

COMPARISON OF CURRENT LEASING RULE TO FINAL LEASING RULE

Current Rule (25 CFR 162)	Final Rule (25 CFR 162 – Residential, Business, Wind & Solar Resource Leasing)
<i>Applicability</i>	
Takes a “one-size fits all” approach to leasing, using the same blanket regulations to process all non-agricultural leases.	Applies specific, tailored regulations to leases based on whether they are for residential, business or wind & solar energy development.
<i>BIA Approval Process</i>	
Does not specify any process for obtaining Bureau of Indian Affairs (BIA) approval of lease documents.	Provides steps for obtaining BIA approval of each type of lease document, including what documentation is required for BIA to consider the application to be “complete.”
Does not establish any timeline for BIA review of lease documents.	Establishes deadlines for BIA review (vary according to whether residential, business, or wind & solar energy development). Provides for consequences if BIA fails to take action within specified deadline. Ex: If BIA does not approve a sublease for a house within 30 days, the sublease is considered to have been deemed approved, and automatically goes into effect.
Gives BIA broad discretion to approve or disapprove lease documents.	Limits grounds on which BIA may disapprove lease documents. Ex: BIA must approve an assignment of a residential lease unless one of five specified circumstances exist or BIA finds a compelling reason to withhold its approval in order to protect the best interests of the Indian landowners.
Requires BIA approval of all assignments, except in limited circumstances.	Does not require BIA approval of assignments if a lease is for housing for public purposes or the assignment is to to certain parties, such as to (up to 3) entities specified in the lease or lessee’s wholly owned subsidiaries. Ex: Lessees may assign a business lease or wind or solar resource lease to their subsidiaries without BIA approval.
Does not allow for landowner consent to other transactions up-front, except in limited circumstances	Provides flexibility by allowing original lease to provide for up-front or deemed consent of leasehold mortgages, subleases, etc.

Requires landowners to obtain BIA approval of permits for temporary, short-term use of Indian lands.	Exempts permits for activities on Indian lands from BIA approval Ex: Landowners may permit their land to a recreational company to hold a weekend fair (in which tents and other temporary structures are erected) without BIA approval.
<i>Compensation & Appraisals</i>	
Requires rent to be at fair market value and requires an appraisal unless BIA grants a waiver.	Requires BIA to defer to tribal decisions on rental rates, and does not require an appraisal of land unless the tribe requests one. Allows for more flexibility in determining and requiring fair market value for individually-owned land. Allows rent for wind energy evaluation leases to be at any amount negotiated by the landowners.
Generally requires a review of the rental amount every 5 years to determine whether an adjustment is necessary to reflect fair rental value.	Limits instances in which a periodic review or adjustment of rental amount is required. Ex: No rental review or adjustment if lease is for housing for public purposes Ex: No rental review or adjustment for tribal land where the tribe provides certain documentation Ex: No rental review or adjustment for leases of individually owned Indian land if lease term is less than 5 years or lease provides for automatic adjustments
<i>Performance Bonding, Insurance, Compliance & Enforcement</i>	
Requires lessee to provide a performance bond and insurance in most cases.	Exempts residential leases from bonding and insurance requirements, allows waivers of bonding requirements in certain circumstances and, for tribal land, requires BIA, to the maximum extent possible, to defer to the tribe's determination that a waiver is in its best interest,
Requires BIA to consult with the Indian landowners only prior to cancellation.	Continues to require BIA to consult with or provide notice to the landowners before cancellation, but also requires BIA to provide notice to landowners of a notice of violation, to consult with landowners prior to taking action against holdovers for trespass, and to consult with landowner prior to taking removal action after expiration of a lease.