

# Department of the Interior

## Departmental Manual

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**Effective Date:** 9/5/03

**Series:** Departmental Management

**Part 303:** Indian Trust Responsibilities

**Chapter 6:** Indian Fiduciary Trust Records

**Originating Office:** Office of the Special Trustee for American Indians

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### 303 DM 6

**6.1 Purpose.** This chapter provides records management guidance for all Interior organizations in order to properly identify, manage, protect, and control Indian fiduciary trust records.

**6.2 Scope.** Indian fiduciary trust records are created, managed, or used by several organizations across Interior (e.g., Bureau of Indian Affairs (BIA), the Office of the Special Trustee for American Indians (OST), the Bureau of Land Management (BLM), Minerals Management Service (MMS), Bureau of Reclamation (BOR), the Office of Surface Mining (OSM)), as well as some offices falling directly under the Secretary (e.g., Office of the Solicitor). The provisions of this chapter are applicable only to Interior organizations that create, manage, or use Indian fiduciary trust records in the conduct of their business operations. Policy and guidance for Indian fiduciary trust records under the custody and control of compacted and contracted tribes will be negotiated and issued separately.

### 6.3 Authorities.

- A. American Indian Trust Management Reform Act of 1994 (P.L. 103-412).
- B. 44 U.S.C. 3101 & 3102 Federal Records Act.
- C. Privacy Act of 1974, as amended (5 U.S.C. 552a).

**6.4 Policy.** All Interior offices and bureaus will evaluate their records to determine if they create, maintain or use Indian fiduciary trust records and ensure that all fiduciary trust records under their control are properly identified, inventoried, scheduled, and maintained in accordance with bureau and Office of Trust Records (OTR) records management policies and procedures for Indian fiduciary trust records.

**6.5 Objectives.** The guidance in this chapter will ensure that Interior organizations maintain and protect all Indian fiduciary trust records by:

- A. Properly identifying, inventorying and scheduling all bureau and office specific Indian fiduciary trust records by record series and periodically reviewing and updating this

inventory.

B. Establishing and maintaining an effective records management system consisting of the creation, maintenance and use, and disposition of Indian fiduciary trust records in accordance with bureau/office records retention/disposition schedules.

C. Preserving Indian fiduciary trust records in accordance with approved Departmental records retention procedures outlined in the Federal Records Act, 44 U.S.C. Chapters 21, 29, 31 and 33, with the BIA/OST records management policies and procedures established in the 16 Bureau of Indian Affairs Manual (BIAM), and/or with applicable unique bureau records schedules for Indian fiduciary trust records.

D. Safeguarding Indian fiduciary trust records as required under the Federal Records Act and the Privacy Act that are subject to inspection by the Federal courts, the Secretary of the Interior, and the Archivist of the United States.

## **6.6 Responsibilities.**

A. The Special Trustee in accordance with the Secretary's Trust Principles shall "Maintain a verifiable system of records that is capable, at a minimum, of identifying:

(1) the location, the beneficiary, any legal encumbrances (i.e., leases, permits, etc.), the user of the resource, the rents and monies paid, if any, and the value of trust or restricted lands and resources;

(2) dates of collections, deposits, transfers, disbursements, third-party obligations (i.e., court ordered child support, judgments, etc.), amount of earnings, investment instruments, and closing of all trust fund accounts;

(3) documents pertaining to actions taken to prevent or compensate for any diminishment of the Indian trust assets; and

(4) documents that evidence the Department's actions regarding the management and disposition of Indian trust assets."

B. The Director, OTR, is responsible for the protection, preservation, inventory and storage of all of the Department's fiduciary trust records. OTR will provide:

(1) adequate policy, guidance, procedures, and technical assistance and training to all Interior organizations that create, manage, or use Indian fiduciary trust records;

(2) oversee the coordination of all Interior organization's identification and scheduling of Indian fiduciary trust records and serve as a central point of contact within Interior for all Indian fiduciary trust records management; and

(3) provide training and technical assistance to bureaus and offices.

C. Bureau/Office Heads that create, manage or use Indian fiduciary trust records will ensure that all Indian fiduciary trust records under their control are properly identified, inventoried, scheduled, and maintained in accordance with bureau, office, and OTR records management policies and procedures for Indian fiduciary trust records.

D. Bureau/Office Records Officers shall ensure that their organization's Indian fiduciary trust records are identified, inventoried and reflected in the organization's National Archives and Records Administration (NARA) approved records retention/disposition schedule. They must also ensure that the inventory of trust records is reviewed and updated regularly to reflect accurate records in the custody and control of their organization.

## 6.7 Definitions.

A. Current records (also referred to as active records). Records necessary to conduct the current business of an office and therefore generally maintained in office space and equipment.

B. Decision Tree. A flow diagram depicting a decision process for determining specific outcomes. Decision trees are to be used by Interior organizations in determining if a record is or is not a fiduciary trust record.

C. Disposition. The actions taken regarding records no longer needed for current business. These actions include transfer to agency storage facilities or Federal Records Center (FRC), transfer from one Federal agency to another, transfer of permanent records to National Archives, and disposal of temporary records. (Refer to 16 Bureau of Indian Affairs Manual and the General Records Schedule (GRS) for disposition instructions)

D. Federal Records Center (FRC). A records center operated by NARA.

E. Fiduciary. Of, pertaining to, or involving one who holds something (e.g., property, money) in trust for another.

F. General Records Schedule (GRS). A NARA-issued schedule governing the disposition of specified records common to several or all agencies.

G. Index. A manual or automated listing arranged differently from a related record series or system to speed retrieval of relevant files.

H. Indian Trust Assets (ITA). ITA refers to particular lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for an Indian tribe, Alaska natives, or Indian individuals. Some lands or other natural resources may be owned by a tribe or Indian individual, subject to restraints on alienation imposed by Federal law. For purposes of this definition, ITA includes such lands or other natural resources.

I. Inventory. A detailed listing of the records (in this case Indian fiduciary trust

records) created, managed, or used by an organization. The inventory specifically identifies each record by name/record series, identification number, or other type of identifying information.

J. Management. Solely for the purposes of defining a fiduciary trust record, and determining the associated records-preservation obligations, management means actions that control, govern, administer, supervise, or regulate the use or disposition of ITA.

K. National Archives and Records Administration (NARA). The Federal agency that serves as a custodian of historical records for the Federal government. It also provides guidance to Federal agencies on records management activities and storage for Federal records at its FRCs.

L. Noncurrent records (also referred to as inactive records). Records no longer required to conduct business and therefore ready for final disposition.

M. Nonrecord materials. U.S. Government-owned informational materials excluded from the legal definition of records or not meeting the requirements of that definition. It also includes extra copies of documents kept only for convenience of reference, stocks of publications and of processed documents, and library or museum material intended solely for reference and exhibition.

N. Records. Records are defined in 44 U.S.C. 3301 as “includes all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, used in connection with the transaction of business and preserved or appropriate for preservation by an agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities because of the financial, historical, informational, and legal value contained in these documents.”

O. Recordkeeping. The act or process of creating and maintaining records.

P. Records Management. The planning, controlling, directing, organizing, training, promoting and other managerial activities related to the creation, maintenance and use, and disposition of records to achieve adequate and proper documentation of Federal policies and transactions and effective and economical management of agency operations.

Q. 16 Bureau of Indian Affairs Manual (16 BIAM). The most recent OST/BIA-issued schedule containing detailed procedures, guidelines, and instructions necessary to create, maintain and dispose of records systematically, as required by the Federal Records Act.

**6.8 Procedures for Determining a Fiduciary Trust Record.** Decision trees are provided in Appendices 1-6 to this chapter for use in determining if a record is an Indian fiduciary trust record. The Bureau of Indian Affairs-Appendix 1, the Office of the Special Trustee for American Indians-Appendix 2, the Bureau of Land Management-Appendix 3, the Minerals Management Service-Appendix 4, and the Office of Surface Mining-Appendix 5, each has a specific decision tree. All other bureaus and offices are covered by a general decision tree-

## Appendix 6.

A. Using the appropriate decision tree, each bureau or office will assess all records to identify, by record series, any and all records that meet the terms of the decision tree and that are Indian fiduciary trust records. The bureau will also complete and maintain a written inventory of all Indian fiduciary trust records by records series.

B. Bureaus and offices are responsible for ensuring that their records retention/disposition schedule includes a separate chapter or section clearly identifying all Indian fiduciary trust records with corresponding retention/disposition instructions. The Indian fiduciary trust records portion of each bureau/office records schedule must be coordinated with the OST, Office of Trust Records, prior to completion and submission to NARA for approval.

C. Annually, at the end of each fiscal year, each bureau/office shall reassess its records and update its inventory and records schedule for Indian fiduciary records. An updated inventory/schedule must be provided to the OST, Office of Trust Records, annually.

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