

25 CFR Subpart D - Business Leases

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BUSINESS LEASING GENERAL PROVISIONS (§§ 162.401 - 162.402)

§ 162.401 What types of [leases](#) does this subpart cover?

(a) This subpart covers both ground [leases](#) (undeveloped land) and [leases](#) of developed land (together with the [permanent improvements](#) thereon) on [Indian land](#) that are not covered in another subpart of this part, including:

- (1) [Leases](#) for residential purposes that are not covered in subpart C;
- (2) [Leases](#) for business purposes that are not covered in subpart E;
- (3) [Leases](#) for religious, educational, recreational, cultural, or other public purposes; and
- (4) Commercial or industrial [leases](#) for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) [Leases](#) covered by this subpart may authorize the construction of single-purpose or mixed-use projects designed for use by any number of [lessees](#) or occupants.

§ 162.402 Is there a model business [lease](#) form?

There is no model business [lease](#) form because of the need for flexibility in negotiating and writing business leases; however, we may:

- (a) Provide other guidance, such as checklists and sample [lease](#) provisions, to assist in the [lease](#) negotiation process; and
- (b) Assist the [Indian](#) landowners, upon their request, in developing appropriate [lease](#) provisions or in using tribal [lease](#) forms that conform to the requirements of this part.

LEASE REQUIREMENTS (§§ 162.411 - 162.419)

§ 162.411 How long may the term of a business [lease](#) run?

(a) A business [lease](#) must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a [lease](#) approved under [25 U.S.C. 415\(a\)](#) may not exceed 50 years (consisting of an initial term not to exceed 25 years and one renewal not to exceed 25 years), unless a Federal statute provides for a longer maximum term (e.g., [25 U.S.C. 415\(a\)](#) allows for a maximum term of 99 years for certain tribes), a different initial term, renewal term, or number of renewals.

(b) For [tribal land](#), we will defer to the tribe's determination that the [lease](#) term, including any renewal, is reasonable. For [individually owned Indian land](#), we will review the [lease](#) term, including any renewal, to ensure it is reasonable, given the:

- (1) Purpose of the [lease](#);
- (2) Type of financing; and
- (3) Level of investment.

(c) The [lease](#) may not be extended by [holdover](#).

§ 162.412 What must the [lease](#) include if it contains an option to renew?

(a) If the [lease](#) provides for an option to renew, the [lease](#) must specify:

- (1) The time and manner in which the option must be exercised or is automatically effective;
- (2) That confirmation of the renewal will be submitted to us, unless the [lease](#) provides for automatic renewal;
- (3) Whether [Indian landowner](#) consent to the renewal is required;
- (4) That the [lessee](#) must provide notice of the renewal to the [Indian landowners](#) and any sureties and mortgagees;
- (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
- (6) Any other conditions for renewal (e.g., that the [lessee](#) not be in [violation](#) of the [lease](#) at the time of renewal).

(b) We will record any renewal of a [lease](#) in the [LTRO](#).

§ 162.413 Are there mandatory provisions that a business [lease](#) must contain?

(a) All business [leases](#) must identify:

- (1) The tract or parcel of land being leased;
- (2) The purpose of the [lease](#) and authorized uses of the [leased](#) premises;
- (3) The parties to the [lease](#);
- (4) The term of the [lease](#);
- (5) The ownership of [permanent improvements](#) and the responsibility for constructing, operating, maintaining, and managing [permanent improvements](#) under [§ 162.415](#);
- (6) Payment requirements and late payment charges, including interest;
- (7) Due diligence requirements under [§ 162.417](#) (unless the [lease](#) is for religious, educational, recreational, cultural, or other public purposes);
- (8) Insurance requirements under [§ 162.437](#); and
- (9) Bonding requirements under [§ 162.434](#). If a [performance bond](#) is required, the [lease](#) must state that the [lessee](#) must obtain the consent of the [surety](#) for any legal instrument that directly affects their obligations and liabilities.

(b) Where a representative executes a [lease](#) on behalf of an [Indian landowner](#) or [lessee](#), the [lease](#) must identify the landowner or [lessee](#) being represented and the authority under which the action is taken.

(c) All business [leases](#) must include the following provisions:

- (1) The obligations of the [lessee](#) and its sureties to the [Indian landowners](#) are also enforceable by the United States, so long as the land remains in [trust or restricted status](#);
- (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the [leased](#) premises;
- (3) The [lessee](#) must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under [§ 162.014](#);
- (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this [lease](#), all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the [lessee](#) will contact BIA and the tribe with jurisdiction over the land to determine how to proceed and appropriate disposition;
- (5) BIA has the right, at any reasonable time during the term of the [lease](#) and upon reasonable notice, in accordance with [§ 162.464](#), to enter the [leased](#) premises for inspection and to ensure compliance; and
- (6) BIA may, at its discretion, treat as a [lease violation](#) any failure by the [lessee](#) to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication.

(d) Unless the [lessee](#) would be prohibited by law from doing so, the [lease](#) must also contain the following provisions:

- (1) The [lessee](#) holds the United States and the [Indian landowners](#) harmless from any loss, liability, or damages resulting from the [lessee's](#) use or occupation of the [leased](#) premises; and
- (2) The [lessee](#) indemnifies 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 leased premises that occurs during the [lease](#) term, regardless of fault, with the exception that the [lessee](#) is not required to indemnify the [Indian landowners](#) for liability or cost arising from the [Indian landowners'](#) negligence or willful misconduct.

(e) We may treat any provision of a [lease document](#) that violates Federal law as a [violation](#) of the [lease](#).

§ 162.414 May [permanent improvements](#) be made under a business lease?

The [lessee](#) may construct [permanent improvements](#) under a business [lease](#) if the business [lease](#) specifies, or provides for the development of:

- (a) A plan that describes the type and location of any [permanent improvements](#) to be constructed by the [lessee](#); and
- (b) A general schedule for construction of the [permanent improvements](#), including dates for commencement and completion of construction.

§ 162.415 How must a business [lease](#) address ownership of permanent improvements?

(a) A business [lease](#) must specify who will own any [permanent improvements](#) the [lessee](#) constructs during the [lease](#) term and may specify under what conditions, if any, [permanent improvements](#) the [lessee](#) constructs may be conveyed to the [Indian landowners](#) during the [lease](#) term. In addition, the [lease](#) must indicate whether each specific permanent improvement the [lessee](#) constructs will:

- (1) Remain on the [leased](#) premises, upon the expiration, [cancellation](#), or [termination](#) of the [lease](#), in a condition satisfactory to the [Indian](#) landowners, and become the property of the [Indian](#) landowners;
- (2) Be removed within a time period specified in the [lease](#), at the [lessee's](#) expense, with the [leased](#) premises to be restored as closely as possible to their condition before construction of the [permanent improvements](#); or
- (3) Be disposed of by other specified means.

(b) A [lease](#) that requires the [lessee](#) to remove the [permanent improvements](#) must also provide the [Indian landowners](#) with an option to take possession of and title to the [permanent improvements](#) if the improvements are not removed within the specified time period.

§ 162.416 How will BIA enforce removal requirements in a business lease?

(a) We may take appropriate enforcement action to ensure removal of the [permanent improvements](#) and restoration of the premises at the [lessee](#)'s expense:

(1) In consultation with the tribe, for [tribal land](#) or, where feasible, with [Indian landowners](#) for [individually owned Indian land](#); and

(2) Before or after expiration, [termination](#), or [cancellation](#) of the [lease](#).

(b) We may collect and hold the [performance bond](#) or alternative form of security until removal and restoration are completed.

§ 162.417 What requirements for due diligence must a business [lease](#) include?

(a) If [permanent improvements](#) are to be constructed, the business [lease](#) must include due diligence requirements that require the [lessee](#) to complete construction of any [permanent improvements](#) within the schedule specified in the [lease](#) or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the [lease](#), the [lessee](#) must provide the [Indian landowners](#) and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(b) Failure of the [lessee](#) to comply with the due diligence requirements of the [lease](#) is a [violation](#) of the [lease](#) and may lead to [cancellation](#) of the [lease](#) under [§ 162.467](#).

(c) BIA may waive the requirements in this section if such waiver is in the best interest of the [Indian](#) landowners.

(d) The requirements of this section do not apply to [leases](#) for religious, educational, recreational, cultural, or other public purposes.

§ 162.418 How must a business [lease](#) describe the land?

(a) A business [lease](#) must describe the [leased](#) premises by reference to an official or certified survey, if possible. If the land cannot be so described, the [lease](#) must include one or more of the following:

(1) A legal description;

(2) A survey-grade global positioning system description; or

(3) Another description prepared by a registered land surveyor that is sufficient to identify the [leased](#) premises.

(b) If the tract is fractionated we will identify the undivided trust or restricted interests in the [leased](#) premises.

§ 162.419 May a business [lease](#) allow compatible uses?

A business [lease](#) may provide for the [Indian landowners](#) to use, or authorize others to use, the [leased](#) premises for other uses compatible with the purpose of the business [lease](#) and consistent with the terms of the business [lease](#). Any such use or authorization by the [Indian landowners](#) will not reduce or offset the monetary compensation for the business [lease](#).

COMPENSATION REQUIREMENTS (§§ 162.420 - 162.429)

§ 162.420 How much monetary compensation must be paid under a business [lease](#) of tribal land?

(a) A business [lease](#) of [tribal land](#) may allow for any payment amount negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a [tribal authorization](#) expressly stating that it:

- (1) Has negotiated compensation satisfactory to the tribe;
- (2) Waives valuation; and
- (3) Has determined that accepting such negotiated compensation and waiving valuation is in its best interest.

(b) The tribe may request, in writing, that we determine [fair market rental](#), in which case we will use a valuation in accordance with [§ 162.422](#). After providing the tribe with the [fair market rental](#), we will defer to a tribe's decision to allow for any payment amount negotiated by the tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require that the [lease](#) provide for [fair market rental](#) based on a valuation in accordance with [§ 162.422](#).

§ 162.421 How much monetary compensation must be paid under a business [lease](#) of individually owned [Indian land](#)?

(a) A business [lease](#) of [individually owned Indian land](#) must require payment of not less than [fair market rental](#) before any adjustments, based on a fixed amount, a percentage of the projected income, or some other method, unless paragraphs (b) or (c) of this section [permit](#) a lesser amount. The [lease](#) must establish how the fixed amount, percentage, or combination will be calculated and the frequency at which the payments will be made.

(b) We may approve a [lease](#) of [individually owned Indian land](#) that provides for the payment of nominal compensation, or less than a [fair market rental](#), if:

(1) The [Indian landowners](#) execute a written waiver of the right to receive [fair market rental](#); and

(2) We determine it is in the [Indian](#) landowners' best interest, based on factors including, but not limited to:

(i) The [lessee](#) is a member of the [immediate family](#), as defined in [§ 162.003](#), of an individual [Indian landowner](#);

(ii) The [lessee](#) is a co-owner in the [leased](#) tract;

(iii) A special relationship or circumstances exist that we believe warrant [approval](#) of the [lease](#);

(iv) The [lease](#) is for religious, educational, recreational, cultural, or other public purposes;

(v) We have waived the requirement for a valuation under [paragraph \(e\)](#) of this section.

(c) We may approve a [lease](#) that provides for payment of less than a [fair market rental](#) during the pre-development or construction periods, if we determine it is in the [Indian](#) landowners' best interest. The [lease](#) must specify the amount of the compensation and the applicable periods.

(d) We will require a valuation in accordance with [§ 162.422](#), unless:

(1) 100 percent of the [Indian landowners](#) submit to us a written request to waive the valuation requirement; or

(2) We waive the requirement under [paragraph \(e\)](#) of this section.

(e) If the owners of the applicable percentage of interests under [§ 162.012](#) of this part execute a business [lease](#) on behalf of all of the [Indian landowners](#) of a [fractionated tract](#), the [lease](#) must provide that the non-consenting [Indian](#) landowners, and those on whose behalf we have consented, receive a [fair market rental](#), as determined by a valuation, unless we waive the requirement because the tribe or [lessee](#) will construct infrastructure improvements on, or serving, the [leased](#) premises, and we determine it is in the best interest of all the landowners.

§ 162.422 How will BIA determine [fair market rental](#) for a business lease?

(a) We will use a market analysis, appraisal, or other appropriate valuation method to determine the [fair market rental](#) before we approve a business [lease](#) of [individually owned Indian land](#) or, at the request of the tribe, for [tribal land](#).

(b) We will either:

(1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or

- (2) Use an approved market analysis, appraisal, or other appropriate valuation method from the [Indian landowners](#) or [lessee](#).
- (c) We will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:
 - (1) Has been prepared in accordance with [USPAP](#) or a valuation method developed by the [Secretary](#) under [25 U.S.C. 2214](#); and
 - (2) Complies with Departmental policies regarding appraisals, including third-party appraisals.
- (d) [Indian landowners](#) may use competitive bidding as a valuation method.

§ 162.423 When are monetary compensation payments due under a business lease?

- (a) A business [lease](#) must specify the dates on which all payments are due.
- (b) Unless the [lease](#) provides otherwise, payments may not be made or accepted more than one year in advance of the due date.
- (c) Payments are due at the time specified in the [lease](#), regardless of whether the [lessee](#) receives an advance billing or other notice that a payment is due.

§ 162.424 Must a business [lease](#) specify who receives monetary compensation payments?

- (a) A business [lease](#) must specify whether the [lessee](#) will make payments directly to the [Indian landowners](#) (direct pay) or to us on their behalf.
- (b) The [lessee](#) may make payments directly to the [Indian landowners](#) if:
 - (1) The [Indian](#) landowners' trust accounts are unencumbered;
 - (2) There are 10 or fewer beneficial owners; and
 - (3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the [lessee](#) at the start of the [lease](#).
- (c) If the [lease](#) provides that the [lessee](#) will directly pay the [Indian](#) landowners, then:
 - (1) The [lease](#) must include provisions for proof of payment upon our request.
 - (2) When we consent on behalf of an [Indian landowner](#), the [lessee](#) must make payment to us on behalf of that landowner.
 - (3) The [lessee](#) must send direct payments to the parties and addresses specified in the [lease](#), unless the [lessee](#) receives notice of a change of ownership or address.
 - (4) Unless the [lease](#) provides otherwise, compensation payments may not be made payable directly to anyone other than the [Indian](#) landowners.
 - (5) Direct payments must continue through the duration of the [lease](#), except that:

(i) The [lessee](#) must make all [Indian landowners'](#) payments to us if 100 percent of the [Indian landowners](#) agree to suspend direct pay and provide us with documentation of their agreement; and

(ii) The [lessee](#) must make that individual [Indian landowner's](#) payment to us if any individual [Indian landowner](#) who dies, is declared [non compos mentis](#), owes a debt resulting in a trust account encumbrance, or his or her whereabouts become unknown.

§ 162.425 What form of monetary compensation payment is acceptable under a business lease?

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

(b) When payments are made to us, our preferred method of payment is electronic funds transfer payments. We will also accept:

- (1) Money orders;
- (2) Personal checks;
- (3) Certified checks; or
- (4) Cashier's checks.

(c) We will not accept cash or foreign currency.

(d) We will accept third-party checks only from financial institutions or Federal agencies.

§ 162.426 May the business [lease](#) provide for non-monetary or varying types of compensation?

(a) A [lease](#) may provide for the following, subject to the conditions in paragraphs (b) and (c) of this section:

- (1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or
- (2) Varying types of compensation at specific stages during the life of the [lease](#), including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(b) For [tribal land](#), we will defer to the tribe's determination that the compensation under [paragraph \(a\)](#) of this section is in its best interest, if the tribe submits a signed certification or [tribal authorization](#) stating that it has determined the compensation under [paragraph \(a\)](#) of this section to be in its best interest.

(c) For individually owned land, we may approve a [lease](#) that provides for compensation under [paragraph \(a\)](#) of this section if we determine that it is in the best interest of the [Indian](#) landowners.

§ 162.427 Will BIA notify a [lessee](#) when a payment is due under a business lease?

Upon request of the [Indian](#) landowners, we may issue invoices to a [lessee](#) in advance of the dates on which payments are due under a business [lease](#). The [lessee](#)'s obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

§ 162.428 Must a business [lease](#) provide for compensation reviews or adjustments?

(a) For a business [lease](#) of [tribal land](#), unless the [lease](#) provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the tribe states in its tribal certification or authorization that it has determined that not having compensation reviews and/or adjustments is in its best interest.

(b) For a business [lease](#) of [individually owned Indian land](#), unless the [lease](#) provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if:

- (1) If the term of the [lease](#) is 5 years or less;
- (2) The [lease](#) provides for automatic adjustments; or
- (3) We determine it is in the best interest of the [Indian landowners](#) not to require a review or automatic adjustment based on circumstances including, but not limited to, the following:
 - (i) The [lease](#) provides for payment of less than [fair market rental](#);
 - (ii) The [lease](#) is for religious, educational, recreational, cultural, or other public purposes;
 - (iii) The [lease](#) provides for most or all of the compensation to be paid during the first 5 years of the [lease](#) term or before the date the review would be conducted; or
 - (iv) The [lease](#) provides for graduated rent or non-monetary or various types of compensation.

(c) If the conditions in paragraph (a) or (b) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the [lease](#).

The [lease](#) must specify:

- (1) When adjustments take effect;
- (2) Who can make adjustments;
- (3) What the adjustments are based on; and
- (4) How to resolve disputes arising from the adjustments.

(d) When a review results in the need for adjustment of compensation, the [Indian landowners](#) must consent to the adjustment in accordance with [§ 162.012](#), unless the [lease](#) provides otherwise.

§ 162.429 What other types of payments are required under a business lease?

(a) The [lessee](#) may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in [§ 162.017](#). The [lessee](#) must pay these amounts to the appropriate office.

(b) If the [leased](#) premises are within an [Indian](#) irrigation project or drainage district, except as otherwise provided in [part 171](#) of this chapter, the [lessee](#) must pay all operation and maintenance charges that accrue during the [lease](#) term. The [lessee](#) must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. We will treat failure to make these payments as a [violation](#) of the [lease](#).

(c) Where the property is subject to at least one other [lease](#) for another compatible use, the [lessees](#) may agree among themselves how to allocate payment of the [Indian](#) irrigation operation and maintenance charges.

BONDING AND INSURANCE (§§ 162.434 - 162.437)

§ 162.434 Must a [lessee](#) provide a [performance bond](#) for a business lease?

The [lessee](#) must provide a [performance bond](#) or alternative form of security, except as provided in [paragraph \(f\)](#) of this section.

(a) The [performance bond](#) or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

(1) No less than:

(i) The highest annual rental specified in the [lease](#), if compensation is paid annually; or

(ii) If the compensation is not paid annually, another amount established by BIA in consultation with the tribe for [tribal land](#) or, where feasible, with [Indian landowners](#) for [individually owned Indian land](#);

(2) The construction of any required [permanent improvements](#);

(3) The operation and maintenance charges for any land located within an irrigation project; and

(4) The restoration and reclamation of the [leased](#) premises, to their condition at the start of the [lease](#) term or some other specified condition.

(b) The [performance bond](#) or other security:

(1) Must be deposited with us and made payable only to us, and may not be modified without our [approval](#), except as provided in [paragraph \(b\)\(2\)](#) of this section; and

(2) For [tribal land](#), if the [lease](#) so provides, may be deposited with the tribe and made payable to the tribe, and may not be modified without the [approval](#) of the tribe.

(c) The [lease](#) must specify the conditions under which we may adjust security or [performance bond](#) requirements to reflect changing conditions, including consultation with the tribal landowner for [tribal land](#) before the adjustment.

(d) We may require that the [surety](#) provide any supporting documents needed to show that the [performance bond](#) or alternative forms of security will be enforceable, and that the [surety](#) will be able to perform the guaranteed obligations.

(e) The [performance bond](#) or other security instrument must require the [surety](#) to provide notice to us at least 60 [days](#) before canceling a [performance bond](#) or other security. This will allow us to notify the [lessee](#) of its obligation to provide a substitute [performance bond](#) or other security and require collection of the bond or security before the [cancellation](#) date. Failure to provide a substitute [performance bond](#) or security is a [violation](#) of the [lease](#).

(f) We may waive the requirement for a [performance bond](#) or alternative form of security if either:

(1) The [lease](#) is for religious, educational, recreational, cultural, or other public purposes; or

(2) The [Indian landowners](#) request it and we determine a waiver is in the [Indian landowners'](#) best interest.

(g) For [tribal land](#), we will defer, to the maximum extent possible, to the tribe's determination that a waiver of a [performance bond](#) or alternative form of security is in its best interest.

§ 162.435 What forms of security are acceptable under a business lease?

(a) We will accept a [performance bond](#) only in one of the following forms:

(1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(b) We may accept an alternative form of security approved by us that provides adequate protection for the [Indian landowners](#) and us, including but not limited to an escrow agreement and assigned savings account.

- (c) All forms of [performance bonds](#) or alternative security must, if applicable:
- (1) Indicate on their face that BIA [approval](#) is required for redemption;
 - (2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if the [lessee](#) violates the [lease](#);
 - (3) Be irrevocable during the term of the [performance bond](#) or alternative security; and
 - (4) Be automatically renewable during the term of the [lease](#).
- (d) We will not accept cash bonds.

§ 162.436 What is the release process for a [performance bond](#) or alternative form of security under a business lease?

- (a) Upon expiration, [termination](#), or [cancellation](#) of the [lease](#), the [lessee](#) may ask BIA in writing to release the [performance bond](#) or alternative form of security.
- (b) Upon receiving a request under [paragraph \(a\)](#) of this section, BIA will:
- (1) Confirm with the tribe, for [tribal land](#) or, where feasible, with the [Indian landowners](#) for [individually owned Indian land](#), that the [lessee](#) has complied with all [lease](#) obligations; and
 - (2) Release the [performance bond](#) or alternative form of security to the [lessee](#), unless we determine that the bond or security must be redeemed to fulfill the contractual obligations.

§ 162.437 Must a [lessee](#) provide insurance for a business lease?

Except as provided in [paragraph \(c\)](#) of this section, a [lessee](#) must provide insurance necessary to protect the interests of the [Indian landowners](#) and in the amount sufficient to protect all insurable [permanent improvements](#) on the premises.

- (a) The insurance may include property, crop, liability, and casualty insurance, depending on the [Indian](#) landowners' interests to be protected.
- (b) Both the [Indian landowners](#) and the United States must be identified as additional insured parties.
- (c) We may waive the requirement for insurance upon the request of the [Indian landowner](#), if a waiver is in the best interest of the [Indian landowner](#), including if the [lease](#) is for less than [fair market rental](#) or nominal compensation. For [tribal land](#), we will defer, to the maximum extent possible, to the tribe's determination that a waiver is in its best interest.

APPROVAL (§§ 162.438 - 162.444)

§ 162.438 What documents are required for BIA [approval](#) of a business lease?

A [lessee](#) or the [Indian landowners](#) must submit the following documents to us to obtain BIA [approval](#) of a business lease:

- (a) A [lease](#) executed by the [Indian landowners](#) and the [lessee](#) that meets the requirements of this part;
- (b) For [tribal land](#), a [tribal authorization](#) for the [lease](#) and, if applicable, meeting the requirements of [§§ 162.420\(a\)](#), [162.426\(b\)](#), and [162.428\(a\)](#), or a separate signed certification meeting the requirements of [§§ 162.426\(b\)](#) and [162.428\(a\)](#);
- (c) A valuation, if required under [§ 162.420](#) or [§ 162.421](#);
- (d) Proof of insurance, if required under [§ 162.437](#);
- (e) A [performance bond](#) or other security, if required under [§ 162.434](#);
- (f) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable [tribal law](#), if required by the tribe;
- (g) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements, including any documentation prepared under [§ 162.027\(b\)](#);
- (h) A [restoration and reclamation plan](#) (and any subsequent modifications to the plan), if appropriate;
- (i) Where the [lessee](#) is not an entity owned and operated by the tribe, documents that demonstrate the technical capability of the [lessee](#) or [lessee's](#) agent to construct, operate, maintain, and terminate the proposed project and the [lessee's](#) ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (j) A preliminary plan of development that describes the type and location of any [permanent improvements](#) the [lessee](#) plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate;
- (k) A legal description of the land under [§ 162.418](#);
- (l) If the [lease](#) is being approved under [25 U.S.C. 415](#), information to assist us in our evaluation of the factors in [25 U.S.C. 415\(a\)](#); and
- (m) If the [lessee](#) is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
 - (1) The representative has authority to execute a [lease](#);
 - (2) The [lease](#) will be enforceable against the [lessee](#); and

(3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

§ 162.439 Will BIA review a proposed business [lease](#) before or during preparation of the NEPA review documentation?

Upon request of the [Indian](#) landowners, we will review the proposed business [lease](#) after negotiation by the parties, before or during preparation of the NEPA review documentation and any valuation. Within 60 [days](#) of receiving the proposed [lease](#), we will provide an acknowledgement of the terms of the [lease](#) and identify any provisions that, based on this acknowledgment review, would justify disapproval of the [lease](#), pending results of the NEPA review and any valuation.

§ 162.440 What is the [approval](#) process for a business lease?

(a) Before we approve a business [lease](#), we must determine that the [lease](#) is in the best interest of the [Indian](#) landowners. In making that determination, we will:

- (1) Review the [lease](#) and supporting documents;
- (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
- (3) If the [lease](#) is being approved under [25 U.S.C. 415](#), assure ourselves that adequate consideration has been given to the factors in [25 U.S.C. 415\(a\)](#); and
- (4) Require any [lease](#) modifications or mitigation measures necessary to satisfy any requirements including any other Federal or [tribal land](#) use requirements.

(b) Upon receiving a business [lease](#) package, we will promptly notify the parties whether the package is or is not complete. A complete package includes all the information and supporting documents required under this subpart, including but not limited to, NEPA review documentation and valuation documentation, where applicable.

- (1) If the business [lease](#) package is not complete, our letter will identify the missing information or documents required for a complete package. If we do not respond to the submission of a business [lease](#) package, the parties may take action under [§ 162.463](#).
- (2) If the business [lease](#) package is complete, we will notify the parties of the date of our receipt. Within 60 [days](#) of the receipt date, we will approve or disapprove the [lease](#), return the package for revision, or inform the parties in writing that we need additional review time. If we inform the parties in writing that we need additional time, then:
 - (i) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 [days](#) of the date of the letter; and
 - (ii) We have 30 [days](#) from sending the letter informing the parties that we need additional time to approve or disapprove the [lease](#).

(c) If we do not meet the deadlines in this section, then the parties may take appropriate action under [§ 162.463](#).

(d) We will provide any [lease approval](#) or disapproval and the basis for the determination, along with notification of any appeal rights under [part 2](#) of this chapter, in writing to the parties to the [lease](#).

(e) We will provide approved business [leases](#) on [tribal land](#) to the [lessee](#) and provide a copy to the tribe. We will provide approved business [leases](#) on [individually owned Indian land](#) to the [lessee](#), and make copies available to the [Indian landowners](#) upon written request.

§ 162.441 How will BIA decide whether to approve a business lease?

(a) We will approve a business [lease](#) unless:

(1) The required consents have not been obtained from the parties to the [lease](#);

(2) The requirements of this subpart have not been met; or

(3) We find a compelling reason to withhold our [approval](#) in order to protect the best interests of the [Indian](#) landowners.

(b) We will defer, to the maximum extent possible, to the [Indian](#) landowners' determination that the [lease](#) is in their best interest.

(c) We may not unreasonably withhold [approval](#) of a [lease](#).

§ 162.442 When will a business [lease](#) be effective?

(a) A business [lease](#) will be effective on the date that we approve the [lease](#), even if an appeal is filed under [part 2](#) of this chapter.

(b) The [lease](#) may specify a date on which the obligations between the parties to the business [lease](#) are triggered. Such date may be before or after the [approval](#) date under [paragraph \(a\)](#) of this section.

§ 162.443 Must a business [lease document](#) be recorded?

(a) Any business [lease document](#) must be recorded in our [LTRO](#) with jurisdiction over the [leased](#) land.

(1) We will record the [lease document](#) immediately following our [approval](#).

(2) If our [approval](#) of an [assignment](#) or [sublease](#) is not required, the parties must record the [assignment](#) or [sublease](#) in the [LTRO](#) with jurisdiction over the leased land.

(b) The tribe must record [lease documents](#) for the following types of [leases](#) in the [LTRO](#) with jurisdiction over the [leased](#) lands, even though BIA [approval](#) is not required:

- (1) [Leases](#) of [tribal land](#) a corporate entity [leases](#) to a third party under [25 U.S.C. 477](#); and
- (2) [Leases](#) of [tribal land](#) under a special act of Congress authorizing [leases](#) without our [approval](#) under certain conditions.

§ 162.444 Will BIA require an [appeal bond](#) for an appeal of a decision on a business [lease](#) document?

(a) If a party appeals our decision on a [lease](#), [assignment](#), amendment, or [sublease](#), then the official to whom the appeal is made may require the appellant to post an [appeal bond](#) in accordance with [part 2](#) of this chapter. We will not require an appeal bond:

- (1) For an appeal of a decision on a [leasehold mortgage](#); or
- (2) If the tribe is a party to the appeal and requests a waiver of the [appeal bond](#).

(b) The appellant may not appeal the [appeal bond](#) decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

§ 162.445 May the parties amend a business lease?

The parties may amend a business [lease](#) by obtaining:

- (a) The [lessee](#)'s signature;
- (b) The [Indian](#) landowners' consent under the requirements in [§ 162.446](#); and
- (c) BIA [approval](#) of the amendment under [§§ 162.447](#) and 162.448.

AMENDMENTS (§§ 162.445 - 162.448)

§ 162.446 What are the consent requirements for an amendment to a business lease?

(a) Unless the [lease](#) provides otherwise, the [lessee](#) must notify all [Indian landowners](#) of the proposed amendment.

(b) The [Indian](#) landowners, or their representatives under [§ 162.013](#), must consent to an amendment of a business [lease](#) in the same percentages and manner as a new business [lease](#) under [§ 162.012](#), unless the lease:

- (1) Provides that individual [Indian landowners](#) are deemed to have consented where they do not object in writing to the amendment within a specified period of time following the landowners' receipt of the amendment and the [lease](#) meets the requirements of [paragraph \(c\)](#) of this section;

- (2) Authorizes one or more representatives to consent to an amendment on behalf of all [Indian](#) landowners; or
 - (3) Designates us as the [Indian](#) landowners' representative for the purposes of consenting to an amendment.
- (c) If the [lease](#) provides for deemed consent under [paragraph \(b\)\(1\)](#) of this section, it must require the parties to submit to us:
- (1) A copy of the executed amendment or other documentation of any [Indian](#) landowners' actual consent;
 - (2) Proof of mailing of the amendment to any [Indian landowners](#) who are deemed to have consented; and
 - (3) Any other pertinent information for us to review.
- (d) Unless specifically authorized in the [lease](#), a written [power of attorney](#), or a court document, [Indian landowners](#) may not be deemed to have consented to, and an [Indian landowner](#)'s designated representative may not negotiate or consent to, an amendment that would:
- (1) Reduce the payment obligations to the [Indian](#) landowners;
 - (2) Increase or decrease the [lease](#) area;
 - (3) Terminate or change the term of the [lease](#); or
 - (4) Modify the dispute resolution procedures.

§ 162.447 What is the [approval](#) process for an amendment to a business lease?

- (a) When we receive an amendment that meets the requirements of this subpart, we will notify the parties of the date we receive it. We have 30 [days](#) from receipt of the executed amendment, proof of required consents, and required documentation to approve or disapprove the amendment or inform the parties in writing that we need additional review time. Our determination whether to approve the amendment will be in writing and will state the basis for our [approval](#) or disapproval.
- (b) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 [days](#) of the date of the letter. We have 30 [days](#) from sending the letter informing the parties that we need additional time to approve or disapprove the amendment.
- (c) If we do not meet the deadline in paragraph (a) or this section, or [paragraph \(b\)](#) of this section if applicable, the amendment is deemed approved to the extent consistent with Federal law. Unless the [lease](#) provides otherwise, provisions of the amendment that are inconsistent with Federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.

ASSIGNMENTS (§§ 162.449 - 162.452)

§ 162.449 May a [lessee](#) assign a business lease?

(a) A [lessee](#) may assign a business [lease](#) by meeting the consent requirements in [§ 162.450](#) and obtaining our [approval](#) of the [assignment](#) under [§§ 162.451](#) and 162.452, or by meeting the conditions in paragraphs (b) or (c) of this section.

(b) Where provided in the [lease](#), the [lessee](#) may assign the [lease](#) to the following without meeting consent requirements or obtaining BIA [approval](#) of the [assignment](#), as long as the [lessee](#) notifies BIA of the [assignment](#) within 30 [days](#) after it is executed:

(1) Not more than three distinct legal entities specified in the [lease](#); or

(2) The [lessee](#)'s wholly owned subsidiaries.

(c) The [lessee](#) may assign the [lease](#) without our [approval](#) or meeting consent requirements if:

(1) The assignee is a leasehold [mortgagee](#) or its designee, acquiring the [lease](#) either through foreclosure or by conveyance;

(2) The assignee agrees in writing to assume all of the obligations and conditions of the [lease](#); and

(3) The assignee agrees in writing that any transfer of the [lease](#) will be in accordance with applicable law under [§ 162.014](#).

§ 162.450 What are the consent requirements for an [assignment](#) of a business lease?

(a) Unless the [lease](#) provides otherwise, the [lessee](#) must notify all [Indian landowners](#) of the proposed [assignment](#).

(b) The [Indian](#) landowners, or their representatives under [§ 162.013](#), must consent to an amendment of a business [lease](#) in the same percentages and manner as a new business [lease](#) under [§ 162.012](#), unless the lease:

(1) Provides that individual [Indian landowners](#) are deemed to have consented where they do not object in writing to the amendment within a specified period of time following the landowners' receipt of the amendment and the [lease](#) meets the requirements of [paragraph \(c\)](#) of this section;

(2) Authorizes one or more representatives to consent to an amendment on behalf of all [Indian](#) landowners; or

(3) Designates us as the [Indian](#) landowners' representative for the purposes of consenting to an amendment.

(c) If the [lease](#) provides for deemed consent under [paragraph \(b\)\(1\)](#) of this section, it must require the parties to submit to us:

- (1) A copy of the executed amendment or other documentation of any [Indian](#) landowners' actual consent;
- (2) Proof of mailing of the amendment to any [Indian landowners](#) who are deemed to have consented; and
- (3) Any other pertinent information for us to review.

(d) The [lessee](#) must obtain the consent of the holders of any bonds or mortgages.

§ 162.451 What is the [approval](#) process for an [assignment](#) of a business lease?

(a) When we receive an [assignment](#) that meets the requirements of this subpart, we will notify the parties of the date we receive it. If our [approval](#) is required, we have 30 [days](#) from receipt of the executed [assignment](#), proof of required consents, and required documentation to approve or disapprove the [assignment](#). Our determination whether to approve the [assignment](#) will be in writing and will state the basis for our [approval](#) or disapproval.

(b) If we do not meet the deadline in this section, the [lessee](#) or [Indian landowners](#) may take appropriate action under [§ 162.463](#).

§ 162.452 How will BIA decide whether to approve an [assignment](#) of a business lease?

(a) We may disapprove an [assignment](#) of a business [lease](#) only if at least one of the following is true:

- (1) The [Indian landowners](#) have not consented and their consent is required;
- (2) The [lessee's](#) [mortgagees](#) or sureties have not consented;
- (3) The [lessee](#) is in [violation](#) of the [lease](#);
- (4) The assignee does not agree to be bound by the terms of the [lease](#);
- (5) The requirements of this subpart have not been met; or
- (6) We find a compelling reason to withhold our [approval](#) in order to protect the best interests of the [Indian](#) landowners.

(b) In making the finding required by [paragraph \(a\)\(6\)](#) of this section, we may consider whether:

- (1) The value of any part of the [leased](#) premises not covered by the [assignment](#) would be adversely affected; and
- (2) If a [performance bond](#) is required, the assignee has posted the bond or security and provided supporting documents that demonstrate that:

- (i) The [lease](#) will be enforceable against the assignee; and
 - (ii) The assignee will be able to perform its obligations under the [lease](#) or [assignment](#).
- (c) We will defer, to the maximum extent possible, to the [Indian](#) landowners' determination that the [assignment](#) is in their best interest.
- (d) We may not unreasonably withhold [approval](#) of an [assignment](#).

SUBLEASES (§§ 162.453 - 162.456)

§ 162.453 May a [lessee sublease](#) a business lease?

- (a) A [lessee](#) may [sublease](#) a business [lease](#) by meeting the consent requirements in [§ 162.454](#) and obtaining our [approval](#) of the [sublease](#) under [§§ 162.455](#) and 162.456, or by meeting the conditions in [paragraph \(b\)](#) of this section.
- (b) Where the [sublease](#) is part of a commercial development or residential development, the [lessee](#) may [sublease](#) without meeting consent requirements or obtaining BIA [approval](#) of the [sublease](#), if:
- (1) The [lease](#) provides for subleasing without meeting consent requirements or obtaining BIA [approval](#);
 - (2) The [sublease](#) does not relieve the lessee/sublessor of any liability; and
 - (3) The parties provide BIA with a copy of the [sublease](#) within 30 [days](#) after it is executed.

§ 162.454 What are the consent requirements for a [sublease](#) of a business lease?

- (a) Unless the [lease](#) provides otherwise, the [lessee](#) must notify all [Indian landowners](#) of the proposed [sublease](#).
- (b) The [Indian landowners](#) must consent to a [sublease](#) of a business [lease](#) in the same percentages and manner as a new business [lease](#) under [§ 162.012](#), unless the lease:
- (1) Provides that individual [Indian landowners](#) are deemed to have consented where they do not object in writing to the [sublease](#) within a specified period of time following the landowners' receipt of the [sublease](#) and the [lease](#) meets the requirements of [paragraph \(c\)](#) of this section;
 - (2) Authorizes one or more representatives to consent to a [sublease](#) on behalf of all [Indian](#) landowners; or
 - (3) Designates us as the [Indian](#) landowners' representative for the purposes of consenting to a [sublease](#).

(c) If the [lease](#) provides for deemed consent under [paragraph \(b\)\(1\)](#) of this section, it must require the parties to submit to us:

- (1) A copy of the executed [sublease](#) or other documentation of any [Indian](#) landowners' actual consent;
- (2) Proof of mailing of the [sublease](#) to any [Indian landowners](#) who are deemed to have consented; and
- (3) Any other pertinent information for us to review.

§ 162.455 What is the [approval](#) process for a [sublease](#) of a business lease?

(a) When we receive a [sublease](#) that meets the requirements of this subpart, we will notify the parties of the date we receive it. If our [approval](#) is required, we have 30 [days](#) from receipt of the executed [sublease](#), proof of required consents, and required documentation to approve or disapprove the [sublease](#) or inform the parties in writing that we need additional review time. Our determination whether to approve the [sublease](#) will be in writing and will state the basis for our [approval](#) or disapproval.

(b) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 [days](#) of the date of the letter. We have 30 [days](#) from sending the letter informing the parties that we need additional time to approve or disapprove the [sublease](#).

(c) If we do not meet the deadline in [paragraph \(a\)](#) of this section, or [paragraph \(b\)](#) of this section if applicable, the [sublease](#) is deemed approved to the extent consistent with Federal law. Unless the [lease](#) provides otherwise, provisions of the [sublease](#) that are inconsistent with Federal law will be severed and unenforceable; all other provisions of the [sublease](#) will remain in force.

§ 162.456 How will BIA decide whether to approve a [sublease](#) of a business lease?

(a) We may disapprove a [sublease](#) of a business [lease](#) only if at least one of the following is true:

- (1) The [Indian landowners](#) have not consented and their consent is required;
- (2) The [lessee's mortgagees](#) or sureties have not consented;
- (3) The [lessee](#) is in [violation](#) of the [lease](#);
- (4) The [lessee](#) will not remain liable under the [lease](#);
- (5) The requirements of this subpart have not been met; or
- (6) We find a compelling reason to withhold our [approval](#) in order to protect the best interests of the [Indian](#) landowners.

(b) In making the finding required by [paragraph \(a\)\(6\)](#) of this section, we may consider whether the value of any part of the [leased](#) premises not covered by the [sublease](#) would be adversely affected.

(c) We will defer, to the maximum extent possible, to the [Indian](#) landowners' determination that the [sublease](#) is in their best interest.

(d) We may not unreasonably withhold [approval](#) of a [sublease](#).

LEASEHOLD MORTGAGES (§§ 162.457 - 162.460)

§ 162.457 May a [lessee](#) mortgage a business lease?

(a) A [lessee](#) may mortgage a business [lease](#) by meeting the consent requirements in [§ 162.458](#) and obtaining our [approval](#) of the [leasehold mortgage](#) under [§§ 162.459](#) and 162.460.

(b) Refer to [§ 162.449\(c\)](#) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

§ 162.458 What are the consent requirements for a [leasehold mortgage](#) of a business lease?

(a) Unless the [lease](#) provides otherwise, the [lessee](#) must notify all [Indian landowners](#) of the proposed [leasehold mortgage](#).

(b) The [Indian](#) landowners, or their representatives under [§ 162.013](#), must consent to a [leasehold mortgage](#) of a business [lease](#) in the same percentages and manner as a new business [lease](#) under [§ 162.012](#), unless the lease:

(1) States that landowner consent is not required for a [leasehold mortgage](#) and identifies what law would apply in case of foreclosure;

(2) Provides that individual [Indian landowners](#) are deemed to have consented where they do not object in writing to the [leasehold mortgage](#) within a specified period of time following the landowners' receipt of the [leasehold mortgage](#) and the [lease](#) meets the requirements of [paragraph \(c\)](#) of this section;

(3) Authorizes one or more representatives to consent to a [leasehold mortgage](#) on behalf of all [Indian](#) landowners; or

(4) Designates us as the [Indian](#) landowners' representative for the purposes of consenting to a [leasehold mortgage](#).

(c) If the [lease](#) provides for deemed consent under [paragraph \(b\)\(2\)](#) of this section, it must require the parties to submit to us:

- (1) A copy of the executed [leasehold mortgage](#) or other documentation of any [Indian](#) landowners' actual consent;
- (2) Proof of mailing of the [leasehold mortgage](#) to any [Indian landowners](#) who are deemed to have consented; and
- (3) Any other pertinent information for us to review.

§ 162.459 What is the [approval](#) process for a [leasehold mortgage](#) of a business lease?

- (a) When we receive a [leasehold mortgage](#) that meets the requirements of this subpart, we will notify the parties of the date we receive it. We have 20 [days](#) from receipt of the executed [leasehold mortgage](#), proof of required consents, and required documentation to approve or disapprove the [leasehold mortgage](#). Our determination whether to approve the [leasehold mortgage](#) will be in writing and will state the basis for our [approval](#) or disapproval.
- (b) If we do not meet the deadline in this section, the [lessee](#) may take appropriate action under [§ 162.463](#).

§ 162.460 How will BIA decide whether to approve a [leasehold mortgage](#) of a business lease?

- (a) We may disapprove a [leasehold mortgage](#) of a business [lease](#) only if at least one of the following is true:
 - (1) The [Indian landowners](#) have not consented and their consent is required;
 - (2) The [lessee's mortgagees](#) or sureties have not consented;
 - (3) The requirements of this subpart have not been met; or
 - (4) We find a compelling reason to withhold our [approval](#) in order to protect the best interests of the [Indian](#) landowners.
- (b) In making the finding required by [paragraph \(a\)\(4\)](#) of this section, we may consider whether:
 - (1) The [leasehold mortgage](#) proceeds would be used for purposes unrelated to the [leased](#) premises; and
 - (2) The [leasehold mortgage](#) is limited to the leasehold.
- (c) We will defer, to the maximum extent possible, to the [Indian](#) landowners' determination that the [leasehold mortgage](#) is in their best interest.
- (d) We may not unreasonably withhold [approval](#) of a [leasehold mortgage](#).

EFFECTIVENESS, COMPLIANCE, AND ENFORCEMENT (§§ 162.461 - 162.474)

§ 162.461 When will an amendment, [assignment](#), [sublease](#), or [leasehold mortgage](#) of a business [lease](#) be effective?

(a) An amendment, [assignment](#), [sublease](#), or [leasehold mortgage](#) of a business [lease](#) will be effective when approved, even if an appeal is filed under [part 2](#) of this chapter, except:

(1) If the amendment or [sublease](#) was deemed approved under [§ 162.447\(c\)](#) or [§ 162.455\(c\)](#), the amendment or [sublease](#) becomes effective 45 [days](#) from the date the parties [mailed](#) or delivered the document to us for our review or, if we sent a letter informing the parties that we need additional time to approve or disapprove the [lease](#), the amendment or [sublease](#) becomes effective 45 [days](#) from the date of the letter informing the parties that we need additional time to approve or disapprove the [lease](#); and

(2) An [assignment](#) that does not require our [approval](#) under [§ 162.449\(b\)](#) or [§ 162.449\(c\)](#) or a [sublease](#) that does not require our [approval](#) under [§ 152.453\(b\)](#) becomes effective on the effective date specified in the [assignment](#) or [sublease](#). If the [assignment](#) or [sublease](#) does not specify the effective date, it becomes effective upon execution by the parties.

(b) We will provide copies of approved documents to the party requesting [approval](#), to the tribe for [tribal land](#), and upon request, to other parties to the [lease document](#).

§ 162.462 What happens if BIA disapproves an amendment, [assignment](#), [sublease](#), or [leasehold mortgage](#) of a business lease?

If we disapprove an amendment, [assignment](#), [sublease](#), or [leasehold mortgage](#) of a business [lease](#), we will notify the parties immediately and advise the landowners of their right to appeal the decision under [part 2](#) of this chapter.

§ 162.463 What happens if BIA does not meet a deadline for issuing a decision on a [lease](#) document?

(a) If a Superintendent does not meet a deadline for issuing a decision on a [lease](#), [assignment](#), or [leasehold mortgage](#), the parties may file a written notice to compel action with the appropriate Regional Director.

(b) The Regional Director has 15 [days](#) from receiving the notice to:

(1) Issue a decision; or

(2) Order the Superintendent to issue a decision within the time set out in the order.

(c) The parties may file a written notice to compel action with the BIA Director if:

(1) The Regional Director does not meet the deadline in [paragraph \(b\)](#) of this section;

(2) The Superintendent does not issue a decision within the time set by the Regional Director under [paragraph \(b\)\(2\)](#) of this section; or

(3) The initial decision on the [lease](#), [assignment](#), or [leasehold mortgage](#) is with the Regional Director, and he or she does not meet the deadline for such decision.

(d) The BIA Director has 15 [days](#) from receiving the notice to:

(1) Issue a decision; or

(2) Order the Regional Director or Superintendent to issue a decision within the time set out in the order.

(e) If the Regional Director or Superintendent does not issue a decision within the time set out in the order under paragraph (d)(2), then the BIA Director must issue a decision within 15 [days](#) from the expiration of the time set out in the order.

(f) The parties may file an appeal from our inaction to the Interior Board of [Indian](#) Appeals if the Director does not meet the deadline in paragraph (d) or (e) of this section.

(g) The provisions of [25 CFR 2.8](#) do not apply to the inaction of BIA officials with respect to a decision on a [lease](#), amendment, [assignment](#), [sublease](#), or [leasehold mortgage](#) under this subpart.

§ 162.464 May BIA investigate compliance with a business lease?

(a) We may enter the [leased](#) premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable [tribal law](#) and applicable [lease](#) documents, to protect the interests of the [Indian landowners](#) and to determine if the [lessee](#) is in compliance with the requirements of the [lease](#).

(b) If an [Indian landowner](#) notifies us that a specific [lease violation](#) has occurred, we will promptly initiate an appropriate investigation.

§ 162.465 May a business [lease](#) provide for negotiated remedies if there is a violation?

(a) A business [lease](#) of [tribal land](#) may provide either or both parties with negotiated remedies in the event of a [lease violation](#), including, but not limited to, the power to terminate the [lease](#). If the [lease](#) provides one or both parties with the power to terminate the lease:

(1) BIA [approval](#) of the [termination](#) is not required;

(2) The [termination](#) is effective without BIA [cancellation](#); and

(3) The [Indian landowners](#) must notify us of the [termination](#) so that we may record it in the [LTRO](#).

(b) A business [lease](#) of [individually owned Indian land](#) may provide either or both parties with negotiated remedies, so long as the [lease](#) also specifies the manner in which those remedies may be exercised by or on behalf of the [Indian landowners](#) of the applicable percentage of interests under [§ 162.012](#) of this part. If the [lease](#) provides one or both parties with the power to terminate the lease:

- (1) BIA concurrence with the [termination](#) is required to ensure that the [Indian landowners](#) of the applicable percentage of interests have consented; and
- (2) BIA will record the [termination](#) in the [LTRO](#).
- (c) The parties must notify any [surety](#) or [mortgagee](#) of any [violation](#) that may result in [termination](#) and the [termination](#) of a business [lease](#).
- (d) Negotiated remedies may apply in addition to, or instead of, the [cancellation](#) remedy available to us, as specified in the [lease](#). The landowners may request our assistance in enforcing negotiated remedies.
- (e) A business [lease](#) may provide that [lease violations](#) will be addressed by a tribe, and that [lease](#) disputes will be resolved by a tribal court, any other [court of competent jurisdiction](#), or by a tribal governing body in the absence of a tribal court, or through an alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing actions or proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.466 What will BIA do about a [violation](#) of a business lease?

- (a) In the absence of actions or proceedings described in [§ 162.465\(e\)](#), or if it is not appropriate for us to defer to the actions or proceedings, we will follow the procedures in paragraphs (b) and (c) of this section.
- (b) If we determine there has been a [violation](#) of the conditions of a business [lease](#), other than a [violation](#) of payment provisions covered by [paragraph \(c\)](#) of this section, we will promptly send the [lessee](#) and any [surety](#) and [mortgagee](#) a [notice of violation](#) by certified [mail](#), return receipt requested.
 - (1) We will send a copy of the [notice of violation](#) to the tribe for [tribal land](#), or provide [constructive notice](#) to [Indian landowners](#) for [individually owned Indian land](#).
 - (2) The [notice of violation](#) will advise the [lessee](#) that, within 10 [business days](#) of the receipt of a [notice of violation](#), the [lessee](#) must:
 - (i) Cure the [violation](#) and notify us, and the tribe for [tribal land](#), in writing that the [violation](#) has been cured;
 - (ii) Dispute our determination that a [violation](#) has occurred; or
 - (iii) Request additional time to cure the [violation](#).
 - (3) The [notice of violation](#) may order the [lessee](#) to cease operations under the [lease](#).
- (c) A [lessee's](#) failure to pay compensation in the time and manner required by a business [lease](#) is a [violation](#) of the [lease](#), and we will issue a [notice of violation](#) in accordance with this paragraph.
 - (1) We will send the [lessees](#) and any [surety](#) and [mortgagee](#) a [notice of violation](#) by certified [mail](#), return receipt requested:

- (i) Promptly following the date on which the payment was due, if the [lease](#) requires that payments be made to us; or
- (ii) Promptly following the date on which we receive actual notice of non-payment from the [Indian](#) landowners, if the [lease](#) provides for payment directly to the [Indian](#) landowners.
- (2) We will send a copy of the [notice of violation](#) to the tribe for [tribal land](#), or provide [constructive notice](#) to the [Indian landowners](#) for [individually owned Indian land](#).
- (3) The [notice of violation](#) will require the [lessee](#) to provide adequate proof of payment.
- (d) The [lessee](#) and its sureties will continue to be responsible for the obligations in the [lease](#) until the [lease](#) expires, or is terminated or cancelled.

§ 162.467 What will BIA do if the [lessee](#) does not cure a [violation](#) of a business [lease](#) on time?

- (a) If the [lessee](#) does not cure a [violation](#) of a business [lease](#) within the required time period, or provide adequate proof of payment as required in the [notice of violation](#), we will consult with the tribe for [tribal land](#) or, where feasible, with [Indian landowners](#) for [individually owned Indian land](#), and determine whether:
 - (1) We should cancel the [lease](#);
 - (2) The [Indian landowners](#) wish to invoke any remedies available to them under the [lease](#);
 - (3) We should invoke other remedies available under the [lease](#) or applicable law, including collection on any available [performance bond](#) or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or
 - (4) The [lessee](#) should be granted additional time in which to cure the [violation](#).
- (b) Following consultation with the tribe for [tribal land](#) or, where feasible, with [Indian landowners](#) for [individually owned Indian land](#), we may take action to recover unpaid compensation and any associated late payment charges.
 - (1) We do not have to cancel the [lease](#) or give any further notice to the [lessee](#) before taking action to recover unpaid compensation.
 - (2) We may still take action to recover any unpaid compensation if we cancel the [lease](#).
- (c) If we decide to cancel the [lease](#), we will send the [lessee](#) and any [surety](#) and [mortgagee](#) a [cancellation](#) letter by certified [mail](#), return receipt requested, within 5 [business days](#) of our decision. We will send a copy of the [cancellation](#) letter to the tribe for [tribal land](#), and will provide [Indian landowners](#) for [individually owned Indian land](#) with actual or [constructive notice](#) of the [cancellation](#). The [cancellation](#) letter will:
 - (1) Explain the grounds for [cancellation](#);

(2) If applicable, notify the [lessee](#) of the amount of any unpaid compensation or late payment charges due under the [lease](#);

(3) Notify the [lessee](#) of the [lessee's](#) right to appeal under [part 2](#) of this chapter, including the possibility that the official to whom the appeal is made may require the [lessee](#) to post an [appeal bond](#);

(4) Order the [lessee](#) to vacate the property within 31 [days](#) of the date of receipt of the [cancellation](#) letter, if an appeal is not filed by that time; and

(5) Order the [lessee](#) to take any other action BIA deems necessary to protect the [Indian](#) landowners.

(d) We may invoke any other remedies available to us under the [lease](#), including collecting on any available [performance bond](#), and the [Indian landowners](#) may pursue any available remedies under [tribal law](#).

§ 162.468 Will late payment charges or special fees apply to delinquent payments due under a business lease?

(a) Late payment charges will apply as specified in the [lease](#). The failure to pay these amounts will be treated as a [lease violation](#).

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the [Indian landowners](#) under the lease:

The lessee will pay . . .	For . . .
(1) \$50.00	Any dishonored check.
(2) \$15.00	Processing of each notice or demand letter.
(3) 18 percent of balance due	Treasury processing following referral for collection of delinquent debt.

§ 162.469 How will payment rights relating to a business [lease](#) be allocated?

The business [lease](#) may allocate rights to payment for insurance proceeds, [trespass](#) damages, condemnation awards, settlement funds, and other payments between the [Indian landowners](#) and the [lessee](#). If not specified in the [lease](#), insurance policy, order, award, judgment, or other document, the [Indian landowners](#) or [lessees](#) will be entitled to receive these payments.

§ 162.470 When will a [cancellation](#) of a business [lease](#) be effective?

(a) A [cancellation](#) involving a business [lease](#) will not be effective until 31 [days](#) after the [lessee](#) receives a [cancellation](#) letter from us, or 41 [days](#) from the date we [mailed](#) the letter, whichever is earlier.

(b) The [cancellation](#) decision will not be effective if an appeal is filed unless the [cancellation](#) is made immediately effective under [part 2](#) of this chapter. While a [cancellation](#) decision is ineffective, the [lessee](#) must continue to pay compensation and comply with the other terms of the [lease](#).

§ 162.471 What will BIA do if a [lessee](#) remains in possession after a business [lease](#) expires or is terminated or cancelled?

If a [lessee](#) remains in possession after the expiration, [termination](#), or [cancellation](#) of a business [lease](#), we may treat the unauthorized possession as a [trespass](#) under applicable law in consultation with the [Indian landowners](#). Unless the [Indian landowners](#) of the applicable percentage of interests under [§ 162.012](#) have notified us in writing that they are engaged in good faith negotiations with the [holdover lessee](#) to obtain a new [lease](#), we may take action to recover possession on behalf of the [Indian](#) landowners, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

§ 162.472 Will BIA [appeal bond](#) regulations apply to [cancellation](#) decisions involving business leases?

(a) Except as provided in [paragraph \(b\)](#) of this section, the [appeal bond](#) provisions in part 2 of this chapter will apply to appeals from [lease cancellation](#) decisions

(b) The [lessee](#) may not appeal the [appeal bond](#) decision. The [lessee](#) may, however, request that the official to whom the appeal is made reconsider the [appeal bond](#) decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

§ 162.473 When will BIA issue a decision on an appeal from a business leasing decision?

BIA will issue a decision on an appeal from a business leasing decision within 60 [days](#) of receipt of all pleadings.

§ 162.474 What happens if the [lessee](#) abandons the [leased](#) premises?

If a [lessee](#) abandons the [leased](#) premises, we will treat the abandonment as a [violation](#) of the [lease](#). The [lease](#) may specify a period of non-use after which the [lease](#) premises will be considered abandoned.

