Authority: 62 Stat. 18; 25 U.S.C. 331 note.

§ 154.1 What are the definitions of the terms used in this part?

Certificate of competency is a certificate issued by the Superintendent of the Osage Agency declaring a certain Osage Indian to be competent to handle his or her allotted or inherited Osage Indian lands or Osage headright interest(s).

Commissioner includes the Deputy Commissioner of Indian Affairs or authorized representative acting under delegated authority.

Person means an unallotted member of the Osage Tribe of Oklahoma of less than one-half Osage Indian blood who has not received a certificate of competency.

Secretary means the Secretary of the Interior or authorized representative acting under delegated authority.

Superintendent means the Superintendent of the Osage Agency, Bureau of Indian Affairs, Department of the Interior.

§ 154.2 Why do I need a certificate of competency?

If you do not wish to be under the supervision of the Bureau of Indian Affairs and feel that you are competent to handle your own allotted or inherited Osage Indian lands or Osage headright interests, you may apply for a certificate of competency which will remove the restrictions from your land as well as make any income deriving from your Osage headright interests fully taxable by both Federal and State. In addition, a certificate of competency will make any Osage lands or headright subject to creditors' claims.

§ 154.3 How do I apply for a certificate of competency?

You must complete and file with the agency superintendent a written application in the form approved by the Secretary.

§ 154.4 How do I qualify for a certificate of competency?

You must be at least 21 years old and be determined by the Osage Agency Superintendent to be competent to handle your own land and financial affairs.

§ 154.5 What is a competency eligibility roll?

It is a listing, prepared for the Osage Agency Superintendent, of persons 21 years or older who have not received a certificate of competency. It contains the following information for each individual:

(a) Name;
(b) Last known address;
(c) Date of birth; and
(d) Total quantity of Osage Indian blood of each person listed.

§ 154.6 How is age determined?

The date of birth as shown on a standard or delayed birth certificate or census records maintained by the Osage Indian Agency is accepted as prima facie evidence in determining the age of a person.

§ 154.7 Who pays for the recording of certificates of competency?

The Superintendent may disburse IIM funds of the persons to whom a certificate of competency is issued in order to provide for the direct payment of costs of recording the certificate of competency into the official land records of the Osage County Clerk.

§ 154.8 When will I get delivery of my funds, if any?

After a certificate of competency is issued and recorded, the Superintendent will deliver to the individual or legal guardian named, the original copy of the certificate and a check for all funds on deposit in the IIM account of the individual at the Osage Indian Agency. At the request of the Superintendent, you will be required to sign a receipt.

Dated: May 31, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–14641 Filed 6–14–96; 8:45 am]

BILLING CODE 4310–02–M

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25 CFR Part 162

RIN 1076–AA29

Leasing and Permitting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking action will revise the leasing and permitting regulations in 25 CFR Part 162, and incorporate the general grazing permit regulations now found in 25 CFR Part 166. The rule will also implement the relevant provisions in a number of statutes of general application, including the American Indian Agricultural Resource Management Act (AIARMA). Finally, the rule will implement many policy decisions, legal opinions, and administrative actions which have been issued or implemented by the Bureau of Indian Affairs (BIA) since the last publication of these regulations in the 1960's.

DATE: Comments must be submitted on or before October 15, 1996.

ADDRESSES: Mail comments to: 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: Stan Webb, Branch of Real Estate Services, Phoenix Area Office, Bureau of Indian Affairs, at 602–379–6781, or Virgil Dupuis, Lands Division, Confederated Salish and Kootenai Tribes of the Flathead Nation, at 406–675–2700.

SUPPLEMENTARY INFORMATION: Section 301 of the AIARMA requires that the act be implemented through the promulgation of final regulations within 24 months, and that such regulations be ''developed by the Secretary with the participation of the affected Indian tribes.'' Four work groups (including a leasing and permitting group) were established by a steering committee, with the work groups and the steering committee each being comprised of BIA and tribal representatives. The work groups met in March 1994, and a first set of draft regulations was distributed for comment to some 3000 addressees on April 29, 1994. The first draft did not provide for a consolidation of the permitting provisions in 25 CFR Parts 162 and 166, although such a consolidation had been planned by the BIA since 1988; it did, however, include a number of proposed revisions (unrelated to the AIARMA) intended to address questions raised during the past 25 years by other statutory enactments and various administrative actions and judicial decisions.

After five formal hearings were conducted throughout the nation, a second mailing was distributed for comment on June 28, 1994. The second mailing included a cross-references summary sheet which indicated how most of the permitting provisions in the existing 25 CFR Part 166 would be incorporated in Subpart D of the proposed 25 CFR Part 162, but it did not include the text of the proposed Subpart D. The text of a revised Subpart D—and all of the other proposed regulations drafted to implement the AIARMA—were distributed for a final round of comments on November 30, 1994. The leasing and permitting work group met in September 1994 and March 1995, respectively, to review the written comments and public testimony received in response to the mass mailings.

The Statutory Framework

Early Statutes—Tribal Land

Under the trade and intercourse acts which are codified at 25 U.S.C. 177, valid leases of tribal land may be made only with specific statutory authorization. The first general leasing statute for Indian land was enacted on February 28, 1891 (26 Stat. 795, 25 U.S.C. 397), and a proviso in that act authorized tribal councils to lease tribal ''purchased'' land (on treaty reservations) for grazing purposes, for up to five years. These tribal leases, unlike the leases of allotments authorized by the same statute, were expressly made subject to approval by we of the Interior. A proviso in an August 15, 1894, appropriations act (28 Stat. 305) authorized tribal councils to lease any unallotted ''surplus'' land for farming purposes, for up to five years. By act dated July 3, 1926 (44 Stat. 894, 25 U.S.C. 402a), leases of irrigable tribal land were authorized for up to ten years, ''with the consent of the tribal council, business committee, or other authorized body.'' By Section 17 of the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 988, 25 U.S.C. 477), tribes which did not vote to reject the IRA were authorized to adopt corporate charters (to be ''issued'' by us). Among other things, these charters initially allowed tribes to grant leases for up to ten years, without further secretarial approval. Section 17 of the IRA was amended on May 24, 1990 (104 Stat. 207), to eliminate the need for a special tribal election to support a proposed corporate charter, and to allow tribes which rejected the IRA to nonetheless adopt a charter pursuant to Section 17. The amendment also authorized 25-year leases of tribal land without secretarial approval, where such leases are authorized by a secretarially-issued charter. The legislative history of the amendment does not reveal why corporate leases were limited to 25 years, when longer terms would have been consistent with the long-term leasing statutes enacted between 1934 and 1990.

Early Statutes—Allotted Land

Leases and other dispositions of allotted land are generally prohibited by the treaties and statutes which authorized the allotments and established the periods during which the land would be held in trust or restricted status. These prohibitions were modified by a series of statutes which authorized the leasing of allotments, subject to various limitations as to the lease purpose, maximum lease term, the leasing authority of the individual Indian landowners, and our approval power. The Act of February 28, 1891, authorized an allottee who could not personally occupy and improve his land—''by reason of age or other disability''—to lease the allotment for farming and grazing purposes. The statute limited the maximum term of the authorized leases to three years, and the legislative history dictated that applications to lease be made directly to us (rather than to the ''agent in charge of any reservation'').

In its August 15, 1894, appropriations act, Congress lessened the 1891 act's restrictions by authorizing farming and grazing leases by any allottee with an ''inability'' to personally occupy and improve his land. In this statute, Congress also extended the maximum term of farming and grazing leases to five years, and authorized leases of up to ten years for business purposes. In appropriations acts from 1897 and 1900, however, Congress vacillated in defining the restrictions to be imposed on the owners of allotted land. In the 1897 act (30 Stat. 85), the ''inability'' provision was dropped, and the maximum terms for farming/grazing and business leases were reduced to three and five years, respectively. Then, in the 1900 act (31 Stat. 229, 25 U.S.C. 395), the ''inability'' provision was restored, and five-year farming leases were re-authorized.

A more expansive leasing statute was enacted on June 25, 1910 (36 Stat. 856, 25 U.S.C. 403), authorizing five-year leases of allotments held under trust patents, without regard to the purpose of the lease or the Indian landowner's age, ''disability,'' or ''inability.'' This act also provided that lease ''proceeds'' could be paid directly to the allottee or his/her heirs, or expended for their benefit by us. Congress attempted to both expand and limit its leasing policy in the Act of May 18, 1916 (39 Stat. 128, 25 U.S.C. 394), which authorized leases of irrigable allotted land for up to ten years, but made such leases subject to the ''age or other disability'' restrictions set forth in the Act of February 28, 1891. By statute enacted on March 3, 1921 (41 Stat. 1232, 25 U.S.C. 393), allottees and their heirs were authorized to grant farming and grazing leases of ''restricted'' allotments (which were not covered by trust patents, and thus fell outside the scope of the 1910 act). (In earlier statutes, the leasing authority of the heirs of allottees had been left to inference.) Leases granted under the 1921 act were expressly made subject to ''the approval of the superintendent or other officer in charge of the reservation where the land is located.'' A September 21, 1922, statute (42 Stat. 995, 25 U.S.C. 392) subsequently authorized us to approve leases of allotments wherever the patents covering such allotments prohibited any type of alienation without the consent of the President.

When the IRA was enacted in 1934, its purposes included the prohibition of the further allotment of Indian reservations and the curtailment of the future alienation of allotted land. Although none of the provisions in the final version of the IRA specifically addressed the leasing or permitting of allotments, Section 6 (48 Stat. 986, 25 U.S.C. 466) directed us to make rules ''to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity * * *, to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.''

A statute was enacted on July 8, 1940 (54 Stat. 745, 25 U.S.C. 380), to address questions which had arisen about our authority to approve leases that had not been executed by all of the individual Indian owners. This act expressly authorized us to grant leases of heirship land (owned by the heirs or devisees of the original allottee) under specific circumstances. The act provided, in its entirety, as follows:

> [R]estricted allotments of deceased Indians may be leased, except for oil and gas mining purposes, by the superintendent of the reservation within which the lands are located (1) when the heirs or devisees of such decedents have not been determined and (2) when the heirs or devisees of the decedents have been determined, and such lands are not in use by any of the heirs and the heirs have not been able during a three-months' period to agree upon a lease by reason of the number of the heirs, their absence from the reservation, or for other cause, under such rules and regulations as the Secretary of the Interior may prescribe. The proceeds derived from such leases will be credited to the estates or other accounts of the individuals entitled thereto in accordance with their respective interests.

The 3 month negotiation period required by the 1940 act is now subject to modification by tribes, insofar as agricultural leases are concerned, through the enactment of the American Indian Agricultural Resource Management Act on December 3, 1993. The provisions of this act are described in some detail below.

The Long-Term Leasing Act

Before 1955, leases for more than five years were generally prohibited on both tribal and individually-owned land; 10 year leases were authorized only where irrigable land was involved, or where the leases were made pursuant to a

tribal corporate charter or a reservation-specific statute. Section 1 of the Act of August 9, 1955 (69 Stat. 539, 25 U.S.C. 415), authorized long-term leases of both tribal and individually-owned land, but Section 6 (25 U.S.C. 415d) expressly provided that previously-enacted statutes would not be repealed. Specifically, ten-year leases were authorized for grazing purposes, and 25-year leases were authorized ''for public, religious, educational, recreational, residential, or business purposes, * * * and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops.'' Single renewal periods of up to 25 years were authorized in leases made for purposes other than farming or grazing.

Section 1 of the 1955 act authorized leases by the Indian landowners, subject to the approval of the Secretary, and Section 2 (25 U.S.C. 415a) confirmed that long-term leases of heirship land could be granted by the Secretary pursuant to the Act of July 8, 1940. Section 2 also provided that if this grant authority was delegated by the Secretary, any ''heirs and devisees'' whose interests were leased under such authority would have a right to appeal. Section 4 (25 U.S.C. 415b) generally prohibited the payment of rentals more than one year in advance of the rental period, and Section 5 (25 U.S.C. 415c) absolutely prohibited lease provisions which would prevent or delay a termination of federal trust responsibilities during the lease term.

The legislative history of the 1955 act indicates that it was intended to facilitate the long-term financing of development on Indian land, and to thereby increase the rental income payable to Indian landowners. The House Report reflects that Section 4 was intended to serve the termination-era ''objective of removing restrictions from Indian lands as rapidly as the Indian owners become able to handle their own affairs without assistance from the Federal Government.'' The House Report also indicates that a statutory provision which would have mandated rental adjustment clauses in long-term leases (''to insure adjustments * * * reflecting appreciation or depreciation of real and personal property values'') was deleted in favor of a committee recommendation to that effect. Specifically, the House Committee on Interior and Insular Affairs recommended that adjustment provisions be included in leases wherever ''applicable and appropriate,'' and that decisions not to include such provisions be documented on a case-by-case basis. Finally, the Conference Report indicates that the ten-year maximum term for grazing leases was established in the belief it would provide adequate security for private loans to livestock operators.

To date, the 1955 act has been amended numerous times, and 99-year leasing authority now exists on several reservations. A June 2, 1970, amendment (84 Stat. 303) added the following sentence at the end of Section 1 of the 1955 act:

> Prior to approval of any lease or extension of an existing lease * * *, the Secretary of the Interior will first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

Miscellaneous Statutes—The American Indian Agricultural Resource Management Act

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. It should be noted, however, that Sections 102(a)–(c) expressly provide for the recognition of only those tribal enactments which are not contrary to federal law or our trust responsibility.

Section 105 of the AIARMA confirms and expands the existing leasing and permitting authority of both us and Indian landowners, and it also limits the authority of tribes to regulate such activities under Section 102. First, Section 105(a)(1) extends the existing 25-year authority for farming leases requiring a ''substantial investment'' to grazing leases that meet the same requirement. Second, Section 105(a)(2) confirms existing authority to grant or approve a lease or permit at less than the appraised rental value of the land, when the land has been advertised and it has been determined that the lease or permit would serve the best interests of the Indian landowners. Third, Section 105(b)(5) of the *amended* AIARMA confirms that tribes may determine the rentals to be paid under agricultural leases and permits of tribal land. Fourth, the negotiation rights of the owners of heirship land are expanded by Section 105(c)(2), which authorizes the owners of a ''majority interest'' to grant an agricultural lease or permit which will bind the remaining owners (so long as the minority owners receive ''fair market value'' for their interests). Finally, while Sections 105(b)(1)–(4) confirm the newly-recognized authority of tribes to supersede federal rules and regulations on preferences, bonding, and the leasing or permitting of heirship land, 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 percent interest in such land object in writing.

Although renewals of farming and grazing leases and permits were not previously authorized by statute, Section 105(b)(1) of the AIARMA implicitly authorizes such renewals, at least on land under the jurisdiction of a tribe which has established preferences for individual Indian lessees and permittees. Moreover, the three-month negotiation period required by the Act of July 8, 1940, has been expressly made subject to modification by tribes under Section 105(b)(4), insofar as ''highly fractionated'' heirship land is concerned; the three-month period may only be modified, however, where a tribe defines ''highly fractionated'' and establishes an alternative plan for providing the individual Indian owners of heirship land with notice of our intent to lease their land pursuant to the 1940 act. In an apparent reference to the newly-recognized authority of tribes to establish alternative notice/negotiation periods, Section 105(c)(1) originally confirmed the rights of individual ''allottees'' to use their own property and negotiate their own leases and permits. (By contrast, the 1940 act allowed the ''heirs and devisees'' of

allottees to prevent us from exercising our broad grant authority on heirship land, by putting the land to direct use or by entering into a lease or permit during a three-month negotiation period.) Section 105(c)(1) was subsequently amended to clarify that nothing in the AIARMA should be construed as ''limiting or altering'' the use and negotiation rights of *either* an ''allottee'' or a tribe, but the amendment failed to address the question of whether the ''heirs and devisees'' of allottees (or individual Indian landowners who acquired their interests by deed) may exercise ''owner's use'' rights under the 1940 act.

Interpretation and Implementation

Audits and Opinions

Since 1984, the Department of the Interior's Office of Inspector General (OIG) has completed audit reports on: (1) Agricultural leasing and permitting activities in Montana, South Dakota, and North Dakota; (2) conservation problems on leased property within the Crow Indian Reservation in Montana; and (3) the administration of commercial leases on the Agua Caliente Indian Reservation in California. In the latter report (from 1992), the OIG expressed concern about whether lessees should benefit from favorable or subsidized lease rentals by entering into ''sandwich'' leases which allow them to retain all or part of the differential between market (sublease) and contract (lease) rents. While the Agua Caliente audit report criticized existing regulations as providing ''insufficient guidance for commercial leasing activities,'' it also asserted that such regulations now make us responsible for ensuring that: (1) All lease rentals (including percentage rentals and interest on delinquencies) are paid; (2) adequate security for such payments is maintained throughout the lease term; (3) negotiated leases provide for a fair rental throughout the lease term, without fixed (or capped) rental adjustments; and (4) all leases *and* subleases are recorded in accordance with 25 CFR 150.

In three audit reports from 1984—1986, the OIG reviewed the agricultural leasing and permitting activities on six reservations in North and South Dakota. In two reports pertaining to the Fort Berthold Reservation, the OIG criticized the BIA's failure to: (1) Identify unleased agricultural land and advertise such land for lease or permit; (2) advertise land on which leases or permits will be expiring, where the landowners have not granted a new lease or permit (to the existing lessee/permittee or anyone else) within a three-month period; (3) issue timely notices of delinquent rentals; (4) require a minimum cash rental where cropshare rentals are authorized; and (5) monitor and document crop production where cropshare rentals are to be paid. In a 1986 report pertaining to five other reservations in North and South Dakota, the OIG reiterated most of the Fort Berthold criticisms, and also recommended that: (1) Minimum grazing rentals be set at a higher rate, with adjustments to off-reservation market data based on such ''factors'' as seasonal limitations, tribal taxes, interest on rental ''advances,'' administrative fees, and bonding requirements; (2) the ''brokering'' of unauthorized ''subleases'' on allocated range units be monitored, so that minimum grazing rentals are paid for all livestock owned by non-Indians; (3) the grazing rentals for the various tracts within a range unit reflect any differences in the production capabilities of such tracts; and (4) stocking rates be continuously reviewed and adjusted as range conditions warrant.

In four audit reports from 1985—1988, the OIG reviewed selected leasing and permitting activities on three reservations in Montana (as well as the Turtle Mountain Chippewa allotments in eastern Montana), focusing primarily on trespass, conservation, and income collection issues. Two of these reports also reiterated the above-referenced concerns about unleased land, expiring leases, and delinquent rentals. Two of the reports dealt solely with conservation issues on the Crow Indian Reservation, with specific reference to (unapproved) leases granted by competent Indian landowners pursuant to the amended Crow allotment act. Based on its review of the legislative history—and its view of our continuing trust responsibility to the allotments in question—the OIG recommended that the BIA clarify its responsibility and authority over land under leases granted by competent Indian landowners, by legislation if necessary.

National Environmental Policy Act

§ 162.16(c)(1) provides that the lessee must comply with the National Environmental Policy Act (42 U.S.C. 4371 et seq.). The courts have held in *Davis* v. *Morton*, 469 F.2d 593 (10th Cir. 1972), that the National Environmental Policy Act applies to the Bureau of Indian Affairs approval of leases of trust land.

List of Subjects in 25 CFR Part 162

Agriculture and agricultural products; Grazing lands; Indian-lands.

For the reasons set out in the preamble, we propose to revise Part 162 of Title 25 of the Code of Federal Regulations, as follows:

PART 162—LEASING AND PERMITTING

Subpart A—General Provisions

Sec.

Subpart B—Administrative Provisions

Subpart C—General Requirements

Subpart D—Special Provisions for Grazing Permits

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635. 25 U.S.C. 3701, 3702, 3703, 3715, 107 Stat. 2018, 108 Stat. 4572.

Subpart A—General Provisions

§ 162.1 Definitions.

Adult means an individual Indian who is 18 years or older.

Agricultural land means farmland, rangeland, or other land which is used in conjunction with farmland or rangeland.

Agricultural lease or permit means a lease or permit or permit for farming and/or grazing purposes.

Allocation means the apportionment of grazing units to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

Conservation plan means a statement of management objectives for an agricultural lessee or permittee, including contract stipulations defining required uses, operations, and improvements. A *conservation plan* may be prepared or adopted by us, and will be reviewable on an annual basis.

Fair annual rental means consideration for a lease or permit which provides a reasonable return on land value, as may be determined by an appraisal of comparable properties, advertisement and/or competitive bidding, or a negotiated percentage of the income to be derived from the land. *Fair annual rental* will reflect the highest and best use of the land, consistent with applicable law, and will take into account the costs associated with the proposed use and the reversionary value of any improvements to be made by the lessee or permittee.

Farmland means land which is used for the development of crops, pasture, or other agricultural products grown or harvested for personal consumption or for commercial purposes.

Government land means the surface estate of a tract of land, or any interest therein, which is owned by the United States and administered by the Bureau of Indian Affairs, not including tribal land which has been reserved for the Bureau's administrative purposes but is not immediately needed for such purposes.

Grazing permit means a permit of specified duration, granting the permittee a privilege to use tribal, individually-owned, and/or Government land for grazing purposes. Unless otherwise provided by agreement, a *grazing permit* will be assignable by the permittee, with the consent of the owners and our approval, and may only be canceled or revoked by us pursuant to §§ 162.18 and 162.46 of this part, respectively.

Grazing unit means one or more tracts which have been designated for grazing purposes, pursuant to § 162.40.

Heirship land means the surface estate of a tract of land having two or more owners, in which any interest is owned by an individual Indian in trust or restricted status. Any such interest will be characterized as individually-owned land, while the entire tract will be considered to be *heirship land.* Other interests in a tract of *heirship land* may be owned by Indian or non-Indian individuals or entities, in unrestricted status, or by tribes, in trust or restricted status.

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

Individually-owned land means the surface estate of a tract of land, or any interest therein, which is held by the United States in trust for an individual Indian, or a tract of land, or any interest therein, which is owned by an individual Indian subject to federal restrictions against alienation or encumbrance.

Interest means an undivided fractional share in the ownership of heirship land.

Lease means a grant to a lessee of a right to possession of tribal and/or individually-owned land, for a specified purpose and duration.

Majority interest means an aggregate of tribal and individually-owned interests totaling more than 50 percent of the total ownership in heirship land.

Owner means the tribe or individual Indian holding beneficial or restricted title to tribal or individually-owned land.

Permit means a grant to a permittee of a privilege to enter on and use tribal, individually-owned, and/or Government land for a specified purpose.

Rangeland means land on which the native vegetation is predominantly grasses, forbs, or shrubs suitable for grazing.

Secretary means the Secretary of the Interior or his authorized representative, acting pursuant to delegated authority.

Tract means a distinct parcel of Government or heirship land, or a distinct parcel of tribal or individually-owned land in which the full beneficial or restricted title is held by or on behalf of a single tribe or individual Indian owner. A *tract* may be leased or permitted either in all or in part, or it may be incorporated in a unit for leasing or permitting purposes.

Tribal corporation means a corporation chartered by us under Section 17 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 477).

Tribal land means a tract of land, or any interest therein, which is held by the United States in trust for a tribe or tribal corporation, or a tract of land, or any interest therein, which is owned by a tribe subject to federal restrictions against alienation or encumbrance.

Tribal law means an ordinance or other enactment by a tribe, which applies to leasing and permitting activities on tribal land and/or individually-owned agricultural land and is applicable under § 162.4.

Tribe means any Indian tribe, band, nation, or other organized Indian group or community, including any Alaskan Native village, which is recognized by us as having special rights and responsibilities, and as being eligible for the services provided by the United States to Indians because of their status as Indians.

Unit means two or more tracts which have been combined for leasing or permitting purposes, pursuant to § 162.10 of this part.

We means the Secretary of the Interior or a Federal official with delegated authority.

§ 162.2 Objectives.

(a) We will prepare and administer leases and permits in accordance with tribal laws which are not contrary to Federal law or our trust responsibility to protect the resources of individual

Indian owners. That means we will manage tribal and individually owned agricultural land in a manner which is consistent with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in tribal laws.

(b) We will assist owners in the granting of leases and permits through negotiation, advertisement, or allocation. We will also recognize the rights of owners to use their own land, if the other owners receive a fair annual rental for this use and the long term value of the land is preserved.

(c) We will ensure that lessees and permittees comply with the terms of their leases and permits, through cancellation or other action necessary to protect the interest of the owners. If the effective use of the land requires, we may grant leases and permits on behalf of the owners and obtain a fair annual rental.

§ 162.3 Scope.

(a) The regulations in this part prescribe the procedures, terms, and conditions under which non-mineral leases and permits covering tribal, individually owned, and government land may be granted, approved, and administered. The regulations in subparts A through C of this part apply to all leases and permits, except as otherwise indicated, and the regulations in subpart D also apply to grazing permits. Mineral leases and permits will be subject to the regulations in subchapter I of this chapter.

(b) The regulations in subpart E prescribe certain procedures, terms, and conditions which apply to leasing and permitting activities on specific reservations. The provisions in subparts A through D will also apply on these reservations, unless superseded by subpart E.

(c) The regulations in this part will not apply if a lease or permit is granted by an owner without our approval being required. Such leases and permits must be recorded according to part 150 of this chapter.

§ 162.4 Tribal laws.

(a) Tribal laws may apply to tribal land and individually owned agricultural land under the jurisdiction of the enacting tribe. To be applicable, the law must apply equally to all land under the jurisdiction of the tribe.

(b) Tribes must notify us of the content, record of public notices and hearings, and effective date of new tribal laws. If the new tribal law applies to individually owned agricultural land, we will notify the affected owners. Either actual or constructive notice may be provided, depending on whether the tribe afforded any notice and hearing rights to the owners before enactment. Actual notice is required if the tribal law is of the type described in paragraphs (c) (1) through (3) of this section.

(c) A tribal law may supersede the regulations in this part, except when the law conflicts with a Federal statute or with the objectives in § 162.2. Also, owners of individually-owned land or the owners of at least a 50 percent interest in heirship land may exempt their land from a tribal law if it:

(1) Provides a preference for Indians or tribal members in issuing or renewing agricultural leases or permits;

(2) Establishes specific security requirements for agricultural leases or permits, or waives our security requirements; or

(3) Defines ''highly fractionated'' heirship land and establishes a plan to provide the owners with notice of our intent to grant an agricultural lease or permit under § 162.13(b).

(d) The owners of a tract of individually owned or 50 percent interest in heirship land may exempt their land from a tribal law by submitting a written statement or petition to us. We will notify the tribe of your request. The same procedure applies to changing your request for exemption.

§ 162.5 Information collection.

The information collection requirements contained in this part do not require the review and approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Subpart B—Administrative Provisions

§ 162.10 How are leasing and permitting units created?

We may establish a unit if it is consistent with prudent management or efficient administration of tribal, individually owned, or Government land. If the value of each tract is not identified in a lease or permit, the value of each tract will be proportionate to its acreage within the unit.

§ 162.11 How are leasing and permitting units advertised?

(a) If necessary to establish a fair annual rental, we will advertise a tract of individually owned or heirship land before granting or approving a lease or permit. Advertisements will require sealed bids, and may also provide for competitive bidding among the potential lessees.

(b) Advertisements will provide potential lessees with notice of the applicable tribal laws, and the basic terms and conditions of the lease or permit. Advertisements will state if there is preference for Indians or members of the tribe that has jurisdiction over the land.

§ 162.12 Can landowners grant leases or permits?

(a) We will approve a lease or non grazing permit of individually owned land negotiated and granted by:

(1) Adult owners, except those under a legal disability;

(2) Parents and other persons standing in loco parentis to minor children owners; and

(3) Guardians, conservators, and other fiduciaries appointed by courts of competent jurisdiction to act on behalf of individual Indian owners.

(b) We will approve leases or permits of tribal land negotiated and granted by tribes and tribal corporations. If allowed by its charter, a tribal corporation may grant a lease or permit for up to 25 years, including any option period, without our approval. If tribal land assigned to a tribal member under tribal law or custom which authorizes further leasing and permitting, the assignee and tribe may jointly grant a lease or permit with our approval.

(c) We will approve agricultural leases or permits granted by owners of a majority interest in heirship land to owners of a minority interest. The lease or permit must provide a fair annual rental to the other owners who do not grant the lease or permit.

§ 162.13 When do we issue leases or permits?

(a) We may grant leases or non grazing permits, or join in agreements which have been negotiated by other owners under § 162.12(a), on behalf of the following owners of individually owned land:

(1) Adults who are legally disabled;

(2) Orphaned minors;

(3) The undetermined heirs or devisees of individual Indian decedents;

(4) Individual Indians who have given us written authority to act on their behalf; and

(5) Individual Indians whose whereabouts are unknown.

(b) We may grant a lease or permit covering all tribal and individually owned interests in heirship land, if a lease or permit cannot be granted for each interest under paragraph (a) of this section and/or § 162.12.

(c) When a tribal law applies, we may only grant a lease or permit after providing the tribal and individual

Indian owners with written notice, and allowing owners 3 months to grant a lease or permit pursuant to § 162.12. We may grant a non-grazing permit covering all trust and restricted interests in a tract of heirship land if it is impractical to provide notice to the owners and no substantial injury to the land would occur. If we grant a lease or permit for 10 years or more, we will notify the owners of their right to appeal under part 2 of this chapter.

(d) We will grant permits for Government land.

§ 162.14 What land is exempt from leasing and permitting?

(a) The parent, guardian, or other person standing in loco parentis to minor children may use a tract of individually owned or heirship land without charge, if the minor children are the only owners and will directly benefit from the use. This use may continue until one of the owners becomes an adult.

(1) In that event a lease or permit must be obtained for the use to continue.

(2) The user must provide evidence of a direct benefit to the minor children, or we will proceed to lease or permit.

(b) We will not grant a lease or permit pursuant to §§ 162.13(b) or 162.42(b), if the land is used by an individual Indian owner and the other owners are receiving a fair annual rental. An individual Indian owner who is personally using heirship land must notify us of the use and provide evidence of an accounting to the other owners before the end of the applicable notice period.

§ 162.15 What administrative fees are required?

(a) We will collect an administrative fee before we approve any lease, permit, sublease, assignment, encumbrance, modification, or other related document. The fee will be based on the annual rental payable by the lessee or permittee, calculated as follows: 3 percent of the first $500, 2 percent of the next $4500, and 1 percent of all rentals exceeding $5000. Grazing permittees will also pay an annual administrative fee for the duration of their permits, at the same rates. In no event will an administrative fee be less than $2, nor exceed $250.

(b) For leases or permits with percentage rentals, we will collect an administrative fee based on the minimum annual rental or an estimated percentage rental. For crop share rental or another type of special consideration is authorized by a lease or permit, we will establish a cash rental value. We will collect an administrative fee based on the cash rental value.

(c) If a tribe performs all or part of the administrative duties, the tribe may establish an alternate fee schedule. We must approve the alternative schedule if any of the fees collected will not be deposited in the U.S. Treasury.

(d) If less than fair annual rental is payable under a lease or permit, or if a document is being processed primarily for the benefit of the owners, we will waive collection of the administrative fee. No refund of previously collected fees is allowed.

§ 162.16 Who reviews and approves leases or permits?

(a) We must identify potential impacts and ensure compliance with all applicable environmental and land use laws and ordinances before we grant or approve a lease or permit. Usually a formal assessment of potential impacts is not required if the proposed action will not result in a physical alteration of the land or a change in the land use.

(b) To assess potential impacts of approving a permit or lease, we will consider the following:

(1) Relationship between the proposed land use and the use of adjoining land;

(2) Type of improvements;

(3) Availability of essential community services; and

(4) Existence of appropriate regulatory controls and forums for adjudicating disputes.

(c) We may conditionally approve a permit or lease and reserve the right to further modify or rescind it as necessary to mitigate significant environmental impacts. You must not take possession or start operations until:

(1) You complete an environmental analysis under the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and we approve it and decide to approve the permit or lease;

(2) The lease or permit is modified to incorporate mitigation measures identified in the record of decision; and

(3) We certify that all conditions in the original grant or approval are satisfied, and we authorize you to take possession and commence operations.

(d) There is no standard format for a lease or permit. The provisions must conform to the general and special requirements in subparts (C) through (E) of this part. A lease or permit must include a citation of the authority used to grant or approve it and the delegation authority to the granting or approving official.

(e) We will not grant or approve a lease or permit more than one year before its starting date. If a lease or permit is granted or approved after its starting date, it is retroactive to that starting date except when another date is stipulated.

§ 162.17 What happens if you default?

(a) We will determine when a default occurs. We will then notify you and any sureties or encumbrancers.

(b) You have 30 days from the receipt of the notice to cure the default or provide information to justify not canceling the lease or permit. We may grant you additional time to complete corrective actions, but you must immediately begin the work necessary to cure the default and diligently proceed to completion within the time allowed.

(c) You have the right to appeal our decision on whether you defaulted under part 2 of this chapter.

§ 162.18 When can leases or permits be canceled?

(a) We will cancel a lease or permit if you fail to justify extra time to correct or fail to complete required corrective actions. We will notify you and any sureties or encumbrancers of our decision to cancel.

(b) In our notice, we will advise you of your right to appeal under part 2 of this chapter, and we will demand the payment of delinquent rentals and damages due. An appeal bond may be required, the amount of the bond will be the amount of delinquent rentals, damages, and additional rentals expected to accrue during the settlement of the appeal. An appeal filed without the required bond will be dismissed.

Subpart C—General Requirements

§ 162.20 Who can obtain a lease or permit?

(a) The lease or permit must identify all parties, including the owners, the lessee or permittee, and representatives. If a representative executes a lease or permit, it must be clearly stated who is represented and under what authority the representation is allowed.

(b) We may grant a lease or permit to an individual who has ability to contract under applicable law. If a lease or permit is granted to several individuals or an informal association of individuals, the lease or permit will be executed by each individual.

(c) Where a lease or permit is granted to a partnership, all of the general partners must execute the lease or permit in the absence of evidence that all partners are not authorized to bind the lessee or permittee.

(1) A lease or permit to a partnership will indicate whether general partners whose partnership interests are later

terminated will continue to be liable for the debts of the lessee or permittee.

(2) A lease or permit to a limited partnership, corporation, or other limited liability company will identify the place where the organizational documents of the lessee or permittee have been filed.

(d) If a lease or permit is granted to a governmental entity, that is prohibited by law from complying with any of the requirements in this part, we may waive those requirements. But, we must ensure that your sovereign immunity has been waived to the extent necessary to protect the interests of the owners.

§ 162.21 How do we describe leased or permitted areas?

A legal description or the parcel number of the premises must be in the lease or permit. If you propose any development or a metes and bounds description is used, you must provide a current survey plat showing encroachments and the natural features of the land.

§ 162.22 What uses of leased or permitted areas are allowed?

(a) A lease or permit must include:

(1) Authorized uses;

(2) Restricted uses;

(3) Prohibited uses; and

(4) Prohibition of creating a nuisance, any illegal activity, and negligent use or the waste of resources.

(b) You must conduct farming and grazing operations in accordance with the principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in tribal laws.

(c) You must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. You must also pay all costs if you do not comply.

§ 162.23 For how long are leases or permits valid?

(a) Leases and permits will specify the beginning and ending dates. The length of time allowed will be the shortest possible considering the purpose, your investment, prudent management, and efficient administration.

(b) The maximum term will depend on the purpose for the lease or permit, the location of the land, and the leasing and permitting authority.

(1) The maximum primary term for public, religious, educational, recreational, residential, or business purposes is 25 years, unless a longer term is specifically authorized by Federal statute. The maximum term for renewals and extensions is 25 years.

(2) We will usually grant agricultural leases or permits not to exceed 10 years including renewals and extensions. The maximum term is 25 years, including renewals and extensions, if substantial investment in development or production of a specialized crop is required. To determine if a long term is justified, we will consider the feasibility of the proposed development or crop production.

(3) The maximum term is 2 years when we grant a lease or permit for the undetermined heirs of an individual Indian decedent, under § 162.13(a)(3).

(c) You cannot extend a lease or permit by holdover. The only ways a lease or permit can be extended is by renewal or automatic extension. Only one extension is allowed. Leases or permits may provide multiple options for unilateral termination. The lease or permit must specify the time and manner an option to renew or terminate is allowed.

§ 162.24 What provisions must be in every lease or permit?

A lease or permit must include provisions stating that:

(a) If the land has trust or restricted status, you and your sureties obligations will be to the United States and the owners;

(b) The lease will not delay or prevent the issue of a fee patent; and

(c) If a fee patent is issued, our responsibilities are assumed by the owners; and

(d) We will notify you of any change land status.

§ 162.25 How much will the lease or permit cost?

(a) We will not approve leases or permits at less than fair annual rental by individual Indian owners or their representatives except:

(1) For religious, educational, recreational, or other public purposes;

(2) For a homesite for the owner's spouse, brother, sister, lineal ancestor, lineal descendent or co-owner.

(3) When a special relationship exists between the parties; or

(4) When we determine it is in the best interest of the owners.

(b) We will not approve leases or permits at less than fair annual rental by a tribe or tribal corporation for tribal land, except:

(1) For religious, educational, recreational, or other public purposes;

(2) For housing or agriculture to a tribal member or tribal entity; or

(3) For a business subsidy for a tribal member or tribal entity.

(c) We will specify in the lease or permit the dates that rents are due and payable. We will also develop a formula for apportionment and/or abatement of rent when you are unable to take possession for the entire rental period. We will not collect rent or other consideration more than one year before its due date unless agreed to by all parties.

(d) We will specify who receives rental payments. If we do not receive the rental payments, you must provide us proof of payment. We may suspend direct payment provisions at any time. If an owner that receives direct payments dies, you must make all future payments to us until the estate is probated.

(e) All leases or permits of more than 5 years duration must have periodic rental adjustments, except when the rental is less than fair annual rental, or if rentals are a percentage of income. We will specify how, and when the adjustments are made, who will make them, and how disputes will be settled. Unless agreed to before hand, adjustments will not:

(1) Give consideration to the value of improvements or developments completed;

(2) Be retroactive if not made on time; and

(3) Be appealable under part 2 of this chapter.

§ 162.26 Will you have to provide a security deposit?

(a) We will usually require that you provide a deposit of cash or marketable securities, a surety bond, an irrevocable letter of credit, a chattel mortgage on personal property located on the premises, or some other type of security, to ensure:

(1) Payment of one year's rental;

(2) Construction of improvements; and

(3) Performance of additional obligations, including the restoration of the land to its original condition.

(b) Tribal laws may establish specific security requirements for agricultural leases or permits, or waive our requirements.

(c) We may waive security requirements for agricultural leases or permits if annual rental is payable in advance, and if performance is secured by compliance to a conservation plan and participation in conservation programs administered by other Federal agencies.

(d) We can adjust security requirements at any time. If you default, we may apply the security and seek replenishment, or we may retain the security and proceed with a notice of default under § 162.17. We may release a security required to ensure the

construction of improvements after completion of construction.

§ 162.27 How can leases or permits be amended or modified?

(a) We will amend leases and permits the same way we approve them under §§ 162.12 and 162.13(a).

(b) Some owners of heirship land may designate one or more of their fellow owners to negotiate and/or agree to amendments or permits on their behalf. In these cases the designated owner:

(1) May negotiate or agree to amendments or permits;

(2) May consent to or approve other items as necessary; and

(3) Cannot negotiate or agree to amendments that reduce the rentals payable to the other owners or terminate or modify the term of the lease or permit.

§ 162.28 Can leases or permits be assigned, transferred, or sublet?

(a) We will approve subleases or assignments of a lease or permit only with the written consent of all parties and sureties.

(b) Under a lease or permit for business purposes, you may sublet a portion of the premises without the consent of the owners, sureties, or us, if the owners receive a fair annual rental for this additional use. A sublease will not relieve you of any liability under the lease or permit, nor will it diminish our supervisory authority.

(c) A tribal housing authority leasing tribal land may make assignments without the consent of the tribe or our approval, if the assignment is to a tribal member and associated with the transfer of a home.

§ 162.29 Can you use a lease or permit as collateral for a loan?

Yes. You may use a lease or grazing permit as loan collateral if you get our approval and the written consent of the owners and sureties. The lease or permit then has an approved encumbrance.

§ 162.30 What restrictions apply if you acquire interest in a lease or permit?

(a) If you acquire interest in a lease or permit by sale or foreclosure of an approved encumbrance:

(1) You may give amortization of the loan priority over your rental payments; and

(2) You may assign your interest without consent or approval, if the assignee agrees in writing to be bound by the terms of the lease or permit.

(b) If you acquire interest in a lease or permit other than by sale of foreclosure of an approved encumbrance:

(1) You need our approval and the consent of the owners and sureties before you may assign your interest; and

(2) The assignee must agree in writing to be bound by the terms of the lease or permit.

§ 162.31 What fees, taxes and assessments must you pay?

(a) If you lease or permit tribal land, you must pay all tribal fees, taxes, and assessments associated with the use of the premises. If you lease or permit individually owned land, you may have to pay also. You will make the payments to the appropriate tribal official.

(b) If you lease or permit land within an Indian irrigation project or drainage district, you will have to pay all charges accruing during the term of the lease or permit, except if part 171 of this chapter supersedes this section. You will make payment to the appropriate Federal official.

§ 162.32 What happens if your lease or permit includes improvements?

(a) We will set starting and ending dates for development of the premises or the construction of improvements. We will also require plans and specifications be submitted before work begins.

(b) Permanent improvements will remain on the premises at the termination of a lease or permit. You can remove other improvements within a set time period if all parties agree. You must restore the premises after removal.

§ 162.33 Do you need insurance?

You must provide enough insurance to protect all insurable improvements on the premises. You must also obtain liability insurance to protect the interests of the owners. All insurance policies must identify the individual Indian and tribal owners and the United States as insured parties.

§ 162.34 What remedies are available if there is a default or dispute?

(a) A lease or permit covering a tract of tribal land may provide a tribe with self-help remedies such as a right of entry. Upon default, a tribe may elect to exercise its rights under the lease or permit, or it may request that we cancel the lease or permit pursuant to § 162.18.

(b) If a lease or permit covering a tract of tribal land authorizes termination pursuant to state or tribal law, or provides for the resolution of certain types of disputes through arbitration, the lease or permit provisions will govern the termination or dispute arbitration.

Subpart D—Special Provisions for Grazing Permits

§ 162.40 How are grazing units established?

We will establish and modify grazing units boundaries to provide for the conservation, development, and effective use of Indian, and Government rangeland. We will consult with the tribe having jurisdiction to comply with tribal land management policies.

§ 162.41 How many animals can you graze?

(a) We will prescribe the maximum number of livestock that can graze on a grazing unit, and the seasons of authorized grazing use consistent with tribal land management policies. We will continuously review stocking rates and adjust them to meet changing conditions.

(b) A tribe may prescribe the kind of livestock that graze on rangeland within its jurisdiction. But, we may require other kinds of livestock if it is essential to the prudent management or efficient administration of the permitted land.

§ 162.42 When do we issue grazing permits?

(a) We may include one or more tracts of individually owned rangeland in a grazing unit, and grant a grazing permit covering such land, on behalf of the following owners:

(1) Adults who are legally disabled;

(2) Orphaned minors;

(3) The undetermined heirs or devisees of individual Indian decedents;

(4) Individual Indians who have given us written authority to act on their behalf; and

(5) Individual Indians whose whereabouts are unknown.

(b) We must notify the Indian owners before we grant a grazing permit on heirship rangeland. They must have 90 days to agree to the permit, withdraw their tract from the grazing unit, or stipulate a higher rental than we proposed.

(c) We may include tribal rangeland within a grazing unit, and grant a grazing permit if the tribe has given us written authority. Without tribal authority, we can only include tribal rangeland if it is essential to the prudent management or efficient administration of the land. We must give the tribe written notice 60 days before the start of a permit. We will not issue the permit if the tribe files a written objection to the proposed permit within the notice period.

§ 162.43 What happens when we implement a tribal allocation program?

(a) A tribe may authorize us to allocate rangeland under its jurisdiction without negotiation or advertisement. We may grant permits under § 162.42(a) and (b), to implement a tribal allocation program, despite there not being an applicable tribal law. The minimum grazing rentals established under § 162.45(a) will generally be payable to any individual Indian owners of allocated land.

(b) The tribe having jurisdiction will prescribe eligibility requirements with our concurrence. If a tribe fails to establish its eligibility requirements on time, we may establish the requirements after a 60-day notice.

§ 162.44 When will we give stocking rate credit?

A grazing permit may grant a permittee a stocking rate credit where the permittee owns or controls other rangeland which adjoins or lies within the grazing unit, and which is grazed in common with the permitted land. The stocking rate credit will be reflected in the grazing capacity of the grazing unit, established pursuant to § 162.40 of this part.

§ 162.45 How much will grazing rental cost?

(a) We will determine fair annual rentals for reservations with rangeland by establishing its minimum grazing rental. These minimum grazing rentals will apply to all livestock owned by non Indians or nonmembers when their livestock grazes on tribal land.

(b) Owners may set alternative minimum rentals, when we grant a grazing permit under § 162.42(a) and (b). Except when lower rentals are authorized under § 162.25(a), the alterative minimum rentals may not be lower than the minimum we set.

§ 162.46 When will permits or tracts be revoked or withdrawn?

(a) If you default, we may cancel the grazing permit under § 162.18, unless we agree to an alternative remedy.

(b) We may revoke or withdraw tracts from a permit if the tribe wants to include the land in its allocation program or an individual Indian owner wants his/her land exempt from permitting under § 162.14(b). The new user must compensate the previous user for any improvements completed before the revocation or withdrawal, and adopt an established conservation plan or develop a new plan acceptable to us. Owners may only withdraw a tract after it is fenced.

(c) We must notify the user 180 days before a revocation or withdrawal is executed. The effective date will be the next anniversary date after notice period, unless a different date is agreed to.

Subpart E—Special Requirements for Specific Reservations

§ 162.50 Crow Reservation.

(a) Some Crow Indians are classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended. They may lease their trust lands and the trust lands of their minor children for farming or grazing without our approval per the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). We must issue a public notice if competent Crow Indians authorize us to lease or permit, or assist in the leasing and permitting their lands. When this occurs, we will comply with the regulations in this part. We must approve leases or permits signed by non competent Crow Indians and leases or permits on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), sets five years as the maximum lease term for farming or grazing. The maximum term for leases or permits of irrigable lands under the Big Horn Canal is 10. You will not have a preference right to future leases or permits if the total period of encumbrance would exceed the maximum terms allowed.

(c) All leases or permits entered into by competent Crow Indians must be recorded at the Crow Agency. Recording will constitute public notice.

(1) Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The 5-year (10-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees or permittees are able to obtain new leases or permits long before the termination of existing leases or permits, they may set their own term. In these circumstances, lessees could perpetuate their leaseholds and bypass the statutory limitations on terms.

(2) In implementation of the interpretation, in paragraph (c)(1) of this section we will not record any lease which:

(i) On its face, violates statutory limitations or requirements;

(ii) Is executed more than 12 months (if a grazing lease) or 18 months (if a farming lease), before its term begins; or

(iii) Purports to cancel an existing lease with the same lessee as of a future date and take effect upon cancellation.

(3) Under a Crow tribal program, competent Crow Indians may enter into agreements which require that, for a specified term, their leases or permits be approved. Information about whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. We will return without recordation any lease entered into with a competent Crow Indian during the time such instrument is in effect that is not in accordance with the instrument.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:

(1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease;

(2) There is, of record, a lease on the land for all or a part of the same term;

(3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices; or

(4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any competent adult Crow Indian will have the full responsibility for obtaining compliance with the terms of any lease made by him/her under this section. This will not preclude action by us to ensure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians will be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights of way and easements, in accordance with applicable law and regulations. In issuing or granting of permits, leases, rights of way or easements we will give due consideration to the interests of lessees and to the adjustment of any damages to such interests. If there is a dispute over the amount of damage, the matter will be referred to us. Our determination of the amount of damage will be final.

§ 162.51 Cabazon, Augustine, and Torres-Martinez Reservations.

(a) We may grant a lease of trust or restricted land on the Cabazon, Augustine, and Torres-Martinez Indian

reservations, if the land is irrigable by the Coachella Valley County Water District and we determine that the owners are not benefitting from its use.

(b) You must file a lease of trust or restricted land on the Cabazon, Augustine, and Torres-Martinez Indian reservations with the appropriate county recorder. You must also file the lease with the Coachella Valley County Water District or other appropriate irrigation or water district.

§ 162.52 Salt River and San Xavier Reservations.

(a) A lease of trust or restricted land on the Salt River or San Xavier reservation may authorize more than one renewal period, but the maximum term allowable by law can not be exceeded. A lease for public, religious, educational, recreational, residential, or business purposes may run for a maximum term of 99 years, and a lease for farming purposes may run for up to 40 years where a substantial investment in the development of the land or the production of a specialized crop is required.

(b) If we determine that the governmental interests of a municipality contiguous to either the Salt River or San Xavier reservation would be substantially affected by the grant or approval of a lease, and these interests cannot be adequately assessed on the basis of the information available (under § 162.16), we must notify the municipality of the proposed action and give them 30 days to comment.

(c) The scenic, historic, and religious values of the Mission San Xavier del Bac on the San Xavier Reservation must be protected.

§ 162.53 Tulalip Reservation.

The Tulalip Tribes may grant a lease without our approval, if the term of the lease does not exceed 15 years including renewal or extension periods. The Tulalip Tribes may grant a lease without our approval for up to 30 years, including renewal or extension periods, under tribal law approved by us.

Date: May 31, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–14640 Filed 6–14–96; 8:45 am]

BILLING CODE 4310–02–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives Before the Agency

AGENCY: National Labor Relations Board.

ACTION: Notice of Extension of Time for filing comments to proposed rulemaking.

SUMMARY: Pursuant to a request from the Management Co-Chair of the American Bar Association Subcommittee on NLRB Practice and Procedure, the NLRB gives notice that it is extending by approximately 45 days the time for filing comments on the proposed rule changes governing misconduct by attorneys or party representatives before the Agency (61 FR 25158, May 20, 1996).

DATES: The comment period which currently ends on June 19, 1996, is extended to August 2, 1996.

ADDRESSES: Comments on the proposed rulemaking should be sent to: Office of the Executive Secretary, 1099 14th Street, NW., Rm. 11600, Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

Dated, Washington, DC, June 11, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 96–15164 Filed 6–14–96; 8:45 am]

BILLING CODE 7545–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5521–3]

Clean Air Act Proposed Interim Approval and in the Alternative Disapproval of Operating Permits Program, State of Idaho; Clean Air Act Proposed Delegation of National Emission Standards for Hazardous Air Pollutants as They Apply to Part 70 Sources and Approval of Streamlined Mechanism for Future Delegations, State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: The EPA is reproposing action on two limited aspects of the Operating Permits Program submitted by the Idaho Division of Environmental Quality for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources. The first element involves the changes EPA believes are necessary as a condition of full approval to the State's regulations dealing with general permits. The second element involves the effect of the State's environmental audit statute on the State's enforcement obligations under title V of the Clean Air Act.

In addition, if EPA grants interim approval of Idaho's title V operating permits program, EPA proposes to delegate the National Emission Standards for Hazardous Air Pollutants (NESHAP) as adopted by the State and as they apply to part 70 sources. EPA also proposes to approve a streamlined mechanism for future NESHAP delegations.

DATES: Comments must be submitted by July 17, 1996.

ADDRESSES: Comments must be submitted to Elizabeth Waddell, at EPA Region 10, 1200 Sixth Avenue, M/D–108, Seattle, WA 98101. Copies of the State's submittal and other supporting information used in developing this proposed action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Docket # 10V100, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, 1200 Sixth Avenue, M/D–108, Seattle, WA 98101, (206) 553–4303.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

1. Title V

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a