tribal laws and ordinances. Section 102(b) requires that we recognize and enforce all tribal laws and ordinances which regulate land use or pertain to Indian agricultural land, and provide notice of such laws and ordinances to individuals or groups "undertaking activities" on any affected land. Section 102(c) authorizes—but does not require—waivers of federal regulations or administrative policies which conflict with an agricultural resource management plan or a tribal law. Please note, Sections 102 (a)–(c) expressly provide for the recognition of only those tribal laws which do not conflict with federal law or our trust responsibility.

Sections 105(b) (1)–(4) allows tribes to supersede our rules and regulations on preferences, bonding, and the leasing or permitting of heirship land, but Section 105(c)(3) allows individual landowners to exempt their land from these *specific* types of tribal actions where the owners of at least a 50% interest in such land object in writing.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 208 DM 8.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments on the proposed rule to the location identified in the addresses section of this document.

This document has been reviewed under Executive Order 12866 and is not a significant rule requiring Office of Management and Budget review. It will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action

significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969. This proposed rule was compiled by four workgroups comprised of BIA and tribal representatives.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

#### List of Subjects in 25 CFR Part 166

Agriculture, Agricultural products, Education, Grazing lands, and Indian lands.

For the reasons set out in the preamble, part 166 of title 25 of the Code of Federal Regulations is proposed to be revised as follows.

### PART 166—GENERAL AGRICULTURE AND RANGE REGULATIONS

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Authority: 5 U.S.C.301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; and by sec. 6, 69 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; sec. 3, 26 Stat. 795, 25 U.S.C. 397; sec. 1, 28 Stat. 305, 25 U.S.C. 402; sec. 4, 36 Stat. 856, 25 U.S.C. 403; sec. 1, 39 Stat. 128, 25 U.S.C. 394; sec. 1, 41 Stat. 1232, 25 U.S.C. 393; C. 158, 47 Stat. 1417, 25 U.S.C. 413; secs. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; C. 210, 53 Stat. 840, 25 U.S.C. 68a, 87a; C. 554, 54 Stat. 745, 25 U.S.C. 380; secs. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011.

## Subpart A—General Provisions

### § 166.1 Definitions.

*Agricultural product* means:

- (a) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit, excluding any crop that is defined as illegal by tribal or Federal statute;
- (b) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;
- (c) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and
- (d) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

*Approved organization* means the Bureau of Indian Affairs, a tribe, tribal agricultural enterprise, Alaska Native Claims Settlement Act Corporation, or other Federal agencies providing agricultural services on Indian reservations.

*Authorized officer* means any tribal or Bureau person authorized to detect and investigate Indian agricultural lands trespass of Public Law 103–177.

*Beneficial owner* means the individual or entity who holds an ownership or contractual or permitted interest in Indian land.

*Bureau* means the Bureau of Indian Affairs of the Department of the Interior.

*Fair market value* means the value of an agricultural product if sold, bartered, or traded within a competitive market, including appropriate seasonal or replacement values.

*Farmland* means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage and seed oil crops or other agricultural products, and may be either dryland, irrigated, or irrigated pasture.

*Indian agricultural lands* means Indian land, including farmland and rangeland, excluding Indian forest land (except where authorized grazing occurs) that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

*Indian land* means land that is:

- (a) Held in trust by the United States for an Indian tribe; or
- (b) Owned by an Indian or Indian tribe and is subject to restrictions against alienation.

*Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Individual Indian* means any person for whom the United States holds title to property in trust status, or holds title subject to federal restrictions against alienation or encumbrance.

*Land use authorization* means a permit, lease, plan of operation, or instrument issued or approved by the authorized officer for the legitimate utilization of Indian agricultural lands or removal of resources from them.

*Lawful authority* means a tribal or Bureau land use authorization or a right granted by tribal or Federal law or statute.

*Rangeland* means Indian land, excluding Indian forest land, on which the native vegetation is predominantly grasses, grass-like plants, forbs, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands revegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

*Trespass* means any use, occupancy, or development of Indian agricultural lands, without either a prior tribal or Bureau land use authorization or a right granted by tribal or Federal law or statute.

### § 166.2 Information collection.

The information collection requirements contained in this part do not require the approval of the Office of

Management and Budget under 44 U.S.C. 3504(h) *et seq.*

### § 166.3 What activities are regulated by this part?

The regulations in this part apply to all Indian agriculture and range land except when this part is superseded by legislation.

### § 166.4 What is BIA's Indian agriculture policy?

(a) We must:

(1) Carry out the trust responsibility of the United States and facilitate the self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) Take part in the management of Indian agricultural lands, with the full and active participation of the beneficial owners of the land, in a manner consistent with our trust responsibility and with the objectives of the beneficial owners;

(3) Develop and manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, and recreation.

(4) Increase the educational and training opportunities available to Indian people and communities in the practical, technical and professional aspects of agriculture and land management to improve the expertise and technical abilities of Indian tribes and their members.

(b) Any Indian agricultural land management activity we undertake must:

(1) Protect, conserve, and maintain or improve the productivity of Indian agricultural and range lands through the use of sound conservation practices and techniques including best management practices, applicable tribal codes, and state of the art soil and range conservation management techniques in planning, development, inventorying, classification, and management of the agricultural resources.

(2) Manage Indian agricultural lands to increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians and Alaska Natives.

(3) Manage Indian agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, and recreation.

(4) Manage Indian agricultural lands to enable Indian farmers and ranchers to maximize the available benefits by providing technical assistance, training in conservation practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products and other applicable subject areas.

(5) Develop Indian agricultural lands and associated value-added industries of Indians and Indian tribes to promote self-sustaining communities.

(6) Assist trust and restricted landowners in leasing their agricultural lands for a reasonable annual return, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

#### **§ 166.5 When will the BIA recognize tribal laws?**

We must comply with tribal laws pertaining to Indian agricultural land, and cooperate with the enforcement of these laws on Indian agricultural land, unless doing this would violate Federal law or our trust responsibility. This cooperation does not constitute a waiver of United States sovereign immunity and includes:

(a) Assisting in the enforcement of these laws;

(b) Notifying persons or entities undertaking activities on Indian agricultural lands;

(c) Appearing in tribal forums when requested by a tribe; and

(d) Waiving sections of this part that conflict with tribal law or the objectives of an agricultural resource management plan. We must inform the tribes of any refusal to waive regulations.

#### **§ 166.6 How is Indian agricultural land managed?**

(a) We will manage Indian agricultural land either directly or through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended).

(b) In close consultation with the affected tribes, we must prepare and revise as necessary an agricultural resource management plan for all Indian agricultural lands unless a tribe notifies us that a plan is not needed. We will follow the tribe's current public hearing and notice policies. In the absence of a tribal policy, we will develop a public hearing and notification plan within 90 days of beginning to write the plan for tribal approval.

### **Subpart B—Indian Agricultural Land Trespass**

#### **§ 166.20 What is our trespass policy?**

We will:

(a) Ensure that all uses, occupancies, or developments of Indian agricultural land are properly authorized and that these authorizations do not cause undue or unnecessary damage to Indian agricultural land or the improvements on it;

(b) Investigate and determine accidental, willful, or incidental trespass;

(c) Resolve all alleged trespass, either administratively or civilly, in a prompt, efficient manner;

(d) Recover the value of products, damage costs, and enforcement costs as a consequence of the trespass;

(e) Ensure that unnecessary or undue damage to Indian lands by trespass activities is rehabilitated and/or stabilized at the expense of the trespasser; and

(f) Determine if there are contractual or permit violations by lessees and permittees as well as other violations of other Federal or tribal laws separate from the regulations in this part.

#### **§ 166.21 How do tribes get concurrent civil jurisdiction?**

Tribes that adopt the regulations in this section, conformed as necessary to tribal law, have concurrent civil jurisdiction to enforce 25 U.S.C. 3713 and this section against any person.

(a) We will acknowledge concurrent civil jurisdiction over trespass, when we receive:

(1) A formal tribal resolution documenting the tribe(s)' adoption of this part; and

(2) Notification from the tribe that its court system is able to properly adjudicate agricultural trespasses, including:

(i) A statement that the tribal court will enforce the Indian Civil Rights Act; or

(ii) A tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(b) Where an Indian tribe acquires concurrent civil jurisdiction over trespass cases under paragraph (a) of this section, we and the authorized tribal representatives are jointly responsible for coordinating prosecution of trespass actions.

(1) When a tribe makes a timely request, we will defer prosecution of agricultural trespasses to the tribe.

(2) When a deferral is not requested, we will determine with the authorized

tribal representatives how concurrent tribal and Federal trespass jurisdiction will apply to each trespass.

(3) When an Indian tribe acquires concurrent jurisdiction but does not request deferral of prosecution, we will file and prosecute an action in the tribal court or forum.

(c) We will rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this part if we or a court of competent jurisdiction determine that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If a rescission is justified, we will notify in writing. The notice will include the findings that justify the rescission and the steps needed to remedy the violations causing the rescission. We will notify the chief judge of the tribal judiciary. If there is no chief judge, we will notify the other authorized tribal official. If the tribe does not take the steps we specify within 60 days, the rescission of concurrent civil jurisdiction will become final. The affected tribe can appeal a Notice of Rescission under Part 2 of Title 25.

(d) Nothing in this part prohibits or diminishes the authority of a tribe to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

#### **§ 166.22 What is agricultural trespass?**

The following uses or actions are acts of agricultural land trespass if unauthorized on land where a tribe has jurisdiction to enforce its laws:

(a) Cultivating of irrigated or non-irrigated crops or the harvesting of native hay, forage, or seed;

(b) Fencing or gates;

(c) Developing water sources reserved to or administered by us;

(d) Commercial filming or photography;

(e) Sale or barter of goods or services;

(f) Placing or storing of beehives;

(g) Commercial use of Indian or tribally owned and controlled road or motorized vehicle use off road where prohibited;

(h) Grazing;

(i) Cutting, damaging, taking, harvesting, or removing of special agricultural products, including but not limited to: berries, nuts, flowers, seeds, moss, cones, leaves, mushrooms, cactus, yucca, and greenery for commercial purposes. (Non-commercial use of special agricultural products for religious and cultural traditions by tribal members are exempt);

(j) Recreation, hunting, trapping, fishing, use of special areas, and developed recreation facilities;

(k) Damaging or removing archaeological or paleontological resources;

(l) Littering or disposing of agriculture related products, hazardous waste, household or business waste, or garbage.

(m) Applying pesticides without tribal/Federal certification, misusing pesticides for purposes other than authorized by pesticide label, or applying pesticides at rates or solutions greater than label directions.

(n) Aquaculture or the harvesting of fish raised for commercial sale or consumption; and

(o) Other items designated by tribes as acts of Indian agricultural land trespass.

#### **§ 166.23 How are trespassers notified?**

Unless otherwise provided under tribal law:

(a) When there is reason to believe that Indian agricultural land or products are involved in trespass, we or the authorized tribal representative must immediately provide the following notice to the alleged trespasser, the possessor of trespass products, and any known lien holder:

(1) Basis for the trespass determination;

(2) Legal description of where trespass occurred;

(3) Time frames for resolving the trespass; and

(4) Actions that must be taken.

(b) The actions may be:

(1) Removal of the trespasser's property to prevent further loss, damage, or destruction to the Indian agricultural land; or,

(2) Prohibition of removal of the agricultural products from the Indian agricultural land.

#### **§ 166.24 What actions are taken against trespassers?**

(a) We will immediately take corrective action to protect Indian agricultural lands or products. If we seize agricultural products we may sell or dispose of them, if appropriate. We will keep equipment that we seize for use as evidence unless a court of competent jurisdiction orders otherwise.

(b) Trespassers will be liable for fair market value of products illegally used or removed, and penalties and damages.

(c) When there is reason to believe that Indian agricultural products are involved in trespass and the products have been removed to land not under our supervision, we must immediately notify the owner of the land or the party in possession of the trespass products that such products could be Indian trust property involved in a trespass and that no action to remove or otherwise dispose of the products may be taken unless authorized.

(d) If we determine that the trespasser or possessor is unknown or refuses delivery of the trespass notice, the trespass notice will be posted at the tribal community building and the U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

#### **§ 166.25 What are the penalties, damages, and costs payable by trespassers?**

(a) Trespassers may be assessed civil penalties such as the ones in the following table. Other penalties may also be assessed.

Penalty	Comments
Double Damages .....	1. Must be based upon the highest value obtainable for the raw materials involved in the trespass. 2. Must be assessed when a person without lawful authority injures, severs, or carries off from a reservation any agricultural product. 3. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability. There is no requirement to show willfulness of intent.
Costs associated with damage to Indian land.	Includes rehabilitation, revegetation, lost future revenue, lost profits, loss of productivity, damage to other resources, and other damages.
Reasonable enforcement costs .....	Includes detection, and all processes through prosecution and collection of damages. This covers field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.
Interest .....	1. Must be based upon double the highest value obtainable for the raw materials involved in the trespass. 2. Must be calculated at the highest rate prescribed by tribal law. If there is no tribal law, calculation must be based upon Federal law. Where there is no Federal law, calculation must be based upon judgments as prescribed by the law of the State where the trespass occurred. 3. Must be calculated from the date of the trespass until payment is made.

(b) When the trespass actions have been resolved, but the trespasser has not settled civil penalties, damages, and costs, we will send a certified letter, return receipt requested, to the trespasser demanding immediate settlement. If settlement is not made within 5 working days after date of receipt, we may refer the case to the appropriate prosecuting authority.

#### **§ 166.26 How are the proceeds from trespass distributed?**

Unless otherwise provided under tribal law:

(a) We will treat civil penalties and other damages collected under the regulations in this part, except for those related to land damage and enforcement costs, as proceeds from the sale of

agricultural products from the Indian agricultural land upon which the trespass occurred.

(b) If we confiscate and dispose of equipment, goods, or agricultural products from the trespasser, we will apply any cash or other proceeds to satisfy the civil penalties. If any money is left, we will return it to the trespasser. If we do not collect enough money from the trespasser, we will distribute civil penalties in accordance with the following table:

If we collect	We will distribute the money
Damages up to the highest value of the trespass products.	pro rata between the beneficial share and the cost of restoring the land

If we collect	We will distribute the money
Damages over the highest value of the trespass product, but less than enough for full recovery.	pro rata between the beneficial share, the law enforcement agency, and the cost of restoring the land

(c) If beneficial owners trespass or are involved in trespass on their own land or undivided land in which they have a partial interest, they must not receive their beneficial share of any civil penalties and damages collected. If we collect civil penalties and damages as a result of a trespass, we will distribute them as follows:

(1) Toward restoration of the land where the trespass occurred; and

(2) Toward the enforcement agency's costs for rectifying the trespass.

(d) We may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, we will determine the procedure and approve acceptance of any settlements negotiated by a tribe exercising its concurrent jurisdiction.

**§ 166.27 What happens if you do not settle a civil trespass case?**

Unless otherwise provided by tribal law:

(a) We will refuse to issue you a lease, permit, or license for use, development or occupancy, if you fail to make full payment of damages in the settlement of a civil trespass case.

(b) If we determine that continuance of any use, occupancy, or development presents a risk to health, safety, or the environment, we will order an immediate, temporary suspension of the use, occupancy, or development before or during the pendency of an appeal. A person whose own direct economic interest is harmed by an action or decision may bring or participate in an appeal.

**§ 166.28 How can you appeal our decisions?**

You may challenge an action we take under this part only through administrative appeal or under the Indian Self-Determination and Education Assistance Act only. The appeal must be filed in accordance with 25 CFR part 2, Appeal from administrative actions, except that an appeal of any action under this part must not stay any action unless we direct.

**Subpart C—Agriculture Education, Education Assistance, Recruitment and Training**

**§ 166.30 How are the Indian agriculture education programs operated?**

(a) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Natives who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional resource manager and other agriculture-related professionals by approved organizations.

(b) We will operate the program in accordance with the provisions of 5 CFR 213.3202 (a) and (b).

(c) We will establish an education committee to coordinate and carry out the agriculture education assistance programs and to select participants for all agriculture education assistance programs except the cooperative

education program. The committee will include at least an American Indian professional educator in the field of natural resources or agriculture, a personnel specialist, a representative of the Intertribal Agriculture Council, and a natural resources or agriculture professional from the Bureau of Indian Affairs and a representative from American Indian Higher Education Consortium. The committee's duties will include the writing of a manual for the Indian and Alaska Native Agriculture Education and Assistance Programs.

(d) We will monitor and evaluate the agriculture education assistance programs to ensure that there are adequate Indian and Alaska Native natural resources and agriculture-related professionals to manage Indian natural resources and agriculture programs by or for tribes and Alaska Native Corporations. Monitoring and evaluating will identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a natural resources or agriculture-related professional; and the number of participants completing advanced degree requirements.

**§ 166.31 How can you become an agriculture intern?**

(a) The purpose of the agriculture intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native agricultural land. In keeping with this purpose, we will work with tribes and Alaska Natives:

(1) To obtain the maximum degree of participation from Indians and Alaska Natives in the agriculture intern program;

(2) To encourage agriculture interns to complete an undergraduate degree program in natural resources or agriculture-related field; and

(3) To create an opportunity for the advancement of natural resources and agriculture-related technicians to professional resource management positions with the Bureau of Indian Affairs, other Federal agencies providing an agriculture service to their respective tribe, a tribe, or tribal agriculture enterprise.

(b) Subject to restrictions imposed by agency budgets, we will establish and maintain in the BIA at least 20 positions for the agriculture intern program. All Indians and Alaska Natives who satisfy the qualification criteria may compete for positions.

(c) Applicants for intern positions must meet the following criteria:

(1) Be eligible for Indian preference as defined in 25 CFR part 5;

(2) Possess a high school diploma or its recognized equivalent;

(3) Be able to successfully complete the intern program within a 3-year period; and

(4) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that one will be sent within 90 days.

(d) We will advertise vacancies for agriculture intern positions semi annually, no later than the first day of April and October, to accommodate entry into school.

(e) In selecting agriculture interns, we will seek to identify candidates who:

(1) Have the greatest potential for success in the program;

(2) Will take the shortest time period to complete the intern program; and

(3) Provide the letter of acceptance required by paragraph (c)(4) of this section.

(f) Agriculture interns must:

(1) Maintain full-time status in an agriculture-related curriculum at an accredited post secondary school;

(2) Maintain good academic standing;

(3) Enter into an obligated service agreement to serve as a professional resource manager or agriculture-related professional with an approved organization for 2 years in exchange for each year in the program; and

(4) Report for service with the approved organization during any break in attendance at school of more than 3 weeks. We will count this service toward satisfaction of the intern's obligated service.

(g) The education committee will evaluate annually the performance of the agriculture intern program participants against requirements to ensure that they are satisfactorily progressing toward completion of program requirements.

(h) We will pay all costs for tuition, books, fees and living expenses incurred by an agriculture intern while attending an accredited post secondary school.

**§ 166.32 How can you become an agriculture cooperative education student?**

(a) To be considered for selection, applicants for the cooperative program must:

(1) Meet the eligibility requirements and be subject to status requirements in 5 CFR Part 308; and

(2) Be accepted into or enrolled in a course of study at an accredited post secondary institution which grants degrees in natural resources or agriculture-related curricula.

(b) Cooperative education steering committees established at the field level will select program participants based on eligibility requirements without regard to applicants' financial needs.

(c) A recipient of assistance under the cooperative education program will be required to enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year in exchange for each year in the program.

(d) We will pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for the cooperative education program.

**§ 166.33 How can you get an agriculture scholarship?**

(a) We may grant agriculture scholarships to Indians and Alaska Natives enrolled as full time students in accredited post-secondary and graduate programs of study in natural resources and agriculture-related curricula.

(b) The education committee established in § 166.30(a) will select program participants based on eligibility requirements stipulated in paragraphs (e) through (g) of this section without regard to applicants' financial needs or past scholastic achievements.

(c) Recipients of scholarships must reapply annually to continue to receive funding beyond the initial award period. Students who have received scholarships in past years, are in good academic standing, and have been recommended for continuation by their academic institution will be given priority over new applicants for scholarship assistance.

(d) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and is subject to yearly change.

(e) Preparatory scholarships are available for a maximum of 3 academic years of general, undergraduate course work leading to a degree in natural resources or agriculture-related curricula and may be awarded to individuals who:

(1) Possess a high school diploma or its recognized equivalent; and  
(2) Are enrolled and in good academic standing at an acceptable post secondary school.

(f) Undergraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who:

(1) Have completed a minimum of 55 semester hours toward a bachelor's degree in a natural resources or agriculture-related curriculum; and

(2) Have been accepted into a natural resource or agriculture-related degree-granting program at an accredited college or university.

(g) Graduate scholarships are available for a maximum of 5 academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in natural resources or agriculture-related fields.

(h) A recipient of assistance under the scholarship program must enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with the Bureau of Indian Affairs, other Federal agency providing assistance to their respective tribe, a tribe, tribal agriculture enterprise or ANCSA Corporation for one year for each year in the program.

(i) We will pay all scholarships approved by the education committee established in § 166.30(a) for which funding is available.

**§ 166.34 What is agriculture education outreach?**

(a) We will establish and maintain an agriculture education outreach program for Indian and Alaska Native youth that will:

(1) Encourage students to acquire academic skills needed to succeed in post secondary mathematics and science courses;

(2) Promote agriculture career awareness;

(3) Involve students in projects and activities oriented to agriculture related professions early so students realize the need to complete required pre college courses; and

(4) Integrate Indian and Alaska Native agriculture program activities into the education of Indian and Alaska Native students.

(b) We will develop and carry out the program in consultation with appropriate community education organizations, tribes, ANCSA Corporations, Alaska Native organizations and other federal agencies providing agriculture services to Indians.

(c) The education committee established under § 166.30(a) will coordinate and implement the program nationally.

**§ 166.35 Who can get assistance for postgraduate studies?**

(a) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native natural resource and agriculture-related professionals working for an approved organization so that the best possible

service is provided to Indian and Alaska Natives.

(b) We may pay the cost of tuition, fees, books, and salary of Alaska Natives and Indians who are employed by an approved organization and who wish to pursue advanced levels of education in natural resource or agriculture-related fields.

(c) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a natural resources or agriculture-related field. Requirements of the postgraduate study program are:

(1) the duration of course work cannot be less than one semester or more than three years; and

(2) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program.

(d) Program applicants must submit application packages to the education committee established under § 166.30. At a minimum, such packages must contain a resume and an endorsement signed by the applicant's supervisor clearly stating the need for and benefits of the desired training.

(e) The education committee must use the following criteria to select participants:

(1) Need for the expertise sought at both the local and national levels;

(2) Expected benefits, both locally and nationally; and

(3) Years of experience and the service record of the employee.

(f) Program participants will enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for two years for each year in the program. We may reduce the obligated service requirement if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance under this part. If the obligated service agreement is breached, we will collect the amount owed us in accordance with § 166.37.

**§ 166.36 What can happen if we recruit you after graduation?**

(a) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native natural resource and trained agriculture technicians into the agriculture programs of approved organizations.

(b) We may assume outstanding student loans from established lending institutions of Indian and Alaska Native natural resources and agriculture technicians who have successfully

completed a post-secondary natural resources or agriculture-related curriculum at an accredited institution.

(c) Indian and Alaska Natives receiving benefits under this program will enter into an obligated service agreement in accordance with § 166.38. Obligated service required under this program will be one year for every \$5,000 of student loan debt repaid.

(d) If the obligated service agreement is breached, we will collect student loan(s) in accordance with § 166.39.

**§ 166.37 Who can be an intergovernmental intern?**

(a) Natural resources or agriculture personnel working for an approved organization may apply for an internship within agriculture-related programs of agencies of the Department of the Interior or other federal agencies providing an agriculture service to their respective reservations.

(b) Natural resources or agriculture-related personnel from other Department of the Interior agencies may apply through proper channels for internships within Bureau of Indian Affairs agriculture programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native agriculture programs.

(c) Natural resources and agriculture personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal agriculture enterprise or Alaska Native Corporation.

(d) Natural resources or agriculture personnel from a tribe, tribal agriculture enterprise or Alaska Native Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation agriculture program.

(e) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(f) The host agency for participating tribal, tribal agriculture enterprise or Alaska Native Corporation agriculture employees will provide for salaries and benefits.

(g) A bonus pay incentive, up to 25 percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and must be conditioned upon the host agency's

documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

**§ 166.38 Who can participate in continuing education and training?**

(a) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of natural resources and agriculture personnel employed by approved organizations. This program will emphasize continuing education and training in three areas:

(1) Orientation training including tribal-Federal relations and responsibilities;

(2) Technical agriculture education; and

(3) Developmental training in agriculture-based enterprises and marketing.

(b) We will maintain an orientation program to increase awareness and understanding of Indian culture and its effect on natural resources management and agriculture practices and on Federal laws that effect natural resources management and agriculture operations and administration in the Indian agriculture program.

(c) We will maintain a continuing technical natural resources and agriculture education program to assist natural resources managers and agriculture-related professionals to perform natural resources and agriculture management on Indian land.

(d) We will maintain an agriculture land-based enterprise and marketing training program to assist with the development and use of Indian and Alaska Native agriculture resources.

**§ 166.39 What are your obligations to us after you participate in an agriculture education program?**

(a) Individuals completing agriculture education programs with an obligated service requirement may be offered full time permanent employment with an approved organization to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If employment is not offered within the 90-day period, the student will be relieved of obligated service requirements. Not less than 30 days before to the start of employment, the employer must notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer must also notify us.

(b) Employment time that can be credited toward obligated service

requirement will begin the day after all program education requirements have been completed, with the exception of the agriculture intern program which includes the special provisions outlined in § 166.31(f)(4). The minimum service obligation period will be one year of full time employment.

(c) The employer has the right to designate the location of employment for fulfilling the service obligation.

(d) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, we will issue a decision within 30 days of receipt of the request for deferral. We may grant such a request; however, deferments granted in no way waive or otherwise affect obligated service requirements.

(e) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a waiver of obligated service based on personal or family hardship. We may grant a full or partial waiver or deny the request for waiver. In such cases, we will issue a decision within 30 days of receiving the request for waiver.

**§ 166.40 What happens if you do not fulfill your obligation to us?**

(a) Any individual who accepts financial support under agriculture education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates employment must repay us in accordance with the following table:

Program	Costs that must be repaid	Costs that do not need to be repaid
Agriculture intern.	Salary, tuition, books, and fees received while occupying position plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.
Cooperative education.	Tuition, books, and fees plus interest.	
Scholarship	Costs of scholarship plus interest.	

Program	Costs that must be repaid	Costs that do not need to be repaid
Postgraduate- .... ation re- .... cruitment.	All student loans assumed by us under the program plus interest.	
Postgraduate studies.	Salary, tuition, books, and fees received while in the program plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.

(b) For agriculture education programs with an obligated service requirement, we will adjust the amount required for repayment by crediting toward the final amount of debt any obligated service performed before breach of contract.

Dated: May 24, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

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BILLING CODE 4310-02-P

## 25 CFR Part 217

RIN 1076-AD37

### Management by the Tribe and the Ute Distribution Corporation of the Ute Indian Tribe's Undivided Tribal Assets on the Uintah and Ouray Reservations, Utah

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is proposing to amend the regulations governing the procedures, under the Secretary of the Interior's supervision, for jointly managing the undivided assets of the Ute Indian Tribe. This rule was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand.

**DATES:** Comments must be received on or before August 2, 1996.

**ADDRESSES:** Mail or hand carry comments to Terrance Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 4513-MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Kim Synder, Division of Energy and Minerals, Bureau of Indian Affairs at telephone (202) 208-3607.

#### SUPPLEMENTARY INFORMATION:

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

We certify to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This is not a significant rule under Executive Order 12866 and does not require review by the Office of Management and Budget.

This rule imposes no unfunded mandates on any government or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

The information collection requirements in this part do not require approval by OMB under 44 U.S.C. 3501 *et seq.*

We determined this proposed rule:

(a) Will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

(b) Does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement is required under the National Environmental Policy Act of 1969;

(c) Does not have significant takings implications in accordance with Executive Order 12630; and

(d) Does not have significant federalism effects.

This rule was written by the Bureau of Indian Affairs' Regulatory Review Action Team.

#### List of Subjects in 25 CFR Part 217

Indians-claims, Indians-land, mineral resources.

For the reasons set out in the preamble, we propose to revise Part 217 of Title 25 of the Code of Federal Regulations as follows:

### PART 217—MANAGEMENT BY THE TRIBE AND THE UTE DISTRIBUTION CORPORATION OF THE UTE INDIAN TRIBE'S UNDIVIDED TRIBAL ASSETS ON THE UINTAH AND OURAY RESERVATION, UTAH

Sec.

217.1 What do certain terms mean?

217.2 What is the authority for this part?

217.3 What is the purpose of this part?

217.4 How do proceeds divide between the two groups?

217.5 What is the Secretary's role under this part?

217.6 How is wildlife managed?

217.7 What is the Joint Advisory Board and what do they do?

217.8 Must joint managers document decisions and file reports?

217.9 Who collects payments from mineral interests?

217.10 How are errors in paying mineral interests corrected?

Authority: 25 U.S.C. 677z.

#### § 217.1 What do certain terms mean?

*Act* means the Act of August 27, 1954, 68 Stat. 868, 25 U.S.C. 677-677aa, commonly referred to as the "Ute Partition Act" or the "Ute Termination Act," as amended by the Act of August 2, 1956, 70 Stat. 936, and the Act of September 25, 1962, 76 Stat. 597.

*Affiliated Ute Citizens of Utah (AUC)* means the organization that represented the mixed-blood members of the Ute Indian Tribe to help partition and distribute divisible tribal assets and carry out other purposes under the Act before August 27, 1961, 12 midnight.

*Asset* means any real, personal, or mixed property of the tribe, whether held by the tribe or by the United States in trust for them, or restricted from division by the United States.

*Full-blood* means a member of the tribe who is on the final roll of full-bloods published April 5, 1956, 21 FR 2208, and also anyone enrolled later as a tribal member under the tribe's constitution, by-laws, and ordinances.

*Indian mineral interest* means any interest in minerals United States holds in trust to benefit the full-bloods and mixed-bloods, individually or as a tribe.

*Mixed-blood* means a person who is on the final roll of mixed-bloods published April 5, 1956, 21 FR 2208. The mixed-blood roll is closed.

*Secretary* means the Secretary of the Interior or other person acting under the Secretary's authority.

*Tribal Business Committee* means the governing body of the Ute Indian Tribe, created under the tribe's constitution and by-laws.

*Tribe* means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah. Starting April 5, 1956, when the