

**§ 162.616**

**25 CFR Ch. I (4-1-06 Edition)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

appropriate. The cancellation letter will:

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

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

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

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

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

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

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

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

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

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

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

**PART 163—GENERAL FORESTRY REGULATIONS**

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