

(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.