

## Bureau of Indian Affairs, Interior

## § 166.4

**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 permittee, 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.