

ADDENDUM

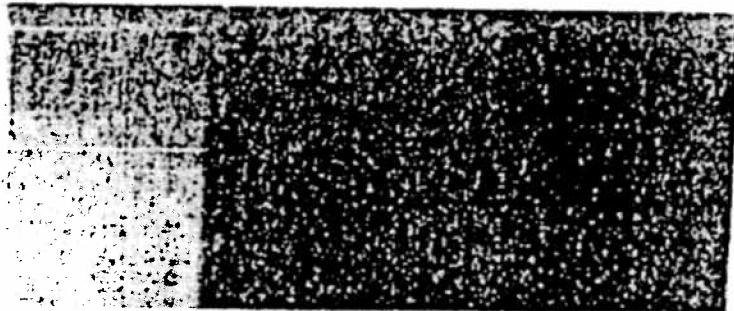
**ADDENDUM:**

<b>25 C.F.R. Title 25, Part 2</b>	<b>Addendum 1-4</b>
<b>25 C.F.R. Title 25, Part 131</b>	<b>Addendum 5 – 9</b>
<b>25. C.F.R. Title 25, Part 162 (April 1, 2007 ed.)</b>	<b>Addendum 10 – 17</b>
<b>CRIT Ordinance 04 – 06 (Oct. 12, 2006)</b>	<b>Addendum 18 - 34</b>

**25**

**Indians**

Revised as of April 1, 1975



§ 1.1

Title 25—Indians

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SUBCHAPTER A—PROCEDURES; PRACTICE

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**Authority:** The provisions of this Part 1 issued under 5 U.S.C. 301; R.E. 463, 25 U.S.C. 2.

**Source:** The provisions of this Part 1 appear at 25 F.R. 3124, Apr. 12, 1960, unless otherwise note.

§ 1.1 [Reserved]

§ 1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in Chapter I of Title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this Chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in Chapter I of Title 25 of the Code of Federal Regulations in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

§ 1.3 Scope.

Chapters I and II of this title contain the bulk of the regulations of the Department of the Interior of general application relating to Indian affairs. Subtitle B, Chapter I, Title 43 of the Code of Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of Title 43 of the Code of Federal Regulations has application to certain aspects of Indian affairs and, among other things, governs practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR Part 36. Title 30 of the Code of Federal Regulations contains regulations on oil and gas and other mining operations which, under certain circumstances, may be applicable to Indian resources.

§ 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used

Chapter I—Bureau of Indian Affairs

§ 2.1

under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate. [30 F.R. 7520, June 9, 1965]

§ 1.10 Availability of forms.

Forms upon which applications and related documents may be filed and upon which rights and privileges may be granted may be inspected and procured at the Bureau of Indian Affairs, Washington, D.C., and at the office of any Area Director or Agency Superintendent.

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**Authority:** The provisions of this Part 2 issued under R.S. 463, 465, 5 U.S.C. 301, 25 U.S.C. 2, 9.

**Source:** The provisions of this Part 2 appear at 25 F.R. 9106, Sept. 22, 1960, unless otherwise noted.

Subpart A—General

§ 2.1 Definitions.

As used in this part:

(a) "Person" includes any Indian or non-Indian individual, corporation, tribe, or other organization.

(b) "Interested party" means any person whose interests would be adversely affected by proceedings conducted under this part.

(c) "Petitioner" means any person who files an appeal under this part.

(d) "Appeal" means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges.

(e) "Complaint" means a written request for correction or reconsideration of an action or decision claimed to be legally or administratively incorrect but not violative of the complainant's own legal rights or privileges.

(f) "Right" means a favorable position in a legal relationship, the continued enjoyment of which may not be withdrawn save by a change in fundamental constitutional law.

(g) "Privilege" means a favorable position in a legal relationship, the continued enjoyment of which may be withdrawn only upon a change in law, statute or regulations upon which the relationship is based.

§ 2.2 Applicability.

This part provides appeals procedures for requesting correction of actions or decisions by officials of the Bureau of Indian Affairs where the action or decision is protested as a violation of a right or privilege of the appellant. Such rights or privileges must be based upon fundamental constitutional law, applicable Federal statutes, treaties, or upon Departmental regulations. Such regula-

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tions appear in the FEDERAL REGISTER and, where of general application in Indian affairs, in Title 25 of the Code of Federal Regulations. "Appeals" shall be processed in accordance with the regulations in this part. "Complaints," on the other hand, may be either informally or formally made and ordinarily first presented to the office immediately responsible for the action or decision questioned and thereafter if necessary to higher officials. An action or decision which is subject to appeal shall be reduced to writing by the official making the decision either at his own instance or upon request of the petitioner. The appeal procedures in this part do not apply to decisions made under statutes or other regulations which provide specific appeals procedures, nor to "complaints."

#### § 2.3 Who may appeal.

In accordance with the procedures in this part, any interested party adversely affected by a decision of an official under the supervision of an Area Director of the Bureau of Indian Affairs may appeal to the Area Director; an appeal may be taken to the Commissioner of Indian Affairs from a decision of the Area Director; and an appeal may be taken to the Secretary of the Interior from a decision of the Commissioner.

#### § 2.4 Notice of administrative action.

Notice shall be given of any action taken or decision made from which an appeal may be taken under the regulations in this part, to any Indian or Indian tribe whose legal rights or privileges are affected thereby. This notice shall be in writing and shall be given by the official making the decision or taking the action. Failure to give such notice shall not affect the validity of the action or decision, but the right to appeal therefrom shall continue under the regulations in this part for the periods hereinafter set forth.

#### Subpart B—Appeals to the Area Director or to the Commissioner

##### § 2.10 Appeal, how taken; time limit.

(a) An interested party who wishes to appeal to the Area Director or Commissioner shall initiate his appeal by filing a written petition with the official who made the decision. Such official if requested by an Indian or Indian tribe shall render such assistance as is appro-

priate in the preparation of any appeal by an Indian or Indian tribe. The petition should give an identification of the case a statement of reasons for the appeal and any arguments the petitioner wishes to make. The petition must be received in such office within 20 days after the date of the mailing of the notice of the decision complained of to the petitioner unless further time is granted pursuant to the regulations in this part. The petitioner also may file an additional written statement of reasons and arguments or briefs with the Area Director or the Commissioner within 10 days after the filing of the petition.

(b) Whether or not the decision complained of will be suspended during the appeal will be within the discretion of the officer to whom the appeal is made. He may require an adequate bond to protect the interest of any Indian, Indian tribe, or other parties involved.

##### § 2.11 Service of petition and of other documents.

(a) The petitioner, or the officer with whom the petition is filed when the petitioner is an Indian or Indian tribe not represented by counsel, shall serve a copy of the petition and of any additional written statement of reasons, arguments, or briefs on each interested party known to him as such, in the manner prescribed in § 2.33, at the time of filing thereof. Failure to serve within the time required may subject the appeal to summary dismissal as provided in § 2.36. Proof of such service as required by § 2.33 must be filed with the Area Director or Commissioner within 15 days after service unless filed with the petition or with the additional statement of reasons, arguments or briefs.

##### § 2.12 Answers.

If any party served with a petition wishes to participate in the proceeding on appeal, he must file a written answer within 20 days after service of the petition upon him. If an additional statement of reasons is filed by the petitioner, the interested party shall have 10 days after service thereof within which to answer. Answers must be filed with the Area Director, the Commissioner, or other Bureau employee with copy to the Commissioner, whichever is appropriate, and be served on the petitioner in the manner prescribed in § 2.33 at the time the answer is filed. Proof of such service, as required by § 2.33, must be filed

with the Area Director or the Commissioner within 15 days after service. If an answer is not filed within the time required, a default will not result but the answer may be disregarded in deciding the appeal.

##### § 2.13 Action by Area Director or Commissioner on appeal.

The Commissioner or the Area Director will render a written decision in each case appealed to him, copies of which will be mailed to all interested parties.

##### § 2.14 Effect of failure to appeal.

When any party fails to appeal a decision of the Superintendent, Area Director, or the Commissioner, that decision shall be final as to such party and will not be disturbed except for fraud or gross irregularity, or where it is found by higher authority that the failure to appeal on the part of an Indian or Indian tribe would result in an inequity or injustice to the Indian or Indian tribe.

#### Subpart C—Appeals to the Secretary

##### § 2.21 Right of appeal to the Secretary.

Any party adversely affected may file an appeal from a decision of the Commissioner to the Secretary except a decision which received the Secretary's approval at the time it was made.

##### § 2.22 Appeal, how taken; time limit.

(a) An interested party who wishes to file an appeal from a decision of the Commissioner to the Secretary must file a written petition with the Commissioner that he wishes to appeal. The petition must give an identification of the case, a statement of the reasons for the appeal and any arguments the petitioner wishes to make. The petition must be received in such office within 20 days after the date of the mailing of the notice of the decision complained of to the petitioner. The petitioner also may file an additional statement of reasons, arguments, or briefs with the Commissioner or Secretary within 10 days after the filing of the petition.

(b) Whether or not the decision complained of will be suspended during the appeal will be within the discretion of the Secretary. He may require an adequate bond to protect the interest of any Indian, Indian tribe, or other parties involved.

##### § 2.23 Service of petition and of other documents.

The petitioner, or the Commissioner when the petitioner is an Indian or Indian tribe not represented by counsel, shall serve a copy of the petition and any accompanying written statement of reasons, arguments or briefs on each interested party known to him as such, in the manner prescribed in § 2.33 at the time of filing the petition and at the time of filing any additional statement of reasons, arguments or briefs. Failure to serve within the time required may subject the appeal to summary dismissal as provided in § 2.36. Proof of such service as required by § 2.33 must be filed with the Secretary within 15 days after service unless filed with the petition or with the additional statement of reasons, arguments or briefs.

##### § 2.24 Answers.

If a party served with a petition wishes to participate in the proceeding on appeal, he must file a written answer within 20 days after service of the petition upon him. If an additional statement of reasons is filed by the petitioner, the interested party shall have 10 days after service thereof within which to answer. Answers must be filed with the Secretary and be served on the petitioner in the manner prescribed in § 2.33 at the time the answer is filed. Proof of such service as required by § 2.33 must be filed with the Secretary within 15 days after service. If an answer is not filed within the time required, default will not result but the answer may be disregarded in deciding the appeal.

##### § 2.25 Finality of decision.

No further right of appeal or request for reconsideration exists within the Department of the Interior from a decision of a Secretarial Officer, except when he finds as a matter of discretion that reconsideration should be had in order to avoid injustice and such decision shall constitute the final administrative action. Copies of such decision will be mailed to all interested parties.

#### Subpart D—Procedures

##### § 2.31 When a document is filed.

A document is properly filed when received in the office of the official with whom the filing is required during regular office hours. No degree of formality is required, a simple letter will suffice

and the appellant need not be represented by counsel. An appeal by an Indian or Indian tribe received in an office other than that to which it should be properly addressed shall be transmitted to the proper office and the appellant advised. If such office is unknown where received, it shall be returned to the writer.

§ 2.32 Record address.

Every interested party who files a document in connection with an appeal shall state his address at the time of initial filing in the matter. Thereafter, he must promptly inform the official with whom the filing was made of any change in address, giving appropriate identification of all matters in which he has made such a filing; otherwise, the address as stated shall be accepted as the proper address. The successors of such party shall likewise promptly inform the official of their interest in the matter and state their addresses. If an interested party fails to furnish his address as required in this section, he will not be entitled to notice in connection with the proceedings.

§ 2.33 Service.

(a) Wherever this regulation requires that a copy of a document be served, service shall be made by delivering the copy personally or by sending the document by registered or certified mail, return receipt requested, to the address of record as required in § 2.32. Where a tribe is an interested party, service shall be made on the authorized tribal official or tribal governing body. Notice of a decision is sufficient if mailed by regular mail.

(b) A document will be considered to have been served at the time (1) of acknowledgment, (2) of personal service, (3) of delivery of a registered or certified letter, or (4) of the return by the post office of an undelivered registered or certified letter.

(c) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney shall be deemed to be service on the party he

represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

§ 2.34 Computation of time for filing and service.

In computing any period of time prescribed herein for filing or serving a document, the day upon which the decision or document to be appealed or answered was mailed or served, or the day of any other event after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it falls upon a Saturday, Sunday, or legal holiday.

§ 2.35 Extensions of time.

The period for filing or serving any document may be extended or waived on behalf of an interested party by the officer to whom the appeal is taken, for good cause found by the officer. The Secretary in his discretion may extend or waive any time limitation established by these regulations.

§ 2.36 Summary dismissal.

An appeal to the Area Director, Commissioner or the Secretary may be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the petition.

(b) If the petition or additional statement of reasons in support of the appeal are not received or not served upon the interested parties within the time required.

(c) If proof of service of any document is not filed within the time required.

No appeal shall be dismissed because of a procedural error or informality which is satisfactorily explained as being the result of ignorance, mistake, or circumstances beyond the control of the appellant.

§ 2.37 Scope of review.

When a matter is before an official of the Bureau of Indian Affairs or higher echelon of the Department of the Interior on appeal, any information available to the reviewing officer may be used

whether formally part of the record, if any, or not, but where reliance is placed on information not of record such information shall be identified as to source and nature.

PART 5—RESERVATION ACCELERATION PROGRAM (RAP)

Sec.

- 5.1 Purpose.
- 5.2 Applicant eligibility.
- 5.3 Application submission and acceptance.
- 5.4 Implementation procedures.

**AUTHORITY:** The provisions of this Part 6 issued under 5 U.S.C. 301.

**Source:** 37 F.R. 23262, Nov. 11, 1972, unless otherwise noted.

§ 5.1 Purpose.

The regulations in this part govern the procedures by which Indian or Native Alaska communities may negotiate with the Bureau of Indian Affairs to restructure the Bureau's programs.

§ 5.2 Applicant eligibility.

Applicant must be an Indian or Native Alaska community currently receiving services from the Bureau of Indian Affairs or an intertribal organization representing a group of such communities.

§ 5.3 Application submission and acceptance.

(a) The governing body of the community or the intertribal organization making application must support participation in the Reservation Acceleration Program by a formal resolution. The resolution requesting participation in the program may be submitted at any time to the Commissioner of Indian Affairs.

(b) If the applicant is a community or communities served by a single Bureau of Indian Affairs Agency which serves no other communities, the Commissioner of Indian Affairs will, within 30 days after the date the application is received, inform the applicant of the date when negotiations may begin. In other cases, the Commissioner will direct members of his staff to meet with the applicant to develop special procedures that are acceptable both to the Commissioner and to the applicant. As soon as such procedures are accepted, a date for the start of negotiations will be announced.

§ 5.4 Implementation procedures.

(a) Leaders of communities selected to participate in the program will meet with the staff of the Bureau of Indian Affairs Agency that serves their communities to familiarize themselves with all aspects of the current Bureau program in their locality. The governing body will then prepare recommendations for changes in the Bureau program that it feels will support the comprehensive development plans of the community. These recommendations will be discussed with the Agency staff to determine if the Superintendent has the authority to implement them. When agreement is reached on those recommendations which are within the Superintendent's authority, he will implement them providing the changes proposed will not adversely affect services to other communities. All RAP recommendations will be forwarded to the area office.

(b) The same procedures described for negotiations at the Agency level will also apply at the area office level. In addition, when a community indicates it would be willing to exchange Bureau funds or staff in a single activity for funds or staff of another activity, the Area Director will be responsible for contacting other communities within his service area to inform them of the offer. When such an exchange is agreed to by all parties, the Area Director will implement it. Other recommendations that are within his authority and on which agreement is reached will also be implemented immediately by the Area Director.

(c) All RAP recommendations will then be forwarded to the Central Office where the negotiation process will be repeated. The Commissioner will be responsible for contacting other area offices to facilitate program exchanges that could not be made within a single area.

(d) Upon completion of the Central Office negotiations, the agreement will be signed by the tribal leader, the Superintendent, the Area Director and the Commissioner of Indian Affairs.

(e) The Area Director will be responsible for making any changes in the staffing or program of the area office that are necessary to implement the agreement.

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a selection of each selective shall be made within five days from the date of notification. Otherwise, the order of preference obtained in the drawing will forfeit and his selection may not be made prior to the selection of the holder the next highest number in the drawing, unless, due to circumstances beyond control, he is unable to appear. If selection is not made before the holder of the second highest number to have made his selection, then his number shall be placed next in line. In event he again fails to make a selection for himself or a member of his family, the Area Director or his authorized representative shall make such selections as may be necessary in order that the selection process may not be unduly delayed and that the schedule of allotments may be closed.

**30.10 Disposition of improvements.**

Any member owning improvements on land selected properly by another member may remove, or otherwise dispose of improvements, within a 60-day period from the date of notification by the Area Director to such member to dispose of such improvements. If in any event the whereabouts of the owner of improvements is not immediately known, an additional reasonable time may be allowed by the Area Director in

which to locate the owner so that he, or his duly appointed representative, may have an opportunity to remove or dispose of such improvements.

**§ 130.11 Submittal of allotment schedule.**

Upon the completion of the allotment selections, a certified allotment schedule containing the names of the allottees, the legal descriptions of their selections and other pertinent information, shall be prepared by the Area Director. The allotment schedule shall be submitted to the Secretary of the Interior, through the Commissioner of Indian Affairs, for approval.

**§ 130.12 Issuance of trust patents.**

With the request for approval of the allotment schedule, the Area Director shall also request the Secretary of the Interior to authorize the Director, Bureau of Land Management to issue trust patents for each of the selections in accordance with the act of January 12, 1891 (26 Stat. 712), as amended by the act of March 2, 1917 (39 Stat. 969, 976).

**§ 130.13 Special instructions.**

To facilitate the work of the Area Director, the Commissioner, Bureau of Indian Affairs, may issue special instructions consistent with the rules and regulations in this part.

**SUBCHAPTER L—LEASING AND PERMITTING**

**PART 131—LEASING AND PERMITTING**

- 1 Definitions.
- 2 Grants of leases by Secretary.
- 3 Grants of leases by owners or their representatives.
- 4 Use of land of minors.
- 5 Special requirements and provisions.
- 6 Negotiation of leases.
- 7 Advertisement.
- 8 Duration of leases.
- 9 Ownership of improvements.
- 10 Utilization for leasing.
- 11 Conservation and land use requirements.
- 12 Subleases and assignments.
- 13 Payment of fees and drainage and irrigation charges.
- 14 Violation of lease.
- 15 Crow Reservations.
- 16 Fort Belknap Reservation.
- 17 Cabazon, Augustine, and Torres-Martinez Reservations, California.
- 18 Colorado River Reservation.

- Sec. 131.19 Grazing units excepted.
- 131.20 San Xavier and Salt River Pima-Maricopa Reservations.

**AUTHORITY:** The provisions of this part 131 issued under 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, sec. 1, 2, 31 Stat. 229, 346, secs. 7, 12, 34 Stat. 546, 34 Stat. 1016, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 120, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 858, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 994, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1987, 64 Stat. 745, 1057, 69 Stat. 308, sec. 1, 2, 80 Stat. 962, sec. 5, 84 Stat. 45, sec. 1, 2, 4, 5, 8, 64 Stat. 470, 69 Stat. 539, 640, 72 Stat. 963; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635.

**SOURCE:** The provisions of this Part 131 appear at 26 F.R. 10966, Nov. 23, 1961, unless otherwise noted.

**§ 131.1 Definitions.**

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) "Tribal land" means land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe band, community, group or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 13, 1931 (48 Stat. 984; 25 U.S.C. 476). This term also includes assignments of tribal land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the tribe must join with the assignee in the grant of a lease.

(d) "Government land" means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which are not immediately needed for the purposes for which they were acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(e) "Permit" means a privilege revocable at will in the discretion of the Secretary and not assignable, to enter on and use a specified tract of land for a specified purpose. The terms "lease", "lessor", and "lessee", when used in this part include, when applicable, "permit", "permitter", and "permittee", respectively.

**§ 131.2 Grants of leases by Secretary.**

(a) The Secretary may grant leases on individually owned land on behalf of: (1) Persons who are non compos mentis; (2) orphaned minors; (3) the unde-

termined heirs of a decedent's estate; (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and (5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

**§ 131.3 Grants of leases by owners or their representatives.**

The following may grant leases: (1) Adults, other than those non compos mentis; (2) adults other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative; (3) the guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability; (4) tribes or tribal corporations acting through their appropriate officials.

**§ 131.4 Use of land of minors.**

The natural or legal guardian, or other person standing in loco parentis of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

**§ 131.5 Special requirements and provisions.**

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

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(1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the Federal, State or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration. For purposes of this section, "immediate family" is defined as the Indian's spouse, brothers, sisters, lineal ancestors, or descendants.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of Federal, State, or local governments; for purposes of subsidization for the benefit of the tribe; and for homestead purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises, the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the

commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

§ 131.6 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 131.3.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 131.3, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 131.2 (a) (1), (2), (3), and (5).

(c) Where the Secretary may grant leases under § 131.2 he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

§ 131.7 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 131.2 the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

§ 131.8 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 131.5(b) (1) and (2), unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Secretary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25

years, except such leases of land on the Hollywood (formerly Dunlap) Reservation, Fla.; the Navajo Reservation, Ariz., N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Satomish Reservation, Wash.; the Pueblos of Cochiti, Pajarito, Tesuque, and Zuni, N. Mex.; and land of the Colorado River Reservation, Ariz., and Calif., as stated in § 131.13, such leases may be made for terms of not to exceed 99 years.

(b) Leases may be made for 25 years for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops. To determine whether a long term lease is justified, it is necessary to give consideration to the nature of the crop to be grown, including the feasibility of raising the proposed crop. The amount or substantially of the investment, as well as the necessity of such an investment in order to raise the proposed crop, are also elements to consider in evaluating the term of the proposed lease.

(c) Farming leases not granted for the purpose of producing specialized crops shall not exceed five years for dry-farming land or ten years for irrigable land.

(d) Grazing leases which require substantial development or improvement of the land shall not exceed ten years.

(e) Leases granted by the Secretary pursuant to § 131.2 (a)(3) shall be for a term of not to exceed two years, except as otherwise provided in § 131.6(b). [26 FR 1096, Nov. 23, 1961, as amended at 29 FR 2512, Feb. 16, 1964, 34 FR 1366, Mar. 1, 1969.]

§ 131.9 Ownership of improvements.

Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 131.10 Limitation for leasing.

Where it appears advantageous to the owner and advantageous to the operation

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tion of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

**§ 131.11 Conservation and land use requirement.**

Farming and grazing operations conducted under leases granted or approved under this part shall be conducted in accordance with recognized principles of good practice and prudent management. Land use stipulations or conservation plans necessary to define such use shall be incorporated in and made a part of the lease.

**§ 131.12 Subleases and assignments.**

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

[26 P.R. 10908, Nov. 23, 1961, as amended at 29 P.R. 2542, Feb. 18, 1964]

**§ 131.13 Payment of fees and drainage and irrigation charges.**

(a) Except as provided in Part 221 of this chapter, any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) Unless otherwise provided in this part or by the Secretary, fees based upon the annual rental payable under the lease shall be collected on each lease, sublease, assignment, transfer, renewal, extension, modification, or other instrument issued in connection with the leasing or permitting of restricted lands under the regulations in this part.

(1) Except where all or any part of the expenses of the work are paid from tribal funds, in which event an additional or alternate schedule of fees may be established subject to the approval of the Secretary, the fee to be paid shall be as follows:

Rental	Percent
On the first \$500 .....	5
On the next \$4,500 .....	2
On all rental above \$5,000 .....	1
In no event shall the fee be less than \$2.00 nor exceed \$250.	

(2) In the case of percentage rental leases, the fee shall be calculated on the

basis of the guaranteed minimum rental. Where rental consists of a stated annual cash rental in addition to a percentage rental, the estimated revenue anticipated from the percentage rental shall be mutually agreed upon solely for the purpose of fixing the fee. The fee to be collected in case of crop-share or other special consideration leases or permits shall be based on an estimate of the cash rental value of the acreage, or the estimated value of the lessor's share of the crops. No fees so collected shall be refunded.

**§ 131.14 Violation of lease.**

Upon a showing satisfactory to the Secretary that there has been a violation of the lease or the regulations in this part, the lessee shall be served with written notice setting forth in detail the nature of the alleged violation and allowing him ten days from the date of receipt of notice in which to show cause why the lease should not be cancelled. The surety or sureties shall be sent a copy of each such notice. If within the ten-day period, it is determined that the breach may be corrected and the lessee agrees to take the necessary corrective measures, he will be given an opportunity to carry out such measures and shall be given a reasonable time within which to take corrective action to cure the breach. If the lessee fails within such reasonable time to correct the breach or to furnish satisfactory reasons why the lease should not be cancelled, the lessee shall forthwith be notified in writing of the cancellation of the lease and demands shall be made for payment of all obligations and for possession of the premises. The notice of cancellation shall inform the lessee of his right to appeal pursuant to Part 2 of this chapter. Where breach of contract can be satisfied by the payment of damages, the Secretary may approve the damage settlement between the parties to the lease, or where the Secretary has granted the lease, he may accept the damage settlement. With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities for the purpose of providing lands on which housing for Indians is to be constructed, may contain a provision prohibiting the cancellation or termination of the lease during the period that a loan, loan insurance, or loan guarantee is in effect without the approval of the lender or the agency of the United States which

has made, insured or guaranteed the loan for the construction of housing on the leased premises, [29 P.R. 2542, Feb. 18, 1964]

**§ 131.15 Crow Reservation.**

(a) Notwithstanding the regulations in other sections of this Part 131, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this Part 131 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than one competent devisee or heirs.

(b) The Act of May 26, 1926 (44 Stat. 655), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except on fee lands under the Big Horn Canal, which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future lease contracts. If exercised, a right thereby created the total period of encumbrance shall not exceed the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under the special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The exercise of this protection is the right to deal with the property free, clear, and unencumbered at intervals of at least as frequent as those provided by law. If lessees are able to obtain new leases long before the expiration of existing leases,

they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning 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. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(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 adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall 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 the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage. [20 F.R. 473, Jan. 18, 1964]

#### § 131.16 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (nonirrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding 10 years.

#### § 131.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the country recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 969).

#### § 131.18 Colorado River Reservation.

The Act of April 30, 1964 (78 Stat. 188), fixed the beneficial ownership of the

Colorado River Reservation in the Colorado River Indian Tribes of the Colorado River Reservation and authorized the Secretary of the Interior to approve leases of said lands for such uses and terms as are authorized by the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415, et seq.), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations. Regulations in this Part 131 govern leasing under the Act of August 9, 1955. Therefore, Part 131 shall also govern the leasing of lands on the Colorado River Reservation: *Provided, however*, That application of this Part 131 shall not extend to any lands lying west of the present course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation; *Provided further*, That any of the described lands in California shall be subject to the provisions of this Part 131 when and if determined to be within the reservation.

[30 F.R. 14156, Nov. 10, 1965, as amended by 35 F.R. 18061, Nov. 26, 1970]

#### § 131.19 Grazing units excepted.

Tribal or individually owned lands within range units established pursuant to Part 151 of this chapter, general grazing regulations, shall not be leased and permits respecting such lands shall not be issued under this part.

#### § 131.20 San Xavier and Salt River Pima-Maricopa Reservations.

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Ariz., in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in §§ 131.1 through 131.14 and in § 131.19 apply. The purpose of this § 131.20 is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious,

educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The term of a grazing lease shall not exceed 10 years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed 10 years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations of §§ 131.1 through 131.14 and in § 131.19 shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this § 131.20.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned

§ 132.1

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by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

[35 F.R. 14641, Oct. 1, 1968]

PART 132—PRESERVATION OF ANTIQUITIES

- Sec.
- 132.1 Penalty.
- 132.2 Permits.
- 132.3 Supervision.
- 132.5 Restoration of land after work completed.
- 132.6 Superintendents authorized to confiscate antiquities illegally obtained or possessed.
- 132.7 Notice to public.
- 132.8 Report of violations.
- 132.9 Report on objects of antiquity.

**AUTHORITY:** The provisions of this Part 132 issued under secs. 3, 4, 34 Stat. 225, as amended; 16 U.S.C. 432.

**SOURCE:** The provisions of this Part 132 appear at 22 F.R. 10570, Dec. 24, 1957, unless otherwise noted.

**CROSS REFERENCE:** For uniform regulations issued by the Secretaries of the Interior, Agriculture, and Army pertaining to the preservation of antiquities, see Public Lands: Interior, 43 CFR Part 3.

§ 132.1 Penalty.

The appropriation, excavation, injury, or destruction of any historic or prehistoric ruin or monument, or any object of antiquity situated on lands owned or controlled by the Government of the United States, by any person or persons, without the permission of the Secretary of the department having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, subject such person or persons to be fined not to exceed \$500 or imprisoned for not to exceed 90 days, or both.

§ 132.2 Permits.

The Departmental Consulting Archeologist may grant permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on Indian tribal lands or on individually owned trust or restricted Indian lands. Permit application forms may be obtained from the Departmental Consulting Archeologist, National Park Service, Interior Building, Washington, D.C. 20240. Completed applications should be directed to the Departmental Consulting Archeologist who will grant permits to reputable museums, universi-

ties, colleges or other recognized scientific or educational institutions, or to their duly authorized agents, subject to the regulations in this Part and 43 CFR Part 3. Copies of these regulations will be attached to the permit. Permits may be granted only after obtaining the consent of the Indian landowners, who may impose special conditions for inclusion in the permit, and the concurrence of the Bureau of Indian Affairs official having immediate jurisdiction over the property. Said Bureau official should not permit any excavation or explorations except as granted to the holders of permits.

[38 FR 18547, July 12, 1973]

§ 132.3 Supervision.

Superintendents may at all times examine the permit of any person or institution claiming the privileges referred to, and may fully examine all work done under such permit.

§ 132.4 [Reserved]

§ 132.5 Restoration of land after work completed.

After the work is completed, institutions and persons receiving permits for excavation shall restore the lands upon which they have worked to their customary condition, to the satisfaction of the Indian owners and the Bureau of Indian Affairs official having immediate jurisdiction over said lands.

[38 FR 18548, July 12, 1973]

§ 132.6 Superintendents authorized to confiscate antiquities illegally obtained or possessed.

Superintendents or others in administrative charge of reservations are hereby directed and authorized to confiscate any antiquities that may have been illegally obtained or that may now be illegally in the possession of licensed Indian traders or others and to submit a report and description of the articles confiscated and request instructions as to their disposition.

**NOTE:** This section prescribed to carry out provisions of 43 CFR 3.16

§ 132.7 Notice to public.

Copies of the act of June 8, 1906 (34 Stat. 225), and the interdepartmental regulations of December 28, 1906 (43 CFR Part 3), shall be posted conspicuously at all agency offices where the need is justified, and warning notices posted on the reservations and at or near the ruins or other articles to be protected.

Chapter I—Bureau of Indian Affairs

§ 141.3

All licensed traders shall be notified immediately that failure to cease traffic in antiquities will result in a revocation of their license.

**NOTE:** This section prescribed to carry out provisions of 43 CFR 3.16.

§ 132.8 Report of violations.

Any and all violations of the regulations in this part should be reported to the Bureau of Indian Affairs immediately.

**NOTE:** This section prescribed to carry out provisions of 48 CFR 3.16.

§ 132.9 Report on objects of antiquity.

Superintendents shall from time to time inquire and report as to the existence, on or near their reservations, of ruins, and archaeological sites, historic or prehistoric ruins, or monument, historic landmarks and prehistoric structures, and other objects of antiquity.

SUBCHAPTER M—FORESTRY

PART 141—GENERAL FOREST REGULATIONS

- Sec.
- 141.1 Definitions.
- 141.2 Scope.
- 141.3 Objectives.
- 141.4 Sustained-yield management.
- 141.5 Cutting restrictions.
- 141.6 Indian operations.
- 141.7 Timber sales from unallotted and allotment lands.
- 141.8 Advertisement of sales.
- 141.9 Timber sales without advertisement.
- 141.10 Deposit with bid.
- 141.11 Acceptance and rejection of bids.
- 141.12 Contracts required.
- 141.13 Execution and approval of contracts.
- 141.14 Bonds required.
- 141.15 Payments for timber.
- 141.16 Advance payments for allotment timber.
- 141.17 Time for cutting timber.
- 141.18 Deductions for administrative expenses.
- 141.19 Timber cutting permits.
- 141.20 Free-use cutting without permits.
- 141.21 Fire protective measures.
- 141.22 Trespass.
- 141.23 Appeals under timber contracts.

**AUTHORITY:** The provisions of this Part 141 issued under secs. 7, 8, 36 Stat. 657, 25 U.S.C. 404, 407; and sec. 6, 48 Stat. 986, 28 U.S.C. 450; 47 Stat. 1417, 25 U.S.C. 418; 141.23 issued under 5 U.S.C. 301, 25 U.S.C. 2, unless otherwise noted.

**CROSS REFERENCES:** For rights-of-way, see Part 161 of this chapter. For sale of forest products, Red Lake Indian Reservation, Minnesota, see Part 144 of this chapter. For sale of lumber and other forest products produced by Indian enterprises from other reservations, see Part 142 of this chapter. For wilderness and roadless areas, see Part 163 of this chapter. For law and order, see Part 11 of this chapter.

§ 141.1 Definitions.

As used in this part:  
(a) "Secretary" means the Secretary of the Interior or his authorized representative

(b) "Indian forest lands" means lands held in trust by the United States for Indian tribes or individual Indians or owned by such tribes or individuals subject to restrictions against alienation, that are considered to be chiefly valuable for the production of forest crops, or on which it is considered that a forest cover should be maintained in order to protect watershed or other values. A formal inspection and land classification action is not required before applying the provisions of this Part 141 to the management of any particular tract of land.  
(c) "Stumpage value" means the value of uncut timber as it stands in the woods.

(d) "Stumpage rate" means the stumpage value per thousand board feet or other unit of measure.  
[24 F.R. 2670 Sept. 30, 1959, as amended at 27 F.R. 12929, Dec. 29, 1962]

§ 141.2 Scope.

The regulations in this part are applicable to all Indian forest lands except as this part may be superseded by special legislation.

[24 F.R. 7470, Sept. 30, 1959]

§ 141.3 Objectives.

(a) The following objectives are to be sought in the management of unallotted Indian forest lands in accordance with the principles of sustained yield:

(1) The preservation of such lands in a perpetually productive state by providing effective protection, by applying sound silvicultural and economic principles to the harvesting of the timber, and by making adequate provision for new forest growth as the timber is removed.

(2) The regulation of the cut in a manner which will insure method and

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**§ 161.801 May decisions under this part be appealed?**

(a) Appeals of BIA decisions issued under this part may be taken in accordance with procedures in part 2 of 25 CFR.

(b) All appeals of decisions by the Grazing Committee and Resources Committee will be forwarded to the Navajo Nation's Office of Hearings and Appeals.

**§ 161.802 How will the Navajo Nation recommend amendments to this part?**

The Resources Committee will have final authority on behalf of the Navajo Nation to approve amendments to the Navajo Partitioned Lands grazing provisions, upon the recommendation of the Grazing Committee and the Navajo-Hopi Land Commission, and the concurrence of BIA.

**PART 162—LEASES AND PERMITS**

**Subpart A—General Provisions**

Sec.

- 162.100 What are the purposes of this part?
- 162.101 What key terms do I need to know?
- 162.102 What land, or interests in land, are subject to these regulations?
- 162.103 What types of land use agreements are covered by these regulations?
- 162.104 When is a lease needed to authorize possession of Indian Land?
- 162.105 Can tracts with different Indian landowners be unitized for leasing purposes?
- 162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?
- 162.107 What are BIA's objectives in granting or approving leases?
- 162.108 What are BIA's responsibilities in administering and enforcing leases?
- 162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?
- 162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?
- 162.111 Who owns the records associated with this part?
- 162.112 How must records associated with this part be preserved?
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**Subpart B—Agricultural Leases**

**GENERAL PROVISIONS**

- 162.200 What types of leases are covered by this subpart?
- 162.201 Must agricultural land be managed in accordance with a tribe's agricultural resource management plan?
- 162.202 How will tribal laws be enforced on agricultural land?
- 162.203 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?
- 162.204 Must notice of applicable tribal laws and leasing policies be provided?
- 162.205 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?

**HOW TO OBTAIN A LEASE**

- 162.206 Can the terms of an agricultural lease be negotiated with the Indian landowners?
- 162.207 When can the Indian landowners grant an agricultural lease?
- 162.208 Who can represent the Indian landowners in negotiating or granting an agricultural lease?
- 162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?
- 162.210 When can BIA grant a permit covering agricultural land?
- 162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?
- 162.212 When will the BIA advertise Indian land for agricultural leases?
- 162.213 What supporting documents must be provided prior to BIA's grant or approval of an agricultural lease?
- 162.214 How and when will BIA decide whether to approve an agricultural lease?
- 162.215 When will an agricultural lease be effective?
- 162.216 When will a BIA decision to approve an agricultural lease be effective?
- 162.217 Must an agricultural lease or permit be recorded?

**LEASE REQUIREMENTS**

- 162.218 Is there a standard agricultural lease form?
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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, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 477, 635, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733; 44 U.S.C. 3101 *et seq.*

SOURCE: 66 FR 7109, Jan. 22, 2001, unless otherwise noted.

**Subpart A—General Provisions**

**§ 162.100 What are the purposes of this part?**

- (a) The purposes of this part are to:
  - (1) Identify the conditions and authorities under which certain interests in Indian land and Government land may be leased;
  - (2) Describe the manner in which various types of leases may be obtained;
  - (3) Identify terms and conditions that may be required in various types of leases;
  - (4) Describe the policies and procedures that will be applied in the administration and enforcement of various types of leases; and

(b) Identify special requirements that apply to leases made under special acts of Congress that apply only to certain Indian reservations.

(b) This part includes six subparts, including separate, self-contained subparts relating to Agricultural Leases (Subpart B), Residential Leases (Subpart C, reserved), Business Leases (Subpart D, reserved), and Non-Agricultural Leases (Subpart F), respectively. Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases covered by subpart E are also subject to the general provisions in subparts A through F, respectively, except to the extent those general provisions are inconsistent with any of the special provisions in subpart E or any special act of Congress under which those leases are made.

(c) These regulations apply to all leases in effect when the regulations are promulgated; however, unless otherwise agreed by the parties, these regulations will not affect the validity or terms of any existing lease.

**§ 162.101 What key terms do I need to know?**

For purposes of this part:

*Adult* means an individual who is 18 years of age or older.

*Agricultural land* means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

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

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

*Assignment* means an agreement between a tenant and an assignee, whereby the assignee acquires all of the tenant's rights, and assumes all of the tenant's obligations, under a lease.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of BIA under § 162.109 of this part.

*Bond* means security for the performance of certain lease obligations, as furnished by the tenant, or a guaranty of such performance as furnished by a third-party surety.

*Day* means a calendar day.

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

*Fair annual rental* means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market.

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

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

*Government land* means any tract, or interest therein, in which the surface estate is owned by the United States and administered by BIA, not including tribal land that has been reserved for administrative purposes.

*Immediate family* means a spouse, brother, sister, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner.

*Indian land* means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

*Indian landowner* means a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

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

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

*Lease* means a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration. Unless otherwise provided,

the use of this term will also include permits, as appropriate.

*Lessee* means tenant, as defined in this section.

*Life estate* means an interest in Indian land that is limited, in duration, to the life of the life tenant holding the interest, or the life of some other person.

*Majority interest* means more than 50% of the trust or restricted interests in a tract of Indian land.

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

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

*NEPA* means the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*)

*Non compos mentis* means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

*Permit* means a written agreement between Indian landowners and the applicant for the permit, also referred to as a permittee, whereby the permittee is granted a revocable privilege to use Indian land or Government land, for a specified purpose.

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

*Restricted land or restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Secretary* means the Secretary of the Interior or an authorized representative.

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

*Surety* means one who guarantees the performance of another.

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*Tenant* means a person or entity who has acquired a legal right of possession to Indian land by a lease or permit under this part.

Trespass means an unauthorized possession, occupancy or use of Indian land.

*Tribal land* means the surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476).

*Tribal laws* means the body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common law.

*Trust land* means any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

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

*Us/We/Our* means the Secretary or BIA and any tribe acting on behalf of the Secretary or BIA under § 162.110 of this part.

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

**§ 162.102 What land, or interests in land, are subject to these regulations?**

(a) These regulations apply to Indian land and Government land, including any tract in which an interest is owned by an individual Indian or tribe in trust or restricted status.

(b) Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be leased under these regulations, unless the lease is for less than one year in duration. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the lease must be paid to the life tenant under part 179 of this chapter.

(c) In approving a lease under these regulations, we will not lease any fee interest in Indian land, nor will we collect rent on behalf of any fee owners. The leasing of the trust and restricted interests of the Indian landowners will not be conditioned on a lease having been obtained from the owners of any fee interests. Where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a lease of the remainder interests only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners.

(d) These regulations do not apply to tribal land that is leased under a corporate charter issued by us pursuant to 25 U.S.C. § 477, or under a special act of Congress authorizing leases without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such leases on behalf of the Indian landowners.

(e) To the extent any regulations in this part conflict with the Indian Land Consolidation Act Amendments of 2000, Public Law 106-462, the provisions of that Act will govern.

**§ 162.103 What types of land use agreements are covered by these regulations?**

(a) These regulations cover leases that authorize the possession of Indian land. These regulations do not apply to:

(1) Mineral leases, prospecting permits, or mineral development agreements, as covered by parts 211, 212 and 225 of this chapter and similar parts specific parts specific to particular tribes;

(2) Grazing permits, as covered by part 166 of this chapter and similar

parts specific parts specific to particular tribes;

(3) Timber contracts, as covered by part 163 of this chapter;

(4) Management contracts, joint venture agreements, or other encumbrances of tribal land, as covered by 25 U.S.C. § 81, as amended;

(5) Leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself; and

(6) Easements or rights-of-way, as covered by part 169 of this chapter.

(b) Where appropriate, the regulations in this part that specifically refer to leases will apply to permits that authorize the temporary, non-possessory use of Indian land or Government land, not including:

(1) Land assignments and similar instruments authorizing temporary uses by tribal members, in accordance with tribal laws or custom; and

(2) Trader's licenses issued under part 140 of this chapter.

**§ 162.104 When is a lease needed to authorize possession of Indian Land?**

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

(b) An Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given the landowner's permission to take or continue in possession without a lease.

(c) A parent or guardian of a minor child who owns 100% of the trust interests in the land may take possession without a lease. We may require that the parent or guardian provide evidence of a direct benefit to the minor child. When the child reaches the age of majority, a lease must be obtained under these regulations to authorize continued possession.

(d) Any other person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a lease under these regulations before taking possession.

**§ 162.105 Can tracts with different Indian landowners be unitized for leasing purposes?**

(a) A lease negotiated by Indian landowners may cover more than one tract of Indian land, but the minimum consent requirements for leases granted by Indian landowners under subparts C through D of this part will apply to each tract separately. We may combine multiple tracts into a unit for lease, negotiated or advertised by us, if we determine that unitization is in the Indian landowners' best interests and consistent with the efficient administration of the land.

(b) Unless otherwise provided in the lease, the rent or other consideration derived from a unitized lease will be distributed based on the size of each landowner's interest in proportion to the acreage within the entire unit.

**§ 162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?**

(a) If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the party in possession is engaged in negotiations with the Indian landowners to obtain a lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

(b) Where a trespass involves Indian agricultural land, we will also assess civil penalties and costs under part 166, subpart I, of this chapter.

**§ 162.107 What are BIA's objectives in granting or approving leases?**

(a) We will assist Indian landowners in leasing their land, either through negotiations or advertisement. In reviewing a negotiated lease for approval, we will defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible. In granting a lease on the landowners' behalf, we will obtain a fair annual rental and attempt to ensure (through proper notice) that the use of the land is consistent with the

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landowners' wishes. We will also recognize the rights of Indian landowners to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved.

(b) We will recognize the governing authority of the tribe having jurisdiction over the land to be leased, preparing and advertising leases in accordance with applicable tribal laws and policies. We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f *et seq.*

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

(a) We will ensure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions. We will also assist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to us under these or other regulations.

(b) We will ensure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Indian landowners and respond to concerns expressed by them. We will take immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.

**§ 162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?**

(a) Leases granted or approved under this part will be subject to federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these regulations.

(b) Tribal laws generally apply to land under the jurisdiction of the tribe

enacting such laws, except to the extent that those tribal laws are inconsistent with these regulations or other applicable federal law. These regulations may be superseded or modified by tribal laws, however, so long as:

(1) The tribal laws are consistent with the enacting tribe's governing documents;

(2) The tribe has notified us of the superseding or modifying effect of the tribal laws;

(3) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with our general trust responsibility under federal law; and

(4) The superseding or modifying of the regulation applies only to tribal land.

(c) State law may apply to lease disputes or define the remedies available to the Indian landowners in the event of a lease violation by the tenant, if the lease so provides and the Indian landowners have expressly agreed to the application of state law.

**§ 162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?**

Except insofar as these regulations provide for the granting, approval, or enforcement of leases and permits, the provisions in these regulations that authorize or require us to take certain actions will extend to any tribe or tribal organization that is administering specific programs or providing specific services under a contract or self-governance compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450f *et seq.*).

**§ 162.111 Who owns the records associated with this part?**

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

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

**§ 162.112 How must records associated with this part be preserved?**

(a) Any organization, including tribes and tribal organizations, that have records identified in § 162.111(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 162.111(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

**§ 162.113 May decisions under this part be appealed?**

Yes. Except where otherwise provided in this part, appeals from decisions by the BIA under this part may be taken pursuant to 25 CFR part 2.

**Subpart B—Agricultural Leases**

GENERAL PROVISIONS

**§ 162.200 What types of leases are covered by this subpart?**

The regulations in this subpart apply to agricultural leases, as defined in this part. The regulations in this subpart may also apply to business leases on agricultural land, where appropriate.

**§ 162.201 Must agricultural land be managed in accordance with tribe's agricultural resource management plan?**

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

(b) A ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the Indian tribe and its members and identify holistic management objectives; and

(5) Identify actions to be taken to reach established objectives.

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

**§ 162.202 How will tribal laws be enforced on agricultural land?**

(a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

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

(1) Assist in the enforcement of tribal laws;

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(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 adult Crow Indian classified as incompetent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the absence of granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of such damage.

**2.501 Fort Belknap Reservation.**

Not to exceed 20,000 acres of allotted tribal lands (non-irrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding ten years.

**2.502 Cabazon, Augustine, and Torres-Martinez Reservations, California.**

(a) Upon a determination by the Secretary that the owner or owners are making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the

regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the county recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

**§ 162.503 San Xavier and Salt River Pima-Maricopa Reservations.**

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Arizona, in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in part 162 apply. The purpose of this section is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed ten years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed ten years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term

beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations in part 162 of this title shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this section.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

**Subpart F—Non-Agricultural Leases**

**§ 162.600 What types of leases are covered by this subpart?**

The regulations in this subpart apply to any leases other than agricultural leases, as defined in this part. To the

extent that any of the regulations in this subpart conflict with the provisions of the Indian Land Consolidation Act Amendments of 2000, Pub. Law. 106-462, the provisions of that Act will govern.

**§ 162.601 Grants of leases by Secretary.**

(a) The Secretary may grant leases on individually owned land on behalf of:

- (1) Persons who are non compos mentis;
- (2) Orphaned minors;
- (3) The undetermined heirs of a decedent's estate;

(4) The heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and

(5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

**§ 162.602 Grants of leases by owners or their representatives.**

The following may grant leases:

(a) Adults, other than those non compos mentis.

(b) Adults, other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative.

(c) The guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability.

(d) Tribes or tribal corporations acting through their appropriate officials.

**§ 162.603 Use of land of minors.**

The natural or legal guardian, or other person standing in loco parentis

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of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

§ 162.604 Special requirements and provisions.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

(1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the federal, state or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of federal, state, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

§ 162.605 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.602 of this subpart.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 162.602 of this subpart, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 162.601(a)(1), (2), (3), and (5) of this subpart.

(c) Where the Secretary may grant leases under § 162.601 of this subpart he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

§ 162.606 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 162.601 of this subpart the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

§ 162.607 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow

the highest economic return to the owner consistent with prudent management and conservation practices; except as otherwise provided in this part shall not exceed the number of years provided for in this section except for those leases authorized by § 162.604(b)(1) and (2) of this subpart. The consideration for the lease shall be based primarily on percentages of the net income produced by the land, and shall provide for periodic review at intervals of less than five-year intervals, of the economic conditions at the time, exclusive of improvements or development required by contract or the contribution of such improvements. Any adjustment of rental resulting from such review may be made by the Secretary who has the authority to grant leases otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 99 years but may include provisions authorizing a renewal or an extension of one additional term of not to exceed 99 years, except such leases of land in Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz., N. Mex., and Utah; the Pinal Springs Reservation, Calif.; the Northern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif.; the Fort Nevada, the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., N. Mex., which leases may be made for terms of not to exceed 99 years.

(b) Leases granted by the Secretary pursuant to § 162.601(a)(3) of this subpart shall be for a term of not to exceed two years except as otherwise provided in § 162.605(b) of this subpart.

§ 162.608 Ownership of improvements.

Improvements placed on the leased land shall become the property of the

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lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 162.609 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

§ 162.610 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of

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the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

§ 162.611 Payment of fees and drainage and irrigation charges.

(a) Any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.

(c) Except as provided in paragraph (d) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage or cropshare rent that can be reasonably estimated.

(d) The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00, and any administrative fees that have been paid will be non-refundable. However, we may

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waive all or part of these administrative fees, in our discretion.

(e) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

§ 162.612 Can a lease provide for negotiated remedies in the event of a violation?

(a) A lease of tribal land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. A lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.619(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) A lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.619 of this subpart.

§ 162.613 Will BIA notify a tenant when a rent payment is due under a lease?

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

§ 162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?

A lease must specify the rate at which interest will accrue on any rent

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payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.618 of this subpart.

§ 162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?

(a) A tenant's failure to pay rent in the time and manner required by a lease will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.618(b) of this subpart and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges and late payment penalties. We may also cancel the lease under § 162.619 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

(c) Partial payments and underpayments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any

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other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

(d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. Any payment made to cure such a violation, and any future payments by the same tenant, must be made by an alternative payment method approved by us.

**§ 162.616 Will any special fees be assessed on delinquent rent payments due under a lease?**

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

The tenant will pay	For
(a) \$50.00	Administrative fee for dishonored checks
(b) \$15.00	Administrative fee for BIA processing of each notice or demand letter
(c) 18% of balance due	Administrative fee charged by Treasury following referral for collection of delinquent debt.

**§ 162.617 How will BIA determine whether the activities of a tenant under a lease are in compliance with the terms of the lease?**

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

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

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**§ 162.618 What will BIA do in the event of a violation under a lease?**

(a) If we determine that a lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within ten business days of the receipt of a notice of violation, the tenant must:

- (1) Cure the violation and notify us in writing that the violation has been cured;
- (2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or
- (3) Request additional time to cure the violation.

**§ 162.619 What will BIA do if a violation of a lease is not cured within the requisite time period?**

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

- (1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.620 through 162.621 of this subpart;
- (2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;
- (3) The Indian landowners wish to invoke any remedies available to them under the lease; or
- (4) The tenant should be granted additional time in which to cure the violation.

(b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as

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appropriate. The cancellation letter will:

- (1) Explain the grounds for cancellation;
- (2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;
- (3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.620 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and
- (4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

**§ 162.620 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving leases?**

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.619 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

**§ 162.621 When will a cancellation of a lease be effective?**

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.620 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not

filed in accordance with § 162.620 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us

**§ 162.622 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?**

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a lease, we will take appropriate emergency action. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

**§ 162.623 What will BIA do if a tenant holds over after the expiration or cancellation of a lease?**

If a tenant remains in possession after the expiration or cancellation of a lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

**PART 163—GENERAL FORESTRY REGULATIONS**

**Subpart A—General Provisions**

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- 163.1 Definitions.
  - 163.2 Information collection.
  - 163.3 Scope and objectives.
  - 163.4 Secretarial recognition of tribal laws.

**Subpart B—Forest Management and Operations**

- 163.10 Management of Indian forest land.
- 163.11 Forest management planning and sustained yield management.
- 163.12 Harvesting restrictions.
- 163.13 Indian tribal forest enterprise operations.
- 163.14 Sale of forest products.
- 163.15 Advertisement of sales.
- 163.16 Forest product sales without advertisement.

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ORDINANCE 04-06

Be it enacted by the Tribal Council of the Colorado River Indian Tribes (hereinafter the Tribal Council) an ordinance establishing procedures for obtaining possession of real property within the Colorado River Indian Reservation, to be effective October 12, 2006, as follows:

PROPERTY CODE  
ARTICLE I. EVICTIONS

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PROPERTY CODE

**PROPERTY CODE  
ARTICLE I. EVICTIONS**

[NOTE: Except as otherwise noted the provisions of Ordinance No. 04-06 were enacted on October 12, 2006, and becomes effective upon its enactment.]

**ARTICLE I. EVICTIONS**

**CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

**Section 1-101. Purpose.**

The purpose of this Article is to provide authority for lessors or landlords, including the Tribes, to regain possession of real property and to evict a lessee or tenant or other occupant therefrom.

**Section 1-102. Jurisdiction.**

The provisions of this Article shall govern relationships between all landlords and tenants and over all property whether private or public real property within the exterior boundaries of the CRIT reservation and subject to the authority of the Tribes.

**Section 1-103. Relation to other laws.**

The remedies established in this Article are in addition to any other remedies that may be available under Tribal, federal or state law.

**Section 1-104. Definitions.**

As used in this Article, the following words will have the meanings given them in this Section unless the context plainly requires otherwise.

- a) "Landlord" means the Tribes, [CRRMC/Indian Housing Authority,] a person, or entity that is the owner, lessor, or sublessor of real property that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.
- b) "Lease" means all agreements, including, but not limited to a permit, rental agreement, or lease-to-purchase agreement, whether written or oral, as well as valid rules and regulations, regarding the terms and conditions of the use or occupancy of real property.
- c) "Lessor" means the legal, beneficial, or equitable owner of real property under a lease, and may include the heir(s), successor(s), executor(s), administrator(s), or

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assign(s) of the lessor.

- d) "Lessee" means the user and/or occupier of real property under a lease and includes a homebuyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the CRRMC/Indian Housing Authority.
- e) "Nuisance" means the maintenance or allowance on real property of a condition which the lessee has the ability to control and which unreasonably threatens the health or safety of the public or nearby land users or unreasonably and substantially interferes with the ability of nearby property users to enjoy the reasonable use and occupancy of their property.
- f) "Person" includes an individual or organization, and where the meaning of this Article requires, it may mean the Tribes, a public agency, corporation, partnership, or other entity.
- g) "Premises" means a portion of real property, and all facilities and areas connected thereto, including grounds, common areas, and facilities, intended for the use of lessees or tenants or the use of which is promised for lessees or tenants.
- h) "Rent" means all periodic payments to be made to the landlord or lessor under a lease.
- i) "Reservation" means the Colorado River Indian Reservation.
- j) "Tenant" means the lessee(s), sublessee(s), or person(s) entitled under a lease to occupy real property to the exclusion of others.
- k) "Term of lease" means the initial term or any renewal or extension of the written rental agreement currently in effect not including any wrongful holdover period.
- l) "Tribal Council" or "Council" means the tribal council of the Colorado River Indian Tribes.
- m) "Tribal Court" or "Court" means the tribal court established by the Colorado River Indian Tribes.
- n) "Tribes" means the Colorado River Indian Tribes.
- o) "Waste" means spoil or destruction by a tenant of land, buildings, gardens, trees, or improvements which results in substantial injury to the lessor's interest in real property.



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- p) "Writ of Restitution" means an order of the Tribal Court restoring an owner, lessor or landlord to possession of real property and evicting a lessee, tenant or other occupant therefrom.
- q) "Writ of Possession" means an order of the Tribal Court giving immediate possession of real property to the person entitled to such possession under the court order.

**CHAPTER 2. PROCEDURES FOR SELF-HELP EVICTION**

**Section 1-201. Use of Self-Help Eviction.**

The Tribes may utilize self-help eviction in accordance with this Chapter.

**Section 1-202. Grounds.**

The Tribes may utilize self-help eviction under the following circumstances:

- (a) Where a lease has expired or been canceled and the lessor has given notice, as required by the lease and in accordance with the law, that the lease has been terminated and the former lessee must vacate the premises, and the time provided in the notice to vacate has expired; or
- (b) Where the person to be evicted has entered onto or remains on the premises of another without permission and without having any substantial claim of a lease or other legal interest in the premises; or
- (c) Ten (10) days after the lessee's interest has been foreclosed in a foreclosure proceeding in the Tribal Court ; or

**Section 1-203. Approval of the Tribal Council.**

Self-help evictions pursuant to this Chapter may be conducted only with the approval of the Tribal Council pursuant to a Resolution adopted by the Council for that purpose, but shall not occur when termination of the lease is subject to appeal and the appeal is pending. The Council may consider such a Resolution upon request by the Attorney General or on the motion of any Council Member.

**Section 1-204. Notice.**

Prior to conducting any self-help eviction pursuant this Chapter, the Realty Services Department or other designee of the Council (known henceforth in this Chapter as "Realty Officer") shall serve a three(3) day written notice upon the person to be evicted that the person is occupying Reservation premises without the consent of the Tribes and

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that unless the person to be evicted voluntarily vacates such Reservation premises and removes the person's property from the premises within three (3) calendar days of receiving the notice, the Tribes shall take possession of the premises in question by forcible entry and dispose of any remaining property pursuant to the June 10, 1994 Tribes' Abandoned Property Resolution, (Resolution #66-94).

(a) The notice required by this Section may be served either:

- (1) By delivering a copy to the person to be evicted personally; or
- (2) If the person is absent from the premises, by leaving a copy with a person of suitable age and discretion on the premises and sending a copy through the United States Mail addressed to the person at his or her current place of residence, if known, or the person's last known place of residence or business; or
- (3) If a person of suitable age or discretion on the premises cannot be found, then by fixing a copy in a conspicuous place on the premises and by sending a copy through the United States Mail addressed to the person to be evicted at his or her current place of residence, if known, or the person's last known place of residence or business; or
- (4) If a person of suitable age or discretion on the premises cannot be found, and a place of residence or business cannot be ascertained, then by fixing a copy in a conspicuous place on the premises.

(b) The notice required by this Section may be combined with any other notice given to vacate the property pursuant to Section 1-202 of this Chapter.

**Section 1-205. Self-Help Evictions.**

The Realty Officer is hereby authorized, after the notices required by Section 1-204 of this Chapter have been given and in accordance with the provisions of this Chapter, to take possession of the premises by forcible entry, including, but not limited to, the following means:

- (a) Forcing locks, breaking open doors, windows, or other parts of a dwelling and any gates, fences, or security systems on the property; or
- (b) Using whatever reasonable force is necessary to retake possession of and reoccupy the premises.

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**Section 1-206. Abandoned Property.**

Once the Realty Officer has taken possession of any Reservation premises pursuant to this Chapter, the Realty Officer is hereby authorized to remove any personal property from such premises and to raze or remove any structure located upon such premises. Any property removed pursuant to this Chapter shall be disposed of in accordance with the June 10, 1994 Tribes' Abandoned Property Resolution, (Resolution #66-94).

**Section 1-207. Posting the Property.**

After taking possession of any Reservation premises pursuant to this Chapter, the Realty Officer shall post the property with signs indicating that the property is Reservation premises and that trespassers will be prosecuted. In addition, the Realty Officer shall notify appropriate law enforcement officials that the Tribes has taken possession of such premises and that any person who enters such premises without the express written permission of the Tribes should be arrested and prosecuted.

**Section 1-208. Breach of Peace Prohibited.**

In taking possession of any Reservation premises pursuant to this Chapter, the Realty Officer shall not breach the peace or threaten or use any physical force against any person.

**CHAPTER 3. SUMMARY TRIBAL COURT PROCEDURE FOR EVICTION AND REGAINING POSSESSION OF LANDS**

**Section 1-301. Grounds for Eviction.**

A person may be evicted for:

- (a) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave, including where a lease has expired or been cancelled, or where the person to be evicted entered onto the premises without permission, or under other circumstances described in Chapter 2, Section 1-202 of this Article; or
- (b) Nonpayment of rent under an agreement for the lease of the premises when such payments are not made after ten (10) calendar days of the agreement date for payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy; or
- (c) Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand;

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or

- (d) Nuisance, waste, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quiet enjoyment of property; or
- (e) Serious or repeated violations of the lease, any applicable rules or regulations, or any applicable building or housing codes; or
- (f) Conviction of a criminal offense where the activity of such criminal offense threatens the health, safety, welfare, or right of peaceful enjoyment of other residents of the community and no appeal is pending and he has been given notice, in accordance with this Article, that the lease shall terminate at a time specified by the notice, but not less than thirty (30) calendar days from the date of such notice; or
- (g) Conviction of a criminal offense regarding drugs on or near the premises and no appeal is pending and he has been given notice, in accordance with this Article, that the lease shall terminate at a time specified by the notice, but not less than thirty (30) calendar days from the date of such notice; or
- (h) Under other terms in the lease which do not conflict with the provisions of this Article

**Section 1-302. Notice to Quit Requirements.**

- (a) When Notice to Quit is Required.
  - (1) When a landlord desires to obtain possession of premises that are occupied without permission or agreement, following any reasonable demand to leave as described in Section 1-301 (a) of this Chapter, no additional notice to quit is required.
  - (2) When a landlord desires to obtain possession of premises, and when there exists one or more legally cognizable reasons to evict the tenant as set forth in Section 1-301 (b)-(h) of this Chapter, the landlord shall give notice to the tenant to quit possession of such premises pursuant to this Section.
- (b) Statement of Grounds for Eviction Required. The notice to quit shall be addressed to the tenant and shall state the reason(s) for the termination of the tenancy and the date by which the tenant is required to quit possession of the premises.
- (c) [Form of Notice. The notice shall be in writing and in substantially the following form:

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"I (or we) hereby give you notice that you are to quit possession or occupancy of the premises now occupied by you at (insert the address or other reasonable description of the location of the premises), on or before the (insert the date) for the following reason (insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (insert the signature, name and address of the landlord, as well as the date and place of signing)."]

(d) Time Requirements for Notice. The notice required by this Section must be delivered within the following periods of time:

- (1) No less than seven (7) calendar days before the date to quit for any failure to pay rent or other payments required by the agreement.
- (2) No less than three (3) calendar days prior to the date to quit for nuisance, serious injury to property, criminal convictions set forth in Section 1-301 (f) and (g), or injury to persons.
- (3) In situations in which there is an emergency, such as a fire or condition making a dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to the public health or safety, the notice may be made in a period of time which is reasonable, given the circumstances.
- (4) No less than fourteen (14) calendar days in all other circumstances.

**Section 1-303.Serving the Notice to Quit.**

(a) Any notice to quit must be in writing, and must be delivered to the tenant by either:

- (1) Delivering a copy to the tenant personally; or
- (2) If the tenant be absent from the premises, by leaving a copy with some person of suitable age and discretion on the premises and sending a copy through the United States Mail addressed to the tenant at his or her current place of residence, if known, or his or her last known place of residence or business; or
- (3) If a person of suitable age or discretion on the premises cannot be found, then by fixing a copy in a conspicuous place on the premises and by sending a copy through the United States Mail addressed to the tenant at his or her current place of residence, if known, or his or her last known place of residence or business; or
- (4) If a person of suitable age or discretion on the premises cannot be found,



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and a place of residence or business cannot be ascertained, then by fixing a copy in a conspicuous place on the premises.

(b) Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of this Section.

**Section 1-304. Summons and Complaint.**

If, after the date set forth in the notice to quit, the tenant has not quit possession, the landlord may commence an action in the Tribal Court for eviction and such other relief as the Court may deem just and proper, by filing with the Tribal Court, in writing, the following documents:

(a) A complaint stating:

- (1) The names of the person(s) against whom the suit is brought;
- (2) A description of the lease, if any;
- (3) The address or reasonable description of the location of the premises;
- (4) The grounds for eviction;
- (5) Evidence demonstrating that the notice to quit has been properly served, which may include an affidavit;
- (6) The relief demanded, including any claim(s) for possession of the premises, damages, fees, costs, or other special relief.

(b) A copy of the summons, issued in accordance with established Tribal Court procedures, requiring the defendant to appear for a trial upon the complaint on a date and time specified in the summons pursuant to Section 1-305 of this Chapter and notifying defendant that judgment will be taken against him or her in accordance with the terms of the complaint unless he or she files an answer with the Court in accordance with Section 1-306 of this Chapter and appear for trial at the time, date and place specified in the summons.

(c) A copy of the summons and complaint shall be served upon the defendant in the manner provided by established Tribal Court procedures.

**Section 1-305. Action Upon Filing Complaint; Setting Trial Date; Procedures.**

(a) When a complaint is filed in the Tribal Court, it shall be immediately presented to a

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Tribal Court Judge. This shall be on the date of filing, or if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with this Chapter, issue an order of the Court requiring the defendant named in the complaint to appear before the Court for a trial on a certain date. The trial date shall be not less than twelve (12) days nor more than thirty (30) days from the date of filing. Upon setting of the date for appearance, the plaintiff shall have the defendant served with the complaint and a summons to appear for the trial date.

(b) Except as otherwise provided in this Chapter, the action shall proceed according to the procedures ordinarily applicable in the Tribal Court.

**Section 1-306. Answer.**

In any action under this Chapter, unless otherwise ordered by the Court for good cause shown, the time allowed for defendant to answer the complaint shall not exceed ten (10) calendar days from service of the complaint and summons. The answer shall be in writing and may deny any allegations contained in the complaint and/or set forth any factual disputes, and must specifically set forth any of the defenses described in Section 1-311 of this Chapter that he or she is asserting.

**Section 1-307. Necessary Party Defendants; Joinder; Subtenants after Notice to Tenant; Persons Bound by Judgment.**

No person, other than the person in actual occupation of the premises when the complaint is filed, need be made a party defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant, but when it appears that any of the defendants served with process, or appearing in the proceeding, are unlawfully in tenancy pursuant to this Chapter, judgment must be rendered against that defendant. In case a defendant has become a subtenant of the premises after the service of the notice to quit provided for by this Chapter, upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after commencement of the suit, shall be bound by the judgment, the same as if he or they had been made party to the action.

**Section 1-308. Motion to Quash Service or Stay or Dismiss Action.**

In any action under this Chapter, where the defendant files a motion to quash service, stay proceedings, or dismiss the complaint, the time for filing the motion shall be the same for the filing of an answer, and the time for hearing the motion shall be not less than three (3) days nor more than seven (7) days after filing the motion. The filing of such a motion shall extend the defendant's time to answer such that defendant shall have until five (5) days after service of a notice of entry of an order denying the defendant's

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motion to file his or her answer.

**Section 1-309. Entry of Default.**

If at the time appointed, any defendant served with a summons does not answer the complaint or appear at the trial and defend, the Court shall, upon written application of the plaintiff and proof of the service of summons and complaint, enter the default of any defendant so served, and, if requested by the plaintiff, immediately enter judgment thereon.

**Section 1-310. Extensions of Time; Rents.**

- (a) Unless specified otherwise, extensions of time for dates established in this Chapter may be granted only with the consent of the adverse party or upon good cause shown.
- (b) The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.
- (c) A defendant may, upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of the hearing, obtain an extension of time beyond the period allowed for a trial. Such an extension is not to exceed fourteen (14) days without the consent of the adverse party. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance, and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to the public health, safety, or peace.

**Section 1-311. Defenses.**

The Court shall grant the remedies allowed in this Chapter, except that one or more of the following may constitute a sufficient defense, to the extent necessary to ensure justice, to an action brought under this Chapter:

- (a) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- (b) The landlord has failed or refused to make repairs which are the landlord's responsibility after a reasonable demand by the tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.
- (c) There are monies due and owing to the tenant because the tenant has been required to make repairs which are the obligation of the landlord and the landlord has failed or

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refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he or she fails or refuses to pay the reasonable rental value of the premises.

(d) That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This may include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

(e) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant the landlord a remedy.

(f) The landlord is evicting the tenant because of his or her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.

(g) The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his or rights under this Code or to force the landlord to comply with his duties under this Code.

(h) Any other material fact relevant under this Code or Tribal customs and traditions the tenant might present that may explain why the eviction is unjust and unfair.

(i) On the trial of an action brought under this Chapter, the issue shall be the right of actual possession and the merits of title shall not be inquired into.

**Section 1-312. Discovery and Pre-hearing Procedures.**

Extensive, prolonged, or time consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed no later than five (5) calendar days before the date of hearing. Requests for discovery shall be made no later than five (5) calendar days following the setting of a hearing date. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

**Section 1-313. Evidence.**

The Court may consider any oral or documentary evidence presented that is relevant to the facts and issues raised by the Complaint without regard to its admissibility under the rules of evidence that apply to other court proceedings; however, the Court may give less weight to evidence that is hearsay or otherwise inadmissible under the rules of evidence. Evidence of the customs and traditions of the Tribes shall be freely admitted.

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**Section 1-314. Burden of Proof.**

The burden of proof in all proceedings under this Chapter shall be preponderance of the evidence.

**Section 1-315. Trials.**

Whenever an issue of fact is presented by the pleadings, it shall be tried by the Tribal Court Judge. No party shall have the right to a trial by jury for actions brought under this Chapter.

**Section 1-316. Judgment.**

Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- (a) Order issuance of a Writ of Restitution ordering the immediate eviction of a tenant and delivery of the premises to the landlord;
- (b) Grant actual damages as provided in the agreement of the parties or this Chapter, including interest;
- (c) Order the parties to carry out an obligation required by law;
- (d) Establish a payment plan for the tenant;
- (e) Order rent payments out of per capita payment or through garnishment;
- (f) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (g) Remediate the action in part or in whole through appropriate recalculation of rent;
- (h) Order the tenant to perform work for the landlord, lessor or owner to pay off back rent due and/or damages;
- (i) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation, except where such costs and fees would be awarded against the Tribe without its express and unambiguous written consent;
- (j) Order the parties into negotiations; or
- (k) Grant any relief provided in this Code or allowed in law or equity, or by the Tribes'

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customs and traditions.

**Section 1-317. Form of Judgment.**

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his or her decision immediately after both parties have rested their case and award costs and restitution as appropriate.

**Section 1-318. Execution of the Judgment.**

The judgment may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose.

(a) To execute a Writ of Restitution, the officer shall:

- (1) Remove all the evicted persons from the premises and verbally order them not to re-enter;
- (2) Provide a copy of the Writ of Restitution to all adult tenants;
- (3) Post copies of the Writ of Restitution on the doors of the premises, if applicable, if there is not any adult tenant present at the time of execution; and
- (4) Supervise the removal of the possessions of the evicted persons by the former tenants or pursuant to the June 10, 1994 Tribes' Abandoned Property Resolution, (Resolution #66-94), if applicable, or, if the abandoned property resolution is not applicable, pursuant to Subsection (b) below.

(b) If the Tribes' abandoned property resolution is not applicable and the former tenant does not remove his or her belongings, personal property shall be handled as follows: Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the landlord for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the landlord is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. If a landlord attempts to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his or her right to the costs of removal and storage. Upon request by the former



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occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this Section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribes in order to return these items.

(c) Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Otherwise, the judgment shall be subject to execution in the manner otherwise provided under Tribal law.

### **Section 1-319. Forcible Eviction.**

Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a Tribal or other appropriate law enforcement officer. In the event of a forcible eviction, any abandoned property shall be disposed of pursuant to the June 10, 1994 Tribes' Abandoned Property Resolution, (Resolution #66-94), if applicable or, if the abandoned property resolution is not applicable, as described in Section 1-318 of this Chapter.

### **Section 1-320. Immediate Possession.**

(a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession issued by the Tribal Court and directed to an appropriate law enforcement official for execution, where it appears to the satisfaction of the Tribal Court, after notice to the defendant and a hearing on the motion, from the complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides off of the Reservation, has departed from the Reservation, cannot, after due diligence be found on the Reservation, or has concealed himself or herself to avoid the service of summons.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the Tribal Court's rules, and shall inform the defendant that he or she may file affidavits on his or her behalf with the Court and may appear and present testimony on his or her behalf, and that, if he or she fails to appear, the plaintiff may apply to the Court for a writ of possession.

(c) The Court may require the plaintiff to file an undertaking with good and sufficient sureties in a sum to be fixed and determined by the Court to the effect that, if the plaintiff

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fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of possession. An action to recover such damages shall be commenced by the defendant in the Tribal Court within one year from the date of entry of dismissal or of final judgment in favor of the defendant.

(d) Notwithstanding the foregoing, the Tribes shall not be required to post bond or any other type of surety in order to obtain a writ of possession.

**Section 1-321.Stay of Execution.**

If judgment for possession of the premises enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order within five (5) calendar days of the judgment being rendered. The Court may grant the stay for good cause, if any of the following is established:

- (a) Good and reasonable grounds affecting the well being of the party are stated; or
- (b) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (c) Execution of the judgment could result in extreme hardship for the party; or
- (d) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the Court.

**Section 1-322.Appeals.**

Appeals under this Chapter shall be handled according to the general Tribal appellate provisions, with the exception that the party taking the appeal shall have only five (5) calendar days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Chapter unless otherwise ordered by the Court.

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