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§ 163.82 Annual status report.

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, and the quantity of timber available for sale, offered for sale, and sold, for each Indian tribe.

§ 163.83 Assistance from the Secretary of Agriculture.

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80 of this part.

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AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; Sec. 6, 96 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; Sec. 3, 26 Stat. 795, 25 U.S.C. 397; Sec. 1, 28 Stat. 305, 25 U.S.C. 402; Sec. 4, 36 Stat. 856, 25 U.S.C. 403; Sec. 1, 39 Stat. 128, 25 U.S.C. 394; Sec. 1, 41 Stat. 1232, 25 U.S.C. 393; Sec. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; Sec. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011; 44 U.S.C. §3101, *et seq.*)

SOURCE: 66 FR 7126, Jan. 22, 2001, unless otherwise noted.

Subpart A—Purpose, Scope, and Definitions

§ 166.1 What is the purpose and scope of this part?

(a) The purpose of this part is to describe the authorities, policies, and procedures the BIA uses to approve, grant, and administer a permit for grazing on tribal land, individually-owned Indian land, or government land.

(b) If the BIA's approval is not required for a permit, these regulations will not apply.

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

(d) To the extent that any provisions of this part conflict with Section 213 of the Indian Land Consolidation Act Amendments of 2000, the provisions of that act will govern.

(e) In approving a permit on behalf of the Indian landowners, the BIA will not permit for fee interest owners nor will we collect rent on behalf of fee interest owners. Our permitting of the trust and restricted interests of the Indian landowners will not be conditioned on a permit having been obtained from any fee interest owners. However, 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 permit of the remainder interests of the Indian landowners only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners. Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be permitted under these regulations, unless the permit 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 permit must be paid to the holder of the life estate under part 179 of this title.

§ 166.2 Can the BIA waive the application of these regulations?

Yes. In any case in which these regulations conflict with the objectives of the agricultural resource management plan provided for in §166.311 of this part, or with a tribal law, the BIA may waive the application of such regulations unless the waiver would constitute a violation of a federal statute or judicial decision or would conflict with the BIA's general trust responsibility under federal law.

§ 166.3 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.

§ 166.4 What terms do I need to know?

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

Agency means the agency or field office or any other designated office in the Bureau of Indian Affairs (BIA) having jurisdiction over trust or restricted property or money.

Agricultural product means:

(1) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(2) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;

(3) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(4) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

Agricultural resource management plan means a ten-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and Indian tribal governments.

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

Allocation means the apportionment of grazing privileges without competition to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

Animal Unit Month (AUM) means the amount of forage required to sustain one cow or one cow with one calf for one month.

Approving/approval means the action taken by the BIA to approve a permit.

Assign/assignment means an agreement between a permittee and an assignee, whereby the assignee acquires all of the permittee's rights, and assumes all of the permittee's obligations under a permit.

Assignee means the person to whom the permit rights for use of Indian land are assigned.

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

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

Conservation plan means a statement of management objectives for grazing, including contract stipulations defining required uses, operations, and improvements.

Conservation practice means a management action to protect, conserve, utilize, and maintain the sustained yield productivity of Indian agricultural land.

Day means a calendar day.

Encumbrance means mortgage, deed of trust or other instrument which secures a debt owed by a permittee to a lender or other holder of a leasehold mortgage on the permit interest.

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 permitted parcel of Indian land would most probably command in an open and competitive market.

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

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 the BIA, not including tribal land which has been reserved for administrative purposes.

Grant/granting means the process of the BIA or the Indian landowner agreeing or consenting to a permit.

Grazing capacity means the maximum sustainable number of livestock that may be grazed on a defined area and within a defined period, usually expressed in an Animal Unit Month (AUM).

Grazing rental payment means the total of the grazing rental rate multiplied by the number of AUMs or acres in the permit.

Grazing rental rate means the amount you must pay for an AUM or acre based on the fair annual rental.

I/You means the person to whom these regulations directly apply.

Immediate family means the spouse, brothers, sisters, lineal ancestors, lineal descendants, or members of the household of an individual Indian landowner.

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

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

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

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

Majority interest means the ownership interest(s) that are greater than 50 percent of the trust or restricted ownership interest(s) 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 which pledges a permittee's permit (leasehold) interest as security for a debt or other obligation owed by the permittee to a lender or other mortgagee.

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 transacting or conducting business and managing one's own affairs.

On-and-off grazing permit means a written agreement with a permittee for additional grazing capacity for other rangeland not covered by the permit.

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

Permittee means an a person or entity who has acquired a legal right of possession to Indian land by a permit for grazing purposes under this part.

Range unit means rangelands consolidated to form a unit of land for the management and administration of grazing under a permit. A range unit may consist of a combination of tribal, individually-owned Indian, and/or government land.

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

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.

Subpermit means a written agreement, whereby the permittee grants to an individual or entity a right to possession (i.e., pasturing authorization), no greater than that held by the permittee under the permit.

Surety means one who guarantees the performance of another.

Sustained yield means the yield of agricultural products that a unit of land can produce continuously at a given level of use.

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

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 law means the body of non-federal law that governs lands and activities under the jurisdiction of a tribe, including ordinances or other enactments by the tribe, 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 BIA and any tribe acting on behalf of the BIA under 166.1 of this part.

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

Written notice means a written letter mailed by way of United States mail, certified return receipt requested, postage prepaid, or hand-delivered letter.

Subpart B—Tribal Policies and Laws Pertaining to Permits

§ 166.100 What special tribal policies will we apply to permitting on Indian agricultural lands?

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, the BIA will:

(1) Waive the general prohibition against Indian operator preferences in permits advertised for bid under § 166.221 of this part, by allowing prospective Indian operators to match the highest responsible bid (unless the tribal law or leasing policy specifies some other manner in which the preference must be afforded);

(2) Waive or modify the requirement that a permittee post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of surety or other bonds; and

(4) Approve permits of tribally-owned agricultural lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, and subject to paragraph (c) of this section, the BIA may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a permit on "highly fractionated undivided heirship lands" as defined by tribal law.

(c) The BIA may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes "highly fractionated undivided heirship lands";

(2) The tribe adopts an alternative plan for notifying individual Indian landowners; and

(3) The BIA's action is necessary to prevent waste, reduce idle land acreage and ensure income.

§ 166.101 May individual Indian landowners exempt their land from certain tribal policies for permitting on Indian agricultural lands?

(a) The individual Indian landowners of Indian land may exempt their land from our application of a tribal policy referred to under § 166.100 of this part if:

(1) The Indian landowners have at least a 50% interest in such fractionated tract; and

(2) The Indian landowners submit a written objection to the BIA of all or any part of such tribal policies to the permitting of such parcel of land.

(b) Upon verification of the written objection we will notify the tribe of the Indian landowners' exemption from the specific tribal policy.

(c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

§ 166.102 Do tribal laws apply to permits?

Tribal laws will apply to permits of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

§ 166.103 How will tribal laws be enforced on Indian agricultural land?

(a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on Indian 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 Indian agricultural land, we will:

(1) Assist in the enforcement of tribal laws;

(2) Provide notice of tribal laws to persons or entities undertaking activities on Indian agricultural land, under § 166.104(b) of this part; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as such an appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR Part 2, Subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of our actions by a tribal court.

(c) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 166.2 of this part, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

§ 166.104 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

(a) Tribes must notify us of the content and effective dates of new tribal laws.

(b) We will then notify affected Indian landowners and any persons or entities undertaking activities on Indian agricultural lands of the superseding or modifying effect of the tribal law. We will:

(1) Provide individual written notice; or

(2) Post public notice. This notice will be posted at the tribal community building, U.S. Post Office, and/or published in the local newspaper nearest to the Indian lands where activities are occurring.

Subpart C—Permit Requirements

GENERAL REQUIREMENTS

§ 166.200 When is a permit needed to authorize possession of Indian land for grazing purposes?

(a) Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a permit under these regulations before taking possession of Indian land for grazing purposes.

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

(c) If an Indian landowner does not own 100 percent (%) of his or her Indian land and wants to use the Indian land for grazing purposes, a permit must be granted by the majority interest of the fractionated tract.

§ 166.201 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?

Parents or guardians need not obtain a permit for Indian lands owned by their minor Indian children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use of the land. We may require the user to provide evidence of the direct benefits to the minor children. When one of the minor children becomes an adult, the permit will have to be obtained from the majority interest.

§ 166.202 May an emancipated minor grant a permit?

Yes. An emancipated minor may grant a permit.

§ 166.203 When can the Indian landowners grant a permit?

(a) Tribes grant permits of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A permit granted by the tribe must be approved by us, unless the permit is authorized by a charter approved by us under 25 U.S.C. § 477, or unless our approval is not required under other applicable federal law. In order to permit tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the permit, subject to our approval.

(b) Individual Indian landowners may grant a permit of their land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these Indian landowners may include the owner of a life estate holding 100 percent (%) interest in their land.

(c) The owners of a majority interest in the Indian ownership of a fractionated tract may grant a permit, subject to our approval, without giving prior notice to the minority Indian landowners as long as the minority interest owners receive fair annual rental.

§ 166.204 Who may represent an individual Indian landowner in granting a permit?

The following individuals or entities may represent an individual Indian landowner in granting a permit:

(a) An adult with custody acting on behalf of their minor children;

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

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

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

(2) Identifies the attorney-in-fact and the land to be permitted; and

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

§ 166.205 When can the BIA grant a permit on behalf of Indian landowners?

(a) We may grant a permit on behalf of:

(1) An individual who is adjudicated to be non compos mentis by a court of competent jurisdiction;

(2) An orphaned minor;

(3) An Indian landowner who has granted us written authority to permit his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the Indian landowner;

(6) Indian landowners, where:

(i) We have provided written notice of our intent to grant a permit on their behalf, but the Indian landowners are unable to agree upon a permit during a three-month negotiation period immediately following such notice, or any other notice period established by a tribe under § 166.100(c)(2) of this part; and

(ii) The land is not being used by an individual Indian landowner under § 166.200 of this part.

(7) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

§ 166.206 What requirements apply to a permit on a fractionated tract?

We may grant a permit on behalf of all Indian landowners of a fractionated tract as long as the owners receive fair annual rental. Before granting such a permit, we may offer a preference right to any Indian landowner who:

(a) Is in possession of the entire tract;

(b) Submits a written offer to permit the land, subject to any required or negotiated terms and conditions, prior to our granting a permit to another party; and

(c) Provides any supporting documents needed to demonstrate the ability to perform all of the obligations under the proposed permit.

§ 166.207 What provisions will be contained in a permit?

A permit, at a minimum, must include:

(a) Authorized user(s);

(b) Conservation plan requirements;

(c) Prohibition against creating a nuisance, any illegal activity, and negligent use or waste or resources;

(d) Numbers and types of livestock allowed;

(e) Season(s) of use;

(f) Grazing rental payment, payment schedule, and late payment interest and penalties;

(g) Administrative fees;

(h) Tribal fees, if applicable;

(i) Payment method;

(j) Range unit number or name;

(k) Animal identification requirements;

(l) A description (preferably a legal description) of the permitted area;

(m) Term of permit (including beginning and ending dates of the term allowed, as well as any option to renew, extend or terminate);

(n) Conditions for making improvements, if any;

(o) A right of entry by the BIA for purposes of inspection or enforcement purposes;

(p) A provision concerning the applicability of tribal jurisdiction;

(q) A provision stating how trespass proceeds are to be distributed; and

(r) A provision for the permittee to indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials or the release or discharge of any hazardous material from the permitted premises that occur during the permit term, regardless of fault.

§ 166.208 How long is a permit term?

(a) The duration must be reasonable given the purpose of the permit and the level of investment required by the permittee to place the property into productive use.

(b) On behalf of the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant or approve permits for a maximum term of two years.

(c) Permits granted for agricultural purposes will not usually exceed ten years. A term longer than ten years, but not to exceed 25 years unless authorized by other federal law, may be authorized when a longer term is determined by us to be in the best interest of the Indian landowners and when such permit requires substantial investment in the development of the lands by the permittee.

(d) A tribe may determine the duration of permits composed entirely of its tribal land or in combination with government land, subject to the same limitations provided in paragraph (d) of this section.

(e) A permit will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

(f) Permits granted by us for protection of the Indian land will be for no more than two years.

§ 166.209 Must a permit be recorded?

A permit must be recorded in our Land Titles and Records Office which has jurisdiction over the land. We will record the permit immediately following our approval under this subpart.

§166.210 When is a decision by the BIA regarding a permit effective?

Our decision to approve a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of the approved permit will be provided to the permitee and made available to the Indian landowners upon request.

§166.211 When are permits effective?

Unless otherwise provided in the permit, a permit will be effective on the date on which the permit is approved by us. A permit may be made effective on some past or future date, by agreement, but such a permit may not be granted or approved more than one year prior to the date on which the permit term is to commence.

§166.212 When may a permittee take possession of permitted Indian land?

The permittee may take possession of permitted Indian land on the date specified in the permit as the beginning date of the term, but not before we approve the permit.

§166.213 Must I comply with any standards of conduct if I am granted a permit?

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in tribal laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. You must also pay all applicable penalties that may be assessed for non-compliance.

(c) Fulfill all financial obligations of your permit owed to the Indian landowners and the United States.

(d) Conduct only those activities authorized by the permit.

§166.214 Will the BIA notify the permittee of any change in land title status?

Yes. We will notify the permittee if a fee patent is issued or if restrictions are removed. After we notify the permittee our obligation under §166.228 of this part ceases.

OBTAINING A PERMIT

§166.215 How can I find Indian land available for grazing?

You may contact a local BIA office or tribal office to determine what Indian land may be available for grazing permits.

§166.216 Who is responsible for permitting Indian land?

The Indian landowner is primarily responsible for granting permits on their Indian land, with the assistance and approval of the BIA, except where otherwise provided by law. You may contact the local BIA or tribal office for assistance in obtaining a permit for grazing purposes on Indian land.

§166.217 In what manner may a permit on Indian land be granted?

(a) A tribe may grant a permit on tribal land through tribal allocation, negotiation, or advertisement in accordance with §166.203 of this part. We must approve all permits of tribal land in order for the permit to be valid, except where otherwise provided by law.

(b) Individual Indian landowners may grant a permit on their Indian land through negotiation or advertisement in accordance with §166.203 of this part. We must approve all permits of Individual Indian land in order for the permit to be valid.

(c) We will grant permits through negotiation or advertisement for range units containing, in whole or part, individually-owned Indian land and range units that consist of, or in combination with individually-owned Indian land, tribal or government land, under §166.205 of this part. We will consult with tribes prior to granting permits for range units that include tribal land.

§166.218 How do I acquire a permit through tribal allocation?

(a) A tribe may allocate grazing privileges on range units containing trust or restricted land which is entirely tribally-owned or which contains only tribal and government land under the control of the tribe.

(b) A tribe may allocate grazing privileges to its members and to tribally-authorized entities without competitive bidding on tribal and tribally-controlled government land.

(c) We will implement the tribe's allocation procedure by authorizing the grazing privileges on individually-owned Indian land and government land, subject to the rental rate provisions in § 166.400(b) and (c) of this part.

(d) A tribe may prescribe the eligibility requirements for allocations 60 days before granting a new permit or before an existing permit expires.

(e) 120 days before the expiration of existing permits, we will notify the tribe of the 60-day period during which the tribe may prescribe eligibility requirements.

(f) We will prescribe the eligibility requirements after the expiration of the 60-day period in the event satisfactory action is not taken by the tribe.

(g) Grazing rental rates for grazing privileges allocated from an existing permit, in whole or in part, must equal or exceed the rates paid by the preceding permittee(s). Tribal members will pay grazing rental rates established by the tribe on tribal lands.

§ 166.219 How do I acquire a permit through negotiation?

(a) Permits may be negotiated and granted by the Indian landowners with the permittee of their choice. The BIA may negotiate and grant permits on behalf of Indian landowners pursuant to § 166.205 of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed permit and any required supporting documents to us for appropriate action. Where a permit is in a form that has previously been accepted or approved by us, and all of the documents needed to support the findings required by this part have been received, we will decide whether to approve the permit within 30 days of the date of our receipt of the permit and supporting documents. If we decide to approve or disapprove a permit, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this title.

(c) In negotiating a permit, the Indian landowners may choose to include their land in the permit in exchange for their receipt of a share of the revenues or profits generated by the permit. Under such an arrangement, the permit may be granted to a joint venture or other legal entity owned, in part, by the Indian landowners.

(d) Receipt of permit payments based upon income received from the land will not, of itself, make the Indian landowner a partner, joint venturer, or associate of the permittees.

(e) We will assist prospective permittees in contacting the Indian landowners or their representatives, for the purpose of negotiating a permit.

§ 166.220 What are the basic steps for acquiring a permit through negotiation?

The basic steps for acquiring a permit by negotiation are as follows:

(a) The BIA or the Indian landowner will:

(1) Receive a request to permit from an Indian landowner or the potential permittee;

(2) Prepare the permit documents; and

(3) Grant the permit.

(b) A potential permittee will complete the requirements for securing a permit, (e.g., bond, insurance, payment of administrative fee, etc.);

(c) We will:

(1) Review the permit for proper documentation and compliance with all applicable laws and regulations;

(2) Approve the permit after our review;

(3) Send the approved permit to the permittee and, upon request, to the Indian landowner; and

(4) Record and maintain the approved permit.

§ 166.221 How do I acquire an advertised permit through competitive bidding?

(a) As part of the negotiation of a permit, Indian landowners may advertise their Indian land to identify potential permittees with whom to negotiate.

(b) When the BIA grants and approves a permit on behalf of an individual Indian landowner using an advertisement for bids, we will:

(1) Prepare and distribute an advertisement of lands available for permit that identifies the terms and conditions of the permit sale, including, for agricultural permits, any preference rights;

(2) Solicit sealed bids and conduct the public permit sale;

(3) Determine and accept the highest or best responsible bidder(s), which may require further competitive bidding after the bid opening; and

(4) Prepare permits for successful bidders.

(c) After completion of the steps in paragraph (b) of this section, the successful bidder must complete and submit the permit and satisfy all applicable requirements, (e.g., bond, insurance, payment of administrative fee, etc.).

(d) After review of the permit documentation for proper completion and compliance with all applicable laws and regulations, within 30 days we will:

(1) Grant and approve the permit on behalf of Indian landowners where we are authorized to do so by law;

(2) Distribute the approved permit to the permittee(s) and, upon request, to the Indian landowner(s); and

(3) Record and maintain the approved permit.

§ 166.222 Are there standard permit forms?

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

PERMIT (LEASEHOLD) MORTGAGE

§ 166.223 Can I use a permit as collateral for a loan?

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the permit interest before it can be effective. We will record the approved leasehold mortgage instrument.

§ 166.224 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the permit interest, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new permit" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

§ 166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the

terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

§ 166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

MODIFYING A PERMIT

§ 166.227 How can Indian land be removed from an existing permit?

(a)We will remove Indian land from the permit if:

(1)The trust status of the Indian land terminates;

(2) The Indian landowners request removal of their interest, with the written approval of the majority interest of the fractionated tract to be removed, and we determine that the removal is beneficial to such interests;

(3) A tribe allocates grazing privileges for Indian land covered by your permit under § 166.218 of this part;

(4) The permittee requests removal of the Indian land, the owners of the majority interest of the Indian land provides written approval of the removal of the Indian land, and we determine that the removal is warranted; or

(5) We determine that removal of the Indian land is appropriate, with the written approval of the owners of the majority interest of the Indian land.

(b) We will revise the grazing capacity to reflect the removal of Indian land and show it on the permit.

§ 166.228 How will the BIA provide notice if Indian land is removed from an existing permit?

If the reason for removal is:

(a) Termination of trust status. We will notify the parties to the permit in writing within 30 days. The removal will be effective on the next anniversary date of the permit.

(b) A request from Indian landowners or the permittee, or our determination. We will notify the parties to the permit in writing within 30 days of such request. The removal will be effective immediately if all sureties, Indian landowners, and permittee agree. Otherwise, the removal will be effective upon the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(c) Tribal allocation under § 166.218 of this part. We will notify the parties to the permit in writing within 180 days of such action. The removal of tribal land will be effective on the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

§ 166.229 Other than to remove land, how can a permit be amended, assigned, subpermitted, or mortgaged?

(a) We must approve an amendment, assignment, subpermit, or mortgage with the written consent of the parties to the permit in the same manner that the permit was approved, and the consent of the sureties.

(b) Indian landowners may designate in writing one or more of their co-owners or representatives to negotiate and/or agree to amendments on their behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the grazing rental payments payable to the other Indian landowners; or

(ii) Terminate the permit or modify the term of the permit.

(c) We may approve a permit for tribal land to individual members of a tribe which contains a provision permitting the assignment of the permit by the permittee or the lender without

our approval when a lending institution or an agency of the United States:

(1) Accepts the interest in the permit (leasehold) as security for the loan; and

(2) Obtains the interest in the permit (leasehold) through foreclosure or otherwise.

(d) We will revise the grazing capacity and modify the permit.

§ 166.230 When will a BIA decision to approve an amendment, assignment, subpermit, or mortgage under a permit be effective?

Our decision to approve an amendment, assignment, subpermit, or mortgage under a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

§ 166.231 Must an amendment, assignment, subpermit, or mortgage approved under a permit be recorded?

An amendment, assignment, subpermit, or mortgage approved under a permit must be recorded in our Land Titles and Records Office which has jurisdiction over the Indian land. We will record the document immediately following our approval.

Subpart D—Land and Operations Management

§ 166.300 How is Indian agricultural land managed?

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

§ 166.301 How is Indian land for grazing purposes described?

Indian land for grazing purposes should be described by legal description (e.g., aliquot parts, metes and bounds) or other acceptable description. Where there are undivided interests owned in fee status, the aggregate portion of trust and restricted interests should be identified in the description of the permitted land.

§ 166.302 How is a range unit created?

We create a range unit after we consult with the Indian landowners of rangeland, by designating units of compatible size, availability, and location.

§ 166.303 Can more than one parcel of Indian land be combined into one permit?

Yes. A permit may include more than one parcel of Indian land. Permits may include tribal land, individually-owned Indian land, or government land, or any combination thereof.

§ 166.304 Can there be more than one permit for each range unit?

Yes. There can be more than one permit for each range unit.

§ 166.305 When is grazing capacity determined?

Before we grant, modify, or approve a permit, in consultation with the Indian landowners, we will establish the total grazing capacity for each range unit based on the summation of each parcel's productivity. We will also establish the season(s) of use on Indian lands.

§ 166.306 Can the BIA adjust the grazing capacity?

Yes. In consultation with the Indian landowners or in the BIA's discretion based on good cause, we may adjust the grazing capacity using the best evaluation method(s) relevant to the ecological region.

§ 166.307 Will the grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?

No. You will not receive an increase in grazing capacity in the permit if you graze trust or non-trust rangeland in common with the permitted land. Grazing capacity will be established only for Indian land covered by your permit.

§ 166.308 Can the number of animals and/or season of use be modified on the permitted land if I graze adjacent trust or non-trust rangelands under an on-and-off grazing permit?

Yes. The number of animals and/or season of use may be modified on permitted Indian land with an on-and-off grazing permit only when a conservation plan includes the use of adjacent trust or non-trust rangelands not covered by the permit and when that land is used in common with permitted land.

§ 166.309 Who determines livestock class and livestock ownership requirements on permitted Indian land?

(a) Tribes determine the class of livestock and livestock ownership requirements for livestock that may be grazed on range units composed entirely of tribal land or which include government land, subject to the grazing capacity prescribed by us under § 166.305 of this part.

(b) For permits on range units containing, in whole or part, individually-owned Indian land, we will adopt the tribal determination in paragraph (a) of this section.

§ 166.310 What must a permittee do to protect livestock from exposure to disease?

In accordance with applicable law, permittees must:

(a) Vaccinate livestock;

(b) Treat all livestock exposed to or infected with contagious or infectious diseases; and

(c) Restrict the movement of exposed or infected livestock.

MANAGEMENT PLANS AND ENVIRONMENTAL COMPLIANCE

§ 166.311 Is an Indian agricultural resource management plan required?

(a) Indian 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 the AIARMA.

(b) The 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 tribe and its members and provide identified 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 or judicial decision or conflict with our general trust responsibility under federal law.

§ 166.312 Is a conservation plan required?

A conservation plan must be developed for each permit with the permittee and approved by us prior to the issuance of the permit. The conservation plan must be consistent with the tribe's agricultural resource management plan and must address the permittee's management objectives regarding animal husbandry and resource conservation. The conservation plan must cover the entire permit period and reviewed by us on an annual basis.

§ 166.313 Is environmental compliance required?

Actions taken by the BIA under the regulations in this part must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), applicable regulations of the Council on Environmental Quality (40 CFR part 1500), and applicable tribal laws and regulations.

CONSERVATION PRACTICES AND IMPROVEMENTS

§ 166.314 Can a permittee apply a conservation practice on permitted Indian land?

Yes. A permittee can apply a conservation practice on permitted Indian land as long as the permittee has approval from the BIA and majority interest and the conservation practice is consistent with the conservation plan.

§ 166.315 Who is responsible for the completion and maintenance of a conservation practice if the permit expires or is canceled before the completion of the conservation practice?

Prior to undertaking a conservation practice, the BIA, landowner, and permittee will negotiate who will complete and maintain a conservation practice if the permit expires or is canceled before the conservation practice is completed. That conservation practice agreement will be reflected in the conservation plan and permit.

§ 166.316 Can a permittee construct improvements on permitted Indian land?

Improvements may be constructed on permitted Indian land if the permit contains a provision allowing improvements.

§ 166.317 What happens to improvements constructed on Indian lands when the permit has been terminated?

(a) If improvements are to be constructed on Indian land, the permit must contain a provision that improvements will either:

(1) Remain on the land upon termination of the permit, in a condition that is in compliance with applicable codes, to become the property of the Indian landowner; or

(2) Be removed and the land restored within a time period specified in the permit. The land must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the permittee we may, at our discretion, grant an extension of time for the removal of improvements and restoration of the land for circumstances beyond the control of the permittee.

(b) If the permittee fails to remove improvements within the time allowed in the permit, the permittee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner or at the request of the Indian landowner, we will apply the bond for the removal of the improvement and restoration of the land.

Subpart E—Grazing Rental Rates, Payments, and Late Payment Collections

RENTAL RATE DETERMINATION AND ADJUSTMENT

§ 166.400 Who establishes grazing rental rates?

(a) For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by us. We will assist a tribe to establish a grazing rental rate by providing the tribe with available information concerning the value of grazing on tribal lands.

(b) We will establish the grazing rental rate by determining the fair annual rental for:

(1) Individually-owned Indian lands; and

(2) Tribes that have not established a rate under paragraph (a) of this section.

(c) Indian landowners may give us written authority to grant grazing privileges on their individually-owned Indian land at a grazing rental rate that is:

(1) Above the grazing rental rate set by us; or

(2) Below the grazing rental rate set by us, subject to our approval, when the permittee is a member of the Indian landowner's immediate family as defined in this part.

§ 166.401 How does the BIA establish grazing rental rates?

An appraisal can be used to determine the rental value of real property. The development and reporting of the valuation will be completed in accordance with the Uniform Standards of Professional Appraisal Practices

(USPAP). If an appraisal is not desired, competitive bids, negotiations, advertisements, or any other method can be used in conjunction with a market study, rent survey, or feasibility analysis developed in accordance with the USPAP.

§ 166.402 Why must the BIA determine the fair annual rental of Indian land?

The BIA must determine the fair annual rental of Indian land to:

(a) Assist the Indian landowner in negotiating a permit with potential permittees; and

(b) Enable us to determine whether a permit is in the best interests of the Indian landowner.

§ 166.403 Will the BIA ever grant or approve a permit at less than fair annual rental?

(a) We will grant a permit for grazing on individually-owned Indian land at less than fair annual rental if, after competitive bidding of the permit, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a permit for grazing on individually-owned Indian land at less than fair annual rental if:

(1) The permit is for the Indian landowner's immediate family or co-owner; or

(2) We determine it is in the best interest of the Indian landowners.

(c) We may approve a permit for grazing on tribal land at less than fair annual rental if the tribe sets the rate.

§ 166.404 Whose grazing rental rate will be applicable for a permit on tribal land?

The following grazing rental rate schedule will apply for tribal land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on tribal land	The tribe established the grazing rental rate.	The rate set by the tribe.
(b) Grazing livestock on tribal land	No tribal grazing rental rate has been established.	The rate set by the BIA.
(c) The successful bidder for use of any of these specific parcels of Indian land.		Your rental rate bid, but not less than the minimum bid rate advertised.

§ 166.405 Whose grazing rental rate will be applicable for a permit on individually-owned Indian land?

The following grazing rental rate schedule will apply for individually-owned Indian land:

If you are * * *	Then you will pay * * *
(a) Grazing livestock on individually-owned Indian land.	The rate set by the BIA or by the individual Indian landowner and approved by us.
(b) The successful bidder for use of any of these specific parcels of Indian land.	Your rental rate bid, but not less than the minimum bid rate advertised, unless the permit is granted at less than fair annual rental under § 166.403.
(c) The recipient of an allocation from a bid unit.	The bid rate or the appraised rate, whichever is higher.

§ 166.406 Whose grazing rental rate will be applicable for a permit on government land?

The following grazing rental rate schedule will apply for government land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on government land	The tribe has control over the land or the tribe has authority to set the rate.	The rate set by the tribe.
(b) Grazing livestock on government land	Government controls all use of the land	The rate set by the BIA.

§ 166.407 If a range unit consists of tribal and individually-owned Indian lands, what is the grazing rental rate?

The grazing rental rate for tribal land will be the rate set by the tribe. The grazing rental rate for individually-owned Indian land will be the grazing rental rate set by us.

§ 166.408 Is the grazing rental rate established by the BIA adjusted periodically?

Yes. To ensure that Indian landowners are receiving the fair annual return, we may adjust the grazing rental rate established by the BIA, based upon an appropriate valuation method, taking into account the value of improvements made under the permit, unless the permit provides otherwise, following the Uniform Standards of Professional Appraisal Practice.

(a) We will:

(1) Review the grazing rental rate prior to each anniversary date or when specified by the permit.

(2) Provide you with written notice of any adjustment of the grazing rental rate 60 days prior to each anniversary date.

(3) Allow the adjusted grazing rental rate to be less than the fair annual rental if we determine that such a rate is in the best interest of the Indian landowner.

(b) If adjusted, the grazing rental rate will become effective on the next anniversary date of the permit.

(c) These adjustments will be retroactive, if they are not made at the time specified in the permit.

(d) For permits granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the grazing rental payment should be made. The permit must be modified to document the granting tribe's waiver of the adjustment. A tribe may grant a permit without providing for a rental adjustment, if the tribe establishes such a policy under § 166.100(a)(4) of this part and negotiates such a permit.

RENTAL PAYMENTS

§ 166.409 How is my grazing rental payment determined?

The grazing rental payment is the total of the grazing rental rate multiplied by the number of AUMs or acres covered by the permit.

§ 166.410 When are grazing rental payments due?

The initial grazing rental payment is due and payable as specified in the permit or 15 days after the BIA approves the permit, whichever is later. Subsequent payments are due as specified in the permit.

§ 166.411 Will a permittee be notified when a grazing rental payment is due?

Each permit states the schedule of rental payments agreed to by the parties. We will issue an invoice to the permittee 30 to 60 days prior to the rental payment due date.

§ 166.412 What if the permittee does not receive an invoice that a grazing rental payment is due?

If we fail to send an invoice or if we send an invoice and the permittee does not receive it, the permittee is still responsible for making timely payment of all amounts due under the permit.

§ 166.413 To whom are grazing rental payments made?

(a) A permit must specify whether grazing rental payments will be made directly to the Indian landowners or to us on behalf of the Indian landowners. If the permit provides for payment to be made directly to the Indian landowners, the permit must also require that the permittee retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of §§166.1000 and 166.1001 of this part.

(b) Grazing rental payments made directly to the Indian landowners must be made to the parties specified in the permit, unless the permittee receives a

notice of a change of ownership. Unless otherwise provided in the permit, grazing rental payments may not be made payable directly to anyone other than the Indian landowners.

(c) A permit which provides for grazing rental payments to be made directly to the Indian landowners must also provide for such payments to be suspended and rent thereafter paid to us, rather than directly than to the Indian landowners, if:

(1) An Indian landowner dies;

(2) An Indian landowner requests that payment be made to us;

(3) An Indian landowner is found by us to be in need of assistance in managing his/her financial affairs; or

(4) We determine, in our discretion and after consultation with the Indian landowner(s), that direct payment should be discontinued.

§ 166.414 What forms of grazing rental payments are acceptable?

(a) When grazing rental payments are made directly to the Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) Payments made to us may be delivered in person or by mail. We will not accept cash, foreign currency, or third-party checks. We will accept:

(1) Personal or business checks drawn on the account of the permittee;

(2) Money orders;

(3) Cashier's checks;

(4) Certified checks; or

(5) Electronic funds transfer payments.

§ 166.415 What will the BIA do if the permittee fails to make a direct payment to an Indian landowner?

Within five business days of the Indian landowner's notification to us that a payment has not been received, we will contact the permittee either in writing or by telephone requesting that the permittee provide documentation (e.g., canceled check, cash receipt voucher, copy of a money order or cashier's check) showing that payment has been made to the Indian landowner. If the permitee fails to provide such documentation, we will follow the procedures identified in § 166.419 of this part to collect the money on behalf of the Indian landowner or to cancel the permit.

§ 166.416 May a permittee make a grazing rental payment in advance of the due date?

Rent may be paid no more than 30 days in advance, unless otherwise specified in the permit.

§ 166.417 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?

No. An individual Indian landowner of a fractionated tract may not modify a permit to allow a grazing rental payment in advance of the due date specified in the initial approved permit.

§ 166.418 When is a grazing rental payment late?

A grazing rental payment is late if it is not received on or before the due date.

LATE RENTAL PAYMENT COLLECTIONS

§ 166.419 What will the BIA do if grazing rental payments are not made in the time and manner required by the permit?

(a) A permitee's failure to pay grazing rental payments in the time and manner required by a permit will be a violation of the permit, and a notice of violation will be issued under § 166.703 of this part. If the permit requires that grazing rental payments be made to us, we will send the permittee and its sureties a notice of violation within five business days of the date on which the grazing rental payment was due. If the permit provides for payment directly to the Indian landowner(s), we will send the permittee 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 Indian landowner(s).

(b) If a permittee fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 166.704 of this part, 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 or late payment penalties. We may also cancel the permit under § 166.705 of this

part, or invoke any other remedies available under the permit 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 permit or any further notice to the permittee, nor will such an action be precluded by a prior cancellation.

(c) Partial payments may be accepted, under special circumstances, by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing permit violations. Unless otherwise provided in the permit, overpayments may be credited as an advance against future grazing rental payments.

(d) If a personal or business check is dishonored, and a grazing rental 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 permit, and a written notice of violation will be issued under § 166.703 of this part. Any payment made to cure such a default, and any future payments by the same permittee, must be made by one of the alternative payment methods listed in § 166.414(b) of this part.

§ 166.420 Will any special fees be assessed on delinquent grazing rental payments due under a permit?

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

The permittee will pay * * *	For * * *
(a) $50.00	Administrative fee for checks returned by the bank for insufficient funds.
(b) $15.00	Administrative fee for the BIA processing of each demand letter.
(c) 18% of balance due.	Administrative fee charged by the Department of Treasury for collection.

§ 166.421 If a permit is canceled for non-payment, does that extinguish the permittee's debt?

No. The permittee remains liable for any delinquent payment. No future permits will be issued until all outstanding debts related to Indian agricultural lands are paid.

COMPENSATION TO INDIAN LANDOWNERS

§ 166.422 What does the BIA do with grazing rental payments received from permittees?

Unless arrangements for direct payment to the Indian landowners has been provided, the rent will be deposited to the appropriate account maintained by the Office of Trust Funds Management in accordance with part 115 of this title.

§ 166.423 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

§ 166.424 How will the BIA determine the grazing rental payment amount to be distributed to each Indian landowner?

Unless otherwise specified in the permit, the grazing rental payment will be distributed to each Indian landowner according to the forage production that each parcel of Indian land contributes to the permit, annual rental rate of each parcel, and the Indian landowner's interest in each parcel.

Subpart F—Administrative and Tribal Fees

§ 166.500 Are there administrative fees for a permit?

Yes. We will charge an administrative fee before approving any permit, subpermit, assignment, encumbrance, modification, or other related document.

§ 166.501 How are annual administrative fees determined?

(a) Except as provided in subsection (b), we will charge a three percent (%)

administrative fee based on the annual grazing rent.

(b) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00.

(c) If a tribe performs all or part of the administrative duties for this part, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

§ 166.502 Are administrative fees refundable?

No. We will not refund administrative fees.

§ 166.503 May the BIA waive administrative fees?

Yes. We may waive the administrative fee for a justifiable reason.

§ 166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

Yes. The permittee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe. Failure to make such payments will constitute a permit violation under subpart H of this part.

Subpart G—Bonding and Insurance Requirements

§ 166.600 Must a permittee provide a bond for a permit?

Yes. A permittee, assignee or subpermittee must provide a bond for each permit interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

§ 166.601 How is the amount of the bond determined?

(a) The amount of the bond for each permit is based on the:

(1) Value of one year's grazing rental payment;

(2) Value of any improvements to be constructed;

(3) Cost of performance of any additional obligations; and

(4) Cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 166.100 of this part may establish or waive specific bond requirements for permits.

§ 166.602 What form of bonds will the BIA accept?

(a) We will only accept bonds in the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to the BIA to sell such securities in case of a violation of the terms of the permit.

(3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;

(4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:

(i) Contain a clause that grants the BIA authority to demand immediate payment if the permittee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;

(ii) Be payable to the "Department of the Interior, BIA";

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date we receive it; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which our approval is required prior to redemption by any party.

(b) Indian landowners may negotiate a permit term that specifies the use of any of the bond forms described in paragraph (a) of this section.

(c) A tribe may accept and hold any form of bond described in paragraph (a) of this section, to secure performance under a permit of tribal land.

§ 166.603 If cash is submitted as a bond, how is it administered?

If cash is submitted as a bond, we will establish an account in the name of the permittee and retain it.

§ 166.604 Is interest paid on a cash performance bond?

No. Interest will not be paid on a cash performance bond.

§ 166.605 Are cash performance bonds refunded?

If the cash performance bond has not been forfeited for cause, the amount deposited will be refunded to the depositor at the end of the permit period.

§ 166.606 What happens to a bond if a violation occurs?

We may apply the bond to remedy the violation, in which case we will require the permittee to submit a replacement bond of an appropriate amount.

§ 166.607 Is insurance required for a permit?

When we determine it to be in the best interest of the Indian landowners, we will require a permittee to provide insurance. If insurance is required, it must:

(a) Be provided in an amount sufficient to:

(1) Protect any improvements on the permit premises;

(2) Cover losses such as personal injury or death; and

(3) Protect the interest of the Indian landowner.

(b) Identify the tribe, individual Indian landowners, and United States as insured parties.

§ 166.608 What types of insurance may be required?

We may require liability or casualty insurance (such as for fire, hazard, or flood), depending upon the activity conducted under the permit.

Subpart H—Permit Violations

§ 166.700 What permit violations are addressed by this subpart?

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart I of this part.

§ 166.701 How will the BIA determine whether the activities of a permittee under a permit are in compliance with the terms of the permit?

Unless the permit provides otherwise, we may enter the range unit at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the permittee is in compliance with the operating requirements of the permit.

§ 166.702 Can a permit provide for negotiated remedies in the event of a permit violation?

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

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 166.705(c) of this subpart. If the permit 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 permit may provide for permit 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 any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 166.705 of this subpart.

§ 166.703 What happens if a permit violation occurs?

(a) If an Indian landowner notifies us that a specific permit violation has occurred, we will initiate an appropriate

investigation within five business days of that notification.

(b) If we determine that a permit violation has occurred based on facts known to us, we will provide written notice to the permittee and the sureties of the violation within five business days.

§ 166.704 What will a written notice of a permit violation contain?

The written notice of a permit violation will provide the permittee with ten days from the receipt of the written notice to:

(a) Cure the permit violation and notify us that the violation is cured.

(b) Explain why we should not cancel the permit; or

(c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that certain corrective actions be taken immediately.

§ 166.705 What will the BIA do if a permit violation is not cured within the required time period?

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

(1) The permit should be canceled by us under paragraph (c) of this section and §§166.706 through 166.707 of this subpart;

(2) We should invoke any other remedies available to us under the permit, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the permit; or

(4) The permittee should be granted additional time in which to cure the violation.

(b) If we decide to grant a permittee additional time in which to cure a violation, the permittee 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 permit, we will send the permittee and its sureties a written notice of cancellation within five business days of that decision. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The written notice of cancellation will:

(1) Explain the grounds for cancellation;

(2) Notify the permittee of the amount of any unpaid rent, interest charges, or late payment penalties due under the permit;

(3) Notify the permittee of its right to appeal under Part 2 of this chapter, as modified by §166.706 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 permittee to vacate the property within 30 days of the date of receipt of the written notice of cancellation, if an appeal is not filed by that time.

§ 166.706 Will the BIA's regulations concerning appeal bonds apply to cancellation decisions involving permits?

(a) The appeal bond provisions in §2.5 of part 2 of this chapter will not apply to appeals from permit cancellation decisions made under §166.705 of this subpart. Instead, when we decide to cancel a permit, we may require the permittee to 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 permit cancellation decision.

§ 166.707 When will a cancellation of a permit be effective?

A cancellation decision involving a permit will not be effective for 30 days after the permittee receives a written notice of cancellation from us. The cancellation decision will remain ineffective if the permittee files an appeal under §166.706 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 permittee must continue to pay rent and comply with the other terms of the permit. If an appeal is not filed in accordance with § 166.706 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from us.

§ 166.708 Can the BIA take emergency action if the rangeland is threatened with immediate, significant, and irreparable harm?

Yes. If a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Indian land during the term of a permit, we will take appropriate emergency action. Emergency action may include trespass proceedings under subpart I of this part, or 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.

§ 166.709 What will the BIA do if a permittee holds over after the expiration or cancellation of a permit?

If a permittee remains in possession of Indian land after the expiration or cancellation of a permit, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the permittee is engaged in negotiations with the Indian landowners to obtain a new permit, we will take action to recover possession of the Indian land on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under subpart I of this part.

Subpart I—Trespass

§ 166.800 What is trespass?

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural lands. These provisions also apply to Indian agricultural land managed under an agricultural lease or permit under part 162 of this title.

§ 166.801 What is the BIA's trespass policy?

We will:

(a) Investigate accidental, willful, and/or incidental trespass on Indian agricultural land;

(b) Respond to alleged trespass in a prompt, efficient manner;

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

§ 166.802 Who can enforce this subpart?

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) Nothing in this subpart shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass.

NOTIFICATION

§ 166.803 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, within five business days, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of ownership of unauthorized property (*e.g.*, brands in the State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

(6) Potential consequences and penalties for failure to take corrective action; and

(7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by us.

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

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

§ 166.804 What can I do if I receive a trespass notice?

If you receive a trespass notice, you will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone but any explanation of trespass you wish to provide must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

§ 166.805 How long will a written trespass notice remain in effect?

A written trespass notice will remain in effect for the same conduct identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

ACTIONS

§ 166.806 What actions does the BIA take against trespassers?

If the trespasser fails to take the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.

(b) Assess penalties, damages, and costs, under § 166.812 of this subpart.

§ 166.807 When will we impound unauthorized livestock or other property?

We will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

§ 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, we will send written notice of our intent to impound unauthorized livestock or other property to the unauthorized livestock or property owner or representative, and any known lien holder of the unauthorized livestock or other property.

(b) If we determine that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, we will post a public notice of intent to impound at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described above, we will impound unauthorized livestock or other property without any further notice.

§ 166.809 What happens after my unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

§ 166.810 How do I redeem my impounded livestock or other property?

You may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under § 166.812 of this subpart and completing all corrective actions identified by us under § 166.804 of this subpart.

§ 166.811 How will the sale of impounded livestock or other property be conducted?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under § 166.804 and § 166.812 of this subpart, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

PENALTIES, DAMAGES, AND COSTS

§ 166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?

Trespassers on Indian agricultural land must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Indian agricultural land and/or property;

(c) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 166.807 of this subpart; and

(e) All other penalties authorized by law.

§ 166.813 How will the BIA determine the value of forage or crops consumed or destroyed?

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

§ 166.814 How will the BIA determine the value of the products or property illegally used or removed?

We will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

§ 166.815 How will the BIA determine the amount of damages to Indian agricultural land?

We will determine the damages by considering the costs of rehabilitation

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and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

§ 166.816 How will the BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

§ 166.817 What happens if I do not pay the assessed penalties, damages and costs?

Unless otherwise provided by applicable tribal law:

(a) We will refuse to issue you a permit for use, development, or occupancy of Indian agricultural lands; and

(b) We will forward your case for appropriate legal action.

§ 166.818 How are the proceeds from trespass distributed?

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 166.812 of this subpart as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) Proceeds recovered under § 166.812 of this subpart may be distributed to:

(1) Repair damages of the Indian agricultural land and property;

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit; and

(3) Reimburse for costs associated with the enforcement of this subpart.

(c) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, we will return it to the trespasser or, where we cannot identify the owner of the impounded property within 180 days, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

§ 166.819 What happens if the BIA does not collect enough money to satisfy the penalty?

We will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within five business days from the date of receipt, we will forward the case for appropriate legal action. We may send a copy of the notice to the Indian landowner, permittee, and any known lien holders.

Subpart J—Agriculture Education, Education Assistance, Recruitment, and Training

§ 166.900 How are the Indian agriculture education programs operated?

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

(b) We will operate the student educational employment program as part of our Indian agriculture education programs in accordance with the provisions of 5 CFR 213.3202(a) and (b).

(c) We will establish an education committee to coordinate and carry out the agriculture education assistance programs and to select participants for all agriculture education assistance programs. The committee will include at least one Indian professional educator in the field of natural resources or agriculture, a personnel specialist, a representative of the Intertribal Agriculture Council, and a natural resources or agriculture professional from the BIA and a representative from American Indian Higher Education Consortium. The committee's duties will include the writing of a manual for the Indian and Alaska Native Agriculture Education and Assistance Programs.

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

§ 166.901 How will the BIA select an agriculture intern?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Agriculture interns must:

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

(2) Maintain good academic standing;

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

(4) Report for service with the approved organization during any break in attendance at school of more than three weeks.

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

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

§ 166.902 How can I become an agriculture educational employment student?

(a) To be considered for selection, applicants for the student educational employment program must:

(1) Meet the eligibility requirements in 5 CFR part 308; and

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

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

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

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

§ 166.903 How can I get an agriculture scholarship?

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

(b) The education committee established in § 166.900(c) of this subpart will select program participants based on eligibility requirements stipulated in paragraphs (e) through (g) of this section without regard to applicants' financial needs or past scholastic achievements.

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

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

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

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

(2) Are enrolled and in good academic standing at an acceptable post-secondary school.

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

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

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

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

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

(i) We will pay all scholarships approved by the education committee established in § 166.900 of this subpart for which funding is available.

§ 166.904 What is agriculture education outreach?

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

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

(2) Promote agriculture career awareness;

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

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

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

(c) The education committee established under § 166.900(c) of this subpart will coordinate and implement the program nationally.

§ 166.905 Who can get assistance for postgraduate studies?

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

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

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

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

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

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

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

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

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

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

(f) Program participants will enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year for each year in the program. We may reduce the obligated service requirement if the employee receives supplemental funding such as research grants, scholarships, or graduate stipends and, as a result, reduces the need for financial assistance under this part. If the obligated service agreement is breached, we will collect the amount owed us in accordance with § 166.910 of this subpart.

§ 166.906 What can happen if we recruit you after graduation?

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

(b) We may assume outstanding student loans from established lending institutions of Indian and Alaska Native natural resources and agriculture technicians who have successfully completed a post-secondary natural resources or agriculture-related curriculum at an accredited institution.

(c) Indian and Alaska Natives receiving benefits under this program will enter into an obligated service agreement in accordance with § 166.901 of this subpart. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(d) If the obligated service agreement is breached, we will collect student loan(s) in accordance with § 166.910 of this subpart.

§ 166.907 Who can be an intern?

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

(b) Natural resources or agriculture-related personnel from other Department of the Interior agencies may apply through proper channels for "internships" within the BIA's agriculture programs. With the consent of a tribe or Alaska Native organization, the BIA can arrange for an Intergovernmental Personnel Act assignment in tribal or Alaska Native agriculture programs.

(c) Natural resources and agriculture personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an "internship" within the BIA and, with the consent of a tribe or Alaska Native organization, we can facilitate an Intergovernmental Personnel Act assignment in a tribe, tribal agriculture enterprise, or Alaska Native Corporation.

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

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

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

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

§ 166.908 Who can participate in continuing education and training?

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

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

(2) Technical agriculture education; and

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

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

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

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

§ 166.909 What are my obligations to the BIA after I participate in an agriculture education program?

(a) Individuals completing agriculture education programs with an obligated service requirement may be offered full time permanent employment with an approved organization to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If employment is not offered within the 90-day period, the student will be relieved of obligated service requirements. Not less than 30 days before the start of employment, the employer

must notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the BIA, the employer must also notify us.

(b) Employment time that can be credited toward obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the agriculture intern program which includes the special provisions outlined in § 166.901(f)(4) of this subpart. The minimum service obligation period will be one year of full time employment.

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

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

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

§ 166.910 What happens if I do not fulfill my obligation to the BIA?

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

If you are...	Then the costs that you must repay are...	And then the costs that you do not need to repay are...
(1) Agriculture intern	Living allowance, tuition, books, and fees received while occupying position plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.
(2) Cooperative education	Tuition, books, and fees plus interest.	
(3) Scholarship	Costs of scholarship plus interest.	
(4)Post graduation recruitment.	All student loans assumed by us under the program plus interest.	
(5) Postgraduate studies	Living allowance, tuition, books, and fees received while in the program plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.

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

Subpart K—Records

§ 166.1000 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.

§ 166.1001 How must a records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 166.1000(a) of this part must preserve the records in accordance with approved Departmental records retention procedures under the

Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in §166.1000(b) of this part for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

PART 167—NAVAJO GRAZING REGULATIONS

Sec.
167.1 Authority.
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167.14 Movement of livestock.
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167.16 Fences.
167.17 Construction near permanent livestock water developments.

AUTHORITY: R.S. 465, 2117, as amended, sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, as amended; 25 U.S.C. 9, 179, 397, 345, 402.

SOURCE: 22 FR 10578, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§167.1 Authority.

It is within the authority of the Secretary of the Interior to protect Indian tribal lands against waste. Subject to regulations of this part, the right exists for Indian tribes to authorize the granting of permits upon their tribal lands and to prescribe by appropriate tribal action the conditions under which their lands may be used.

§167.2 General regulations.

Part 166 of this subchapter authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on Indian lands under conditions set forth therein. In accordance with this authority and that of the Navajo Tribal Council, the Central Grazing Committee and the District Grazing Committees, the grazing of livestock on the Navajo Reservation shall be governed by the regulations in this part.

§167.3 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the Navajo Reservation, and the building up of those resources where they have deteriorated.

(b) The protection of the interests of the Navajo Indians from the encroachment of unduly aggressive and anti-social individuals who may or may not be members of the Navajo Tribe.

(c) The adjustment of livestock numbers to the carrying capacity of the range in such a manner that the livestock economy of the Navajo Tribe will be preserved.

(d) To secure increasing responsibility and participation of the Navajo people, including tribal participation in all basic policy decisions, in the sound management of one of the Tribe's greatest assets, its grazing lands, and to foster a better relationship and a clearer understanding between the Navajo people and the Federal Government in carrying out the grazing regulations.

(e) The improvement of livestock through proper breeding practices and the maintenance of a sound culling policy. Buck and bull pastures may be established and maintained either on or off the reservation through District Grazing Committee and Central Grazing Committee action.