

COMPARISON OF CURRENT LEASING RULE TO PROPOSED LEASING RULE

| Current Rule (25 CFR 162) | Proposed Rule (25 CFR 162 – Residential, Business, Wind & Solar Resource Leasing) |
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| <i>Applicability</i> | |
| Takes a “one-size fits all” approach to leasing, using the same blanket regulations to process all non-agricultural leases. | Applies specific, tailored regulations to leases based on whether they are for residential, business or wind & solar energy development. |
| <i>BIA Approval Process</i> | |
| Does not specify any process for obtaining Bureau of Indian Affairs (BIA) approval of lease documents. | Establishes deadlines for BIA review (vary according to whether residential, business, or wind & solar energy development). Provides for consequences if BIA fails to take action within specified deadline. <ul style="list-style-type: none"> ➤ Ex. If BIA does not approve a sublease for a house within 30 days, the sublease is considered to have been approved, and automatically goes into effect. |
| Gives BIA broad discretion to approve or disapprove lease documents. | Limits grounds on which BIA may disapprove lease documents. <ul style="list-style-type: none"> ➤ Ex: BIA must approve an assignment of a residential lease unless one of five specified circumstances exist or BIA finds a compelling reason to withhold its approval in order to protect the best interests of the Indian landowners. |
| Requires BIA approval of all subleases, except in limited circumstances. | Does not require BIA approval for certain subleases as long as requirements are met. <ul style="list-style-type: none"> ➤ Ex: BIA must approve a residential lease provision allowing subleases for a housing development for public purposes without further BIA approval, as long as BIA has approved a general plan of development, a sublease form, and rent schedule. |
| Does not allow for the landowner consent to other transactions up-front, except in limited circumstances. (Eg. Mortgages and subleases) | Provides flexibility by allowing original lease to provide for up-front consent of leasehold mortgages, subleases, etc. |

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| Requires landowners to obtain BIA approval of permits for temporary, short-term use of Indian lands. | Exempts permits for activities on Indian lands from BIA approval. ➤ Ex: Landowners may permit their land to a recreational company to hold a weekend fair (in which tents and other temporary structures are erected) without BIA approval. |
| Requires BIA approval of all assignments, except in limited circumstances. | Does not require BIA approval for assignments in certain cases. ➤ Ex: Lessees may assign the lease to their subsidiaries without BIA approval. |
| <i>Compensation & Appraisals</i> | |
| Requires rent to be at fair market value and requires an appraisal unless BIA grants a waiver. | Requires the BIA to defer to tribal decisions on rental rates, and does not require an appraisal of land unless the tribe requests one. Allows for more flexibility in determining and requiring fair market value for individually-owned land. Allows rent for wind energy evaluation leases to be at any amount negotiated by the landowners. |
| Generally requires a review of the rental amount every five years to determine whether an adjustment is necessary to reflect fair rental value. | Adds flexibility for landowners to negotiate lease terms addressing when reviews of rent must occur, and explicitly allows automatic adjustments. |
| <i>Performance Bonding, Insurance, Compliance & Enforcement</i> | |
| Requires lessee to provide a performance bond in most cases. | Allows BIA to waive the requirement for a performance bond and exempts leases for housing for public purposes from the performance bond requirement. |
| Requires lessee to have insurance. | Allows BIA to waive the requirement for insurance. |
| Addresses compliance with, and enforcement of, leases. | Simplifies provisions on how BIA will address violations and requires BIA to consult with landowners before taking certain enforcement actions. |