

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 161**

RIN 1076-AE46

**Navajo Partitioned Lands Grazing Permits****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior (Department), Bureau of Indian Affairs (BIA), is amending its regulations by adding a new part to govern the grazing of livestock on the Navajo Partitioned Land (NPL) of the Navajo-Hopi Former Joint Use Area (FJUA) of the 1882 Executive Order reservation. The purpose of this regulation is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes, while recognizing the importance of livestock in the Navajo way of life.

**DATES:** Effective January 5, 2006.

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**I. Background**

This regulation is issued to implement the Secretary of the Department of the Interior's (Secretary) responsibilities for the NPL as mandated by the Navajo-Hopi Settlement Act of 1974, 25 U.S.C. 640d-6402-31, as amended by the Navajo-Hopi Indian Relocation Amendments Acts of 1980, 94 Stat. 929, and the Federal court decisions of *Healing v. Jones*, 174 F. Supp. 211 (D. Ariz. 1959) (*Healing I*), *Healing v. Jones*, 210 F. Supp. 126 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963) (*Healing II*), *Hopi Tribe v. Watt*, 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe v. Watt*, 719 F.2d 314 (9th Cir. 1983).

This regulation also incorporates the requirements of the American Indian Agricultural Resource Management Act (AIARMA) (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended. The purposes of AIARMA include carrying out the trust responsibility of the United States and promoting self-determination of

Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield; by authorizing the Secretary to take part in the management of Indian agricultural lands with the participation of the beneficial owners of the land in a manner consistent with the trust responsibility of the Secretary and the objectives of beneficial owners; and by providing for the development and management of Indian agricultural land. The AIARMA requires that the Secretary conduct all land management activities on Indian agricultural lands in accordance with agricultural resource management plans, integrated resources management plans, and all tribal laws and ordinances, except where such compliance would be contrary to the trust responsibility of the United States.

The proposed regulation was published in the **Federal Register** on November 12, 2003 (68 FR 64023), with a 90-day public comment period that ended on February 10, 2004. Before the proposed regulation was published, BIA received approval to publish the draft regulation from the Navajo Nation at a meeting held on June 26, 2003, in Window Rock, Arizona.

On October 27, 2004, the Navajo Hopi Land Commission, by a 6-0 vote, passed a resolution recommending concurrence in the final regulation. On February 10, 2005, the Navajo Nation Resources Committee, by a 7-0 vote, recommended concurrence, and referred the final regulation to the Navajo Nation Intergovernmental Relations Committee for final concurrence. On April 8, 2005, the Navajo Nation Intergovernmental Relations Committee, by an 8-0 vote, passed a resolution concurring in and approving the final regulation.

This regulation will become effective 90 days after date of publication in the **Federal Register**.

**II. Response to Comments**

The Department solicited comments from all interested parties through its publication of the Proposed Rule in the **Federal Register** on November 12, 2003 (68 FR 64023). During the comment period, BIA employees and representatives from the Navajo Nation Resources Committee, the Navajo-Hopi Land Commission Office, the Navajo Nation Department of Agriculture, and the NPL District Grazing Committee members held public meetings in Tonalea, Arizona, on December 10, 2003, and in Pinon, Arizona, on December 11, 2003. These meetings were well attended, and many NPL

residents testified in both the English and Navajo languages. A certified Navajo interpreter was present at the meetings to translate comments for the court reporter so that all testimony was recorded.

The Department received a total of 63 comments, representing 53 individuals, on all parts of the proposed rule. The comments were carefully reviewed by the regulation drafting team made up of BIA employees from Washington, DC, and the Navajo Regional Office, attorneys from the Solicitor's Office, and representatives from the Navajo Nation, and depending upon their merit, the Department accepted, accepted with revision, or rejected comments made on each part of the rule. As noted in the part-by-part analysis below, certain sections of the regulation have been clarified in direct response to comments. Additionally, some language has been deleted and/or added to provide for increased clarity and precision. Substantive comments are summarized below.

**III. Part-by-Part Analysis***25 CFR Part 16—Navajo Partitioned Lands Grazing Permits*

The purpose of this regulation is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes, while recognizing the importance of livestock in the Navajo way of life. This regulation is an addition to the regulations of the Bureau of Indian Affairs governing the grazing of livestock on the NPL of the Navajo-Hopi FJUA of the 1882 Executive Order reservation.

The various subparts of part 161 address the purpose and scope of the NPL grazing permits; the definition of terms; the application of tribal policies and laws pertaining to permits; environmental compliance and management documents required by AIARMA; the process by which carrying capacity and stocking rates are established; permit requirements; eligibility and priority criteria for reissuance of cancelled permits; permit transfer, assignment and modification; procedures for the investigation, notification and processing of permit violations; procedures for trespass notification, enforcement, actions and penalties, damages and costs; and procedures by which the Navajo Nation provides concurrence to BIA under this part.

## General Observations in Response to Comments

Several commenters expressed general support for the regulation's purpose of land restoration and resource management. However, numerous concerns and questions were raised by commenters. Some commenters found that the regulation did not clearly identify whether BIA or the Navajo Nation will oversee particular activities, or expressed concern about the difficult nature of enforcing the regulation. One commenter felt that the regulation is too "authoritarian rather than flexible."

We believe the regulation provides the significant flexibility in implementation as required by statute. Section 640d-9(e)(1)(A) of the Settlement Act requires that all conservation practices, including grazing control and range restoration activities be coordinated and executed with the concurrence of the Navajo Nation. Thus, conservation practices will be cooperatively developed and implemented by both BIA and the Navajo Nation. Further, this regulation provides the Navajo Nation with the opportunity to take the lead role in any part of this regulation, either by enforcing tribal laws as provided in subpart B, or through the contracting process pursuant to Public Law 93-638. The regulation therefore allows for a range of approaches in implementation. However, pursuant to AIARMA which authorizes the Secretary to carry out the trust responsibility of the United States in managing Indian agricultural lands, the Secretary retains the final authority for actions taken under this part.

## Subpart A—Definitions, Authority, Purpose and Scope

### Summary of Subpart

Subpart A contains key terms used throughout the regulation. The terms are consistent with those found in AIARMA. This subpart also describes the Secretary's authorities under part 161.

### Comments

Numerous commenters expressed concern that the regulation does not address the importance of livestock in the Navajo culture. Another commenter was concerned that the regulation rehabilitates the environment but not human lives. We recognize the crucial role of livestock, and have revised the Summary and section 161.3 of the regulation to note the importance of livestock in the Navajo way of life, tradition and culture. The BIA and Navajo Nation were mindful of the impact that this regulation would have

on the NPL residents. The regulation is intended to facilitate recovery of the NPL rangeland which in turn will result in improved conditions for NPL residents.

A number of commenters stated that additional funding is necessary in order for the regulation to achieve its goals. Two commenters inquired as to whether funding was included as part of BIA's assistance in Navajo law enforcement. While we have not made any change to the regulation because funding is an issue that is determined by Congress, the Navajo Nation stated that it would address its concerns about funding for implementation of the regulation to the Department in a forthcoming tribal resolution.

Another commenter felt that individuals should be compensated to the extent that their rights are lost due to the regulation. This regulation does not intentionally contemplate the loss of any individual rights. However, if an individual feels that his or her rights have been violated by a decision made by BIA, the decision may be appealed pursuant to 25 CFR part 2. Decisions made by the Navajo Nation under this part may be appealed to the appropriate hearing body of the Navajo Nation. Section 161.801 addresses appeals made under this part. No change was made to the regulation.

Several commenters requested clarification of terms used in the regulation. In response to these requests, section 161.1 has been revised to further define the term "improvements," by including examples such as windmills, water troughs, fences, and cattle guards. Also a definition of "other affected land users" was added to section 161.4.

Several commenters also indicated that the District Grazing Committee should be given greater priority in decision making. The term "Navajo Nation" as used in this regulation includes the District Grazing Committee and such authority provided to it by the Navajo Nation. No change was made to the regulation.

One commenter questioned how the regulation would classify Shetland ponies, and one felt that the llama should not count as an animal unit. Shetland ponies will be classified as horses, and llamas kept as livestock will require a permit because such animals consume forage and are used to guard sheep. No change was made to the regulation.

One commenter felt that NPL District Rangers should play a larger role in carrying out the regulation. The role of NPL District Rangers will be determined by the Navajo Nation and BIA at the

implementation stage of this regulation. No change was made to the regulation.

Another commenter stated that the Secretary should be responsible for assisting the Navajo people in improving their farming methods under section 161.1. Pursuant to AIARMA, the Secretary is authorized to increase educational and training opportunities in all aspects of agricultural and land management. Education and assistance can be addressed on a continuing basis by BIA and the Navajo Nation following finalization of this regulation. No change was made to the regulation.

One commenter was concerned that there will be two different permits used on the Navajo Reservation; *i.e.*, 25 CFR parts 167 and 161. Another commenter expressed concern that this regulation and part 167 create different standards for permit eligibility. One commenter was concerned that the regulation would force people to choose between either grazing on non-NPL Navajo lands or the NPL. In response, part 167 governs grazing on the majority of the Navajo Reservation. However, because grazing management on the NPL must comply with the requirements of the Settlement Act, a separate permitting system must be used on the NPL. Pursuant to section 161.4, contiguous areas outside of the NPL may be included under this part which may eliminate any confusion caused by two different permitting systems on contiguous parcels. The Navajo Nation will have discretion to determine whether an individual may hold permits under both parts 161 and 167. No change was made to the regulation.

## Subpart B—Tribal Policies and Laws Pertaining to Permits

### Summary of Subpart

This subpart is consistent with AIARMA, and makes clear that Navajo Nation laws generally apply to land under the jurisdiction of the Navajo Nation, except to the extent that those Navajo Nation laws are inconsistent with applicable Federal law. Further, unless prohibited by Federal law, BIA will recognize and comply with tribal laws regulating activities on the NPL, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

### Comments

Two commenters expressed concern about conflicts between Federal law and those of the Navajo Nation. Sections 161.100 and 161.101, in compliance with section 3712(b) of AIARMA, address this concern by providing that Navajo Nation law applies so long as it

does not conflict with Federal law, and that the Navajo Nation is primarily responsible for enforcing tribal laws on the NPL. One commenter felt that the enforcement role of the Navajo Nation Resources Committee and the Navajo Nation Courts is ignored under section 161.101. However, section 161.101 provides discretion for the Navajo Nation to determine the roles of the Navajo Nation Resources Committee and Courts. No change was made to the regulation.

### Subpart C—General Provisions

#### *Summary of Subpart*

This subpart lists the environmental compliance and management documents that are required by AIARMA. This subpart also discusses how carrying capacity and stocking rates are established.

#### *Comments*

Numerous commenters expressed concern that this regulation will result in the loss of livestock. One commenter felt that stocking rate adjustments should be prorated and not be made equally under section 161.204. In response, the regulation provides that livestock numbers may be reduced when stocking rates are established in order to facilitate range recovery. While the extent of such permit reductions will not be known until BIA and the Navajo Nation review the current carrying capacity of each range unit pursuant to section 161.204, both BIA and the President's Office of the Navajo Nation will explore all possible alternatives to the loss of livestock. No change was made to the regulation.

Several commenters indicated that the permit process should include more environmental studies. Sections 161.200 and 161.201, in compliance with AIARMA section 3711(b), address this concern by requiring that an agricultural resource management plan be prepared, and that actions taken by BIA under this regulation must comply with the National Environmental Policy Act, 42 U.S.C. 431 *et seq.*, applicable regulations of the Council on Environmental Quality, 40 CFR part 1500, and applicable tribal laws and provisions of the Navajo Nation Environmental Policy Act CAP-47-95, where the tribal laws and provisions do not violate a Federal or judicial decision or conflict with the Secretary's trust responsibility under Federal law. No change was made to the regulation.

One commenter questioned when specific environmental standards would be announced. The standards for environmental compliance are set forth

in the statutes and regulations listed above. Compliance with these standards and regulations is an ongoing responsibility of the BIA and Navajo Nation. No change was made to the regulation.

Some commenters were concerned that the regulation did not address the manner in which current NPL livestock will be treated if stocking rates are reduced. We believe this comment refers to the removal of livestock that exceed permit stocking rates. This issue will be addressed at the implementation stage following finalization of the regulation. Sufficient time and accommodations will be made available to implement changes for individuals affected by this regulation. No change was made to the regulation.

One commenter expressed concern that livestock kept and grazed elsewhere would count towards NPL livestock limitations under section 161.204. Livestock grazed elsewhere on the Navajo Reservation will have no effect on the number of NPL grazing permits that are issued or on the stocking rates for each permit. No change was made to the regulation.

One commenter felt that private agreements should be honored when range unit boundaries are set, and another was concerned that range units would be established based on the already standing fences. Section 161.202 provides flexibility in determining range unit boundaries, and allows for agreements to be reached based on historical use. Fences may also be taken into account when establishing range unit boundaries. No change was made to the regulation.

One commenter felt that more than two horses should be allowed on a grazing unit. In response, the BIA and the Navajo Nation have determined that because cattle, sheep and goat herd sizes are relatively small, two horses are sufficient for the management of these herds. No change was made to the regulation.

One commenter felt that the regulation should discuss deferred compensation. Determinations about compensation will be made in accordance with Federal and tribal law. No change in the regulation was made.

### Subpart D—Grazing Permit Requirements

#### *Summary of Subpart*

This subpart describes the general requirements for obtaining a permit, the provisions contained in a grazing permit, the restrictions placed on permits, and other permit requirements.

#### *Comments*

Several commenters raised questions regarding permit costs. The regulation does not require that rentals or fees be paid for permits because the Navajo Nation requested that the regulation not include grazing fee provisions. Several commenters were concerned about the period of permit validity and permit renewals. Under section 161.303 permits are valid for one year, and will be automatically renewed so long as the permittee remains in good standing. No change was made to the regulation.

Two commenters also indicated that the manner in which permits will be issued is unclear. We believe this question refers to the process of applying for and receiving permits. The specific steps that must be taken by a potential permittee when applying for a permit are not outlined in this regulation. However, BIA and Navajo Nation personnel will be available to answer questions about the permitting process after finalization of this regulation.

Several commenters were concerned that the language of section 161.301(a)(14) would result in permittees being held responsible for the cleanup of hazardous waste spills, or that hazardous dumping would be authorized. Due to the continuing confusion created by this language, section 161.301(a)(14) was deleted from the regulation. Section 161.301(a)(15) was redesignated as section 161.301(a)(14). Nonetheless, liability standards for hazardous waste are governed by applicable statutes and regulations, and the elimination of this language from this regulation does not alter such standards.

One commenter was concerned about the ability of a family to share a permit. Section 161.302(b) requires that a permit be issued in the name of one individual only, and section 161.302(f) requires that a permit cannot be subdivided once it has been issued. This requirement was developed to ensure that permit ownership and accountability may be efficiently tracked. It does not preclude a family from sharing in permit responsibilities, or for a permit holder from assigning his or her permit to a family member under section 161.500.

### Subpart E—Reissuance of Grazing Permits

#### *Summary of Subpart*

This subpart sets forth eligibility and priority criteria for reissuance of cancelled grazing permits. This subpart makes clear that the Navajo Nation may prescribe eligibility requirements for

grazing allocations within 180 days following the effective date of these regulations. The BIA will prescribe the eligibility requirements after expiration of the 180-day period in the event that the Navajo Nation does not prescribe eligibility requirements, or in the event that the Navajo Nation does not take satisfactory action. This subpart also describes how new permits may be granted after the initial reissuance of permits, and sets forth the procedures for reissuing permits and allocating permits within each range unit.

#### *Comments*

Many commenters indicated that grazing permits of the deceased should pass to their descendants. While permits may not automatically pass to descendants under this regulation, the Navajo Nation has discretion under section 161.401 to determine who may be granted the permit of a deceased permit holder in accordance with Navajo Nation law. No change was made to the regulation.

Several commenters expressed concern that the regulation and specifically section 161.400 give priority to those over the age of 65. One commenter indicated that all enrolled Navajo Nation members over 18 should be eligible to receive permits. In response, priority under section 161.400(c)(1) was given to those aged 65 and older because persons of that age are more likely to have had their permits cancelled by the 1972 United States District Court order in *Hamilton v. MacDonald*, Civ. 579-PCT (1972), and are more likely to be dependent on livestock for subsistence. No change was made to the regulation.

Commenters were also concerned that those not fluent in the English language, especially the elderly, will be disadvantaged in exercising their rights under the regulation. The BIA and the Navajo Nation are committed to making the materials and processes of this regulation available in both the English and Navajo languages. No change was made to the regulation.

Commenters were also concerned that decisions regarding permit reissuance have already been made. Decisions regarding permit reissuance have not been made by either BIA or the Navajo Nation, and any previous discussions of permit reissuance were speculative and non-binding.

One commenter felt that those who previously grazed on Navajo and Hopi land should receive permits under section 161.400. Another commenter stated that priority for permit reissuance should go to those starting a business, and one commenter indicated that first

priority for reissuing permits should go to those not paid for relocation. One commenter expressed concern that residents of Black Mesa, Arizona, would be left out of permit reissuance. One commenter questioned whether non-Navajos are qualified to receive permits, and another expressed concern that those outside the Joint Use Area will not be qualified to receive permits. No changes were made to the regulation in response to these comments because the Navajo Nation has the discretion to determine permit eligibility for these and other situations under sections 161.400 and 161.401. If the Navajo Nation does not prescribe eligibility criteria for permit reissuance, the criteria presented in section 161.400 will be implemented. The criteria presented in section 161.400 were developed by BIA and the Navajo Nation and are intended to restore permits to those permittees who had their permits cancelled by court order in *Hamilton v. MacDonald*, Civ. 579-PCT (1972). Under section 161.400, only current residents of the NPL may receive permits. This criterion was developed to ensure that current NPL residents receive permits before non-NPL residents receive them. Section 161.401 provides complete discretion to the Navajo Nation to grant permits based on its own criteria following reissuance of permits under section 161.400. No change was made to the regulation.

Another commenter felt that 180 days is insufficient time for the Navajo Nation to establish permit eligibility requirements. The Navajo Nation may receive an extension to determine eligibility criteria under section 161.400 upon request and a showing that progress is being made. No change was made to the regulation.

#### **Subpart F—Modifying A Permit**

##### *Summary of Subpart*

This subpart describes how permits may be transferred, assigned or modified.

##### *Comments*

One commenter expressed concern about the impact that outside businesses would have on grazing permits under section 161.502 if businesses were allowed to occupy grazing lands and remove those lands from a range unit. Another commenter felt that in the event that a special land use results in permit modification, the permittee should be compensated. In response, section 161.502 provides discretion to BIA and the Navajo Nations to determine whether a special land use

may occupy grazing land, but does not require that special land uses be approved. Determination about special land uses will be made on a case-by-case basis by BIA and the Navajo Nation. Determinations about compensation will be made in accordance with Federal and tribal law. No change was made to the regulation.

#### **Subpart G—Permit Violations**

##### *Summary of Subpart*

This subpart sets forth the procedures for investigation, notification and processing of permit violations. This subpart also describes the process by which mediation can be used in the event of a permit violation.

##### *Comments*

One commenter expressed concern that the responsibilities for monitoring permit compliance under section 161.601 were unclear. In response to this concern, section 161.601 has been slightly modified to add “and/or Navajo Nation” to provide additional enforcement capabilities.

One commenter suggested that section 161.603 be deleted. This section was developed by BIA and the Navajo Nation to provide an alternative means of resolving permit violations or disputes prior to permit cancellation. No change was made to the regulation.

#### **Subpart H—Trespass**

##### *Summary of Subpart*

This subpart describes the process for trespass notification, enforcement, actions and penalties, damages and costs. This subpart is substantially similar to the general grazing regulations, 25 CFR part 166, subpart I, and is consistent with AIARMA.

##### *Comments*

Numerous commenters were concerned that the trespass provisions and penalties are too harsh and insufficiently defined. However, section 3713 of AIARMA requires the Secretary to establish civil penalties for the commission of trespass on Indian agricultural lands, and specifies what those penalties must be. The trespass provisions contained in this subpart are substantially similar to the trespass provisions contained in the general grazing regulations in 25 CFR part 166, and incorporate the requirements of AIARMA. In accordance with section 161.101, BIA has agreed that it will use the Navajo Nation Trespass Code when resolving trespass issues on the NPL. However, if a trespass issue remains unresolved under the Navajo Nation Trespass Code, the provisions of this

subpart will be applied. No change was made to the regulation.

Several commenters were concerned that a trespass may result in loss of NPL occupancy under section 161.715. This is a concern to some NPL residents because the issue of authorized occupancy on the NPL is somewhat unclear in some cases due the particular history of the area. In response, we slightly modified section 161.715(a) to eliminate loss of occupancy as a consequence of failure to pay penalties, damages or costs.

#### Subpart I—Concurrence/Appeals/Amendments

##### Summary of Subpart

This subpart sets forth the procedures for the Navajo Nation to provide concurrence to BIA under this part. This subpart also states that decisions made by BIA under this part may be appealed, and that decisions made by the Navajo Nation under this part may be appealed to the appropriate hearing body of the Navajo Nation.

##### Comments

Some commenters were concerned with the possibility that BIA may implement proposals without the Navajo Nation's concurrence under section 161.800(b)(5). In response, section 161.800 provides a detailed procedure by which the Navajo Nation provides concurrence to BIA conservation practices, including grazing control and range restoration activities as required by section 640d-9(e)(1)(A) of the Settlement Act. If however, this process does not result in Navajo Nation concurrence, BIA is authorized to act by AIARMA, which authorizes the Secretary to carry out the trust responsibility of the United States in managing Indian agricultural lands. Every attempt will be made to resolve issues of concern prior to the implementation of section 161.800(b)(5). No change was made to the regulation.

One commenter indicated that the citation in section 161.800(a) should be "*Hopi v. Watt*" rather than the "Settlement Act." We slightly modified the regulation to include the specific citation for the Settlement Act for clarity.

Another commenter felt that the Navajo-Hopi Land Commission is best suited for recommending amendments under section 161.802. This section requires the Resources Committee to incorporate the recommendation of the Navajo-Hopi Land Commission in approving amendments to this part. No change was made to the regulation.

#### IV. Procedural Requirements

##### A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in the Executive Order.

The rule describes how BIA will administer grazing permits on trust land. Thus, the impact of the rule is confined to the Federal Government and individual Indian and the Navajo Nation, and does not impose a compliance burden on the economy generally. Accordingly, it has been determined that this rule is not a "significant regulatory action" under any of the preceding criteria.

##### B. Review Under the Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rule making for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities. Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act, and consequently, no regulatory flexibility analysis has been done.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises because it concerns only the Navajo Nation. Accordingly, this regulation will not have an economic impact on a substantial number of small entities, and, therefore,

no regulatory flexibility analysis has been prepared.

##### C. Review Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under 5 U.S.C. 804(2), SBREFA, a rule is major if OMB finds that it results in:

- a. An annual effect on the economy of \$100 million or more;
- b. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- c. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is not a major rule as defined by section 804 of the SBREFA. This rule is uniquely confined to the Federal Government, individual Indians and the Navajo Nation, thus, it will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule provides regulatory guidance for grazing permits on trust lands owned by individual Indians and the Navajo Nation.

##### D. Review Under the Unfunded Mandates Reform Act

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). The impact of this rule is confined to grazing permits on land held in trust for the Navajo Nation. Accordingly, this proposed rule will not result in the expenditure of \$100 million or more in any one year.

##### E. Review Under Executive Order 12630

This rule does not have significant "takings" implications. Policies that have taking implications do not include actions affecting properties that are held in trust by the United States. The NPL grazing regulations provide specific regulatory guidance on trust lands.

##### F. Review Under Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 that speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This

rule is restricted to 25 CFR 161, NPL Grazing Permits on lands held in trust for individual Indians and tribes. Mineral development on lands held in trust for individual Indians and the Navajo Nation are regulated under the Indian Mineral Development Act. Regulations for mineral development are provided under a separate part in 25 CFR 211, 212 and 225. This proposed implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

#### G. Review Under Executive Order 12612

This rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States. While this proposed rule will impact tribal governments, there is no federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of the Executive Order 12988, Civil Justice Reform, 61 FR 4729, February 7, 1996, imposes on executive agencies the general duty to adhere to the following requirements:

- (1) Eliminate drafting errors and ambiguity;
- (2) Write regulations to minimize litigation; and
- (3) Provide a clear legal standard for effective conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to insure that the regulations:

- (1) Clearly specifies the preemptive effect, if any;
- (2) Clearly specifies any effect on existing federal law or regulation;
- (3) Provides a clear legal standard for affecting conduct while promoting simplification and burden reduction;

- (4) Specifies the retroactive affect if any;
- (5) Adequately defines key terms; and
- (6) Addresses other important issues affecting clarity and general draftsmanship.

Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of the applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet on one or more of them. This rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

#### I. Review Under the National Environmental Policy Act (NEPA)

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the NEPA of 1969, 42 U.S.C. 4321, *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under this rule will be subject at the time of the action itself to the NEPA process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

#### J. Review Under Executive Order 13175

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Department has determined that because this rule will uniquely affect tribal governments, it will follow Department and Administrative protocols in consulting with tribal governments on rulemaking. Consequently, tribal governments were notified through the proposed rulemaking published in the **Federal Register** and through BIA field offices, of the ramifications of this rule. This enabled tribal officials and the affected tribal constituency throughout the NPL to have meaningful and timely input in the development of this rule. This will reinforce good intergovernmental relations with the Navajo Nation and better inform, educate and advise the Navajo Nation on compliance requirements of this rule. We consulted with representatives of the Navajo Nation during the formulation of this rule. Representatives from the Navajo-Hopi Land Commission and Navajo

Nation Natural Resources Committee met in consultation several times from November 2002 to June of 2003 to draft the proposed regulations. The comments received from these consultations were taken into consideration in the formulation of this rule. We also consulted with the Navajo Nation in the formulation of this rule.

#### K. Review Under the Paperwork Reduction Act

This rule requires an information collection from 10 or more parties, and therefore was subject to review under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The information collection regulates grazing permits and the use of the Navajo Partitioned Lands. The information collection will also help protect the lands from overgrazing and aid in restoring lands that have been overgrazed. The information collection involves 5,370 responses with an hourly annual burden of 1227 hours for an average burden of approximately 14 minutes. The respondents are not required to keep records but many do as part of their business. Responses are given in order to obtain or retain a benefit, namely, acquiring or keeping a grazing permit as authorized by the Navajo-Hopi Settlement Act of 1974 as amended, by federal court decisions (*Healing v. Jones*, 174 F. Supp. 211 (D. Ariz. 1959) (*Healing I*), *Healing v. Jones*, 210 F. Supp. 126 (D. Ariz. 1962), and *Hopi Tribe v. Watt*, 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe v. Watt*, 719 F. 2d 314 (9th Cir. 1983), and the American Indian Agricultural Resource Management Act (AIARMA), (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*) as amended. Interior submitted a request for approval of the information request which was approved. The OMB Control Number is 1076-0162 and expires January 31, 2007.

Comments on this information collection can be made at any time and sent to the Information Collection Clearance Officer at 625 Herndon Parkway, Herndon, VA 20170. Please note that comments about the burden are separate from comments on the rule. If you wish to withhold personal information, such as your name, you must state this prominently at the beginning of your comments. We will honor your request to the extent that the law allows.

The table showing the burden of the information collection is included below for your information.

TABLE OF BURDEN FOR 25 CFR 161

CFR section	Number of respondents	Number of annual responses	Hourly burden per response (hours)	Total annual hourly burden
161.102 .....	700	700	.....	.....
161.206 .....	700	700	1/2	350
161.301 .....	700	700	.....	.....
161.302 .....	700	700	1/3	233
161.304 .....	700	700	.....	.....
161.402 .....	700	700	1/3	233
161.500 .....	70	70	1/3	23
161.502 .....	70	70	.....	.....
161.604 .....	35	35	1/2	17.5
161.606 .....	35	35	1/2	17.5
161.703 .....	35	35	1/2	17.5
161.704 .....	35	35	1/2	17.5
161.708 .....	10	10	1/2	5
161.717 .....	10	10	1	10
161.800 .....	700	700	1/4	175
161.801 .....	85	85	1/2	42.5
161.802 .....	85	85	1	85
Totals .....	700	5,370	.....	1,226.5

TABLE OF BURDEN FOR 25 CFR 161

CFR section	Salary: \$5.00 × total hourly burden = total hourly burden cost	Federal burden per response (hours)	Total Federal annual burden hours	Salary: \$18.52 × total hourly burden = total Federal burden cost
161.102 .....	.....	1/2	350	\$6,482
161.206 .....	\$1,750	1/4	175	3,241
161.301 .....	.....	1/4	175	3,241
161.302 .....	1,165	1/4	175	3,241
161.304 .....	.....	1/4	175	3,241
161.402 .....	1,165	1	700	12,964
161.500 .....	115	1	70	1,296
161.502 .....	.....	1/4	17.5	324
161.604 .....	87	1	35	648
161.606 .....	87	1	35	648
161.703 .....	87	1	35	648
161.704 .....	88	1	35	648
161.708 .....	25	1	10	185
161.717 .....	50	2	20	370
161.800 .....	875	1/4	212.5	3,936
161.801 .....	213	1	85	1,575
161.802 .....	425	1/2	42.5	787
Totals .....	6,132	.....	2,347.5	43,475

**List of Subjects in 25 CFR Part 161**

Grazing lands, Indians—lands, Livestock.

Dated: July 29, 2005.

**Michael D. Olsen,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

■ For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, is adding part 161 to chapter I of title 25 of the Code of Federal Regulations as follows.

**PART 161—NAVAJO PARTITIONED LANDS GRAZING PERMITS****Subpart A—Definitions, Authority, Purpose and Scope**

Sec.

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161.3 What is the purpose of this part?

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**Authority:** 25 U.S.C. 2; 5 U.S.C. 301; 25 U.S.C. 640d *et seq.*

#### Subpart A—Definitions, Authority, Purpose, and Scope

##### § 161.1 What definitions do I need to know?

*Agricultural Act* means the American Indians Agricultural Resource Management Act (AIARMA) of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).

*Agricultural resource management plan* means a 10-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 BIA and Indian tribal governments.

*Allocation* means the number of animal units authorized in each grazing permit.

*Animal Unit (AU)* means one adult cow and her 6-month-old calf or the equivalent thereof based on comparable

forage consumption. Thus as defined in the following:

- (1) One adult sheep or goat is equivalent to one-fifth (0.20) of an AU;
- (2) One adult horse, mule, or burro is equivalent to one and one quarter (1.25) AU; or
- (3) One adult llama is equivalent to three-fifths (0.60) of an AU.

*Appeal* means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request.

*Appeal Bond* means a bond posted upon filing of an appeal that provides a security or guaranty if an appeal creates a delay in implementing our decision that could cause a significant and measurable financial loss to another party.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*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.

*Business day* means Monday through Friday, excluding federally or tribally recognized holidays.

*Carrying capacity* means the number of livestock and/or wildlife, which may be sustained on a management unit compatible with management objectives for the unit.

*Concurrence* means the written agreement of the Navajo Nation with a policy, action, decision or finding submitted for consideration by BIA.

*Conservation practice* refers to any management measure taken to maintain or improve the condition, productivity, sustainability, or usability of targeted resources.

*Customary Use Area* refers to an area to which an individual traditionally confined his or her traditional grazing use and occupancy and/or an area traditionally inhabited by his or her ancestors.

*Day* means a calendar day, unless otherwise specified.

*Enumeration* means the list of persons living on and identified improvements located within the Former Joint Use Area obtained through interviews conducted by BIA in 1974 and 1975.

*Former Joint Use Area* means the area that was divided between the Navajo Nation and the Hopi Tribe by the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona. This area was established by the United States District Court for the District of Arizona in *Healing v. Jones*, 210 F. Supp. 125



(1962), aff'd. 373 U.S. 758 (1963) and is located:

(1) Inside the Executive Order area (Executive Order of December 16, 1882); and

(2) Outside Land Management District 6.

*Grazing Committee* means the District Grazing Committee established by the Navajo Nation Council, that is responsible for enforcing and implementing tribal grazing regulations on the Navajo Partitioned Lands.

*Grazing Permit* means a revocable privilege granted in writing and limited to entering on and utilizing forage by domestic livestock on a specified range unit. The term as used herein shall include authorizations issued to enable the crossing or trailing of domestic livestock within an assigned range unit.

*Historical Land Use* see Customary Use Area.

*Improvement* means any structure or excavation to facilitate management of the range for livestock, such as: Fences, cattle guards, spring developments, windmills, stock ponds, and corrals.

*Livestock* means horses, cattle, sheep, goats, mules, burros, donkeys, and llamas.

*Management Unit* is a subdivision of a geographic area where unique resource conditions, goals, concerns, or opportunities require specific and separate management planning.

*Navajo Nation* means all offices/entities/programs under the direct jurisdiction of the Navajo Nation Government.

*Navajo Partitioned Lands (NPL)* means that portion of the Former Joint Use Area awarded to the Navajo Nation under the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona, and now a separate administrative entity within the Navajo Indian Reservation.

*Non-Concurrence* means the official written denial of approval by the Navajo Nation of a policy, action, decision, or finding submitted for consideration by BIA.

*Range management plan* is a statement of management objectives for grazing, farming, or other agriculture management including contract stipulations defining required uses, operations, and improvements.

*Range Unit* means a tract of land designated as a separate management subdivision for the administration of grazing.

*Resident* means a person who lives on the Navajo Partitioned Lands.

*Resources Committee* means the oversight committee for the Division of Natural Resources within the Navajo

Nation Government. The Resources Committee of the Navajo Nation Council to whom authority is delegated to exercise the powers of the Navajo Nation with regards to the range development and grazing management of the Navajo Partitioned Lands.

*Secretary* means the Secretary of the Interior or his or her designated representative.

*Settlement Act* means the Navajo Hopi Settlement Act of December 22, 1974 (88 Stat. 1712, 25 U.S.C. 64d *et seq.*, as amended).

*Sheep Unit* means an adult ewe with un-weaned lamb. It is also the basic unit in which forage allocations are expressed.

*Special land use* means all land usage for purposes other than for grazing withdrawn in accordance with Navajo Nation laws, Federal laws, and BIA policies and procedures, such as but not limited to: Housing permits, farm leases, governmental facilities, rights-of-way, schools, parks, business leases, etc.

*Stocking rate* means the maximum number of sheep units, or animal units authorized to graze on a particular pasture, management unit, or range unit during a specified period of time.

*Trespass* means any unauthorized occupancy, grazing, use of, or action on the Navajo Partitioned Lands.

#### **§ 161.2 What are the Secretary's authorities under this part?**

(a) Under Section 640d-9(e) of the Settlement Act, lands partitioned under the Settlement Act are subject to the jurisdiction of the tribe to whom partitioned. The laws of the tribe apply to the partitioned lands as in paragraphs (a)(1) and (a)(2) of this section.

(1) Effective October 6, 1980:

(i) All conservation practices on the Navajo Partitioned Lands, including control and range restoration activities, must be coordinated and executed with the concurrence of the Navajo Nation; and

(ii) All grazing and range restoration matters on the Navajo Reservation lands must be administered by BIA, under applicable laws and regulations.

(2) Effective April 18, 1981, the Navajo Nation has jurisdiction and authority over any lands partitioned to it and over all persons on these lands. This jurisdiction and authority apply:

(i) To the same extent as is applicable to those other portions of the Navajo reservation; and

(ii) Notwithstanding any provision of law to the contrary, except where there is a conflict with the laws and regulations referred to in paragraph (a) of this section.

(b) Under the Agricultural Act, the Secretary is authorized to:

(1) Carry out the trust responsibility of the United States and promote Indian tribal self-determination by providing for management of Indian agricultural lands and renewable resources consistent with tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) Take part in managing Indian agricultural lands, with the participation of the land's beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(3) Provide for the development and management of Indian agricultural lands; and

(4) Improve the expertise and technical abilities of Indian tribes and their members by increasing the educational and training opportunities available to Indian people and communities in the practical, technical, and professional aspects of agricultural and land management.

#### **§ 161.3 What is the purpose of this part?**

The purpose of this part is to describe the goals and objectives of grazing management on the Navajo Partitioned Lands:

(a) To respect and recognize the importance that livestock and land have in sustaining Navajo tradition and culture.

(b) Provide resources to rehabilitate range resources in the preservation of forage, soil, and water on the Navajo Partitioned Lands;

(c) Monitor the recovery of those resources where they have deteriorated;

(d) Protect, conserve, utilize, and maintain the highest productive potential on the Navajo Partitioned Lands through the application of sound conservation practices and techniques. These practices and techniques will be applied to planning, development, inventorying, classification, and management of agricultural resources;

(e) Increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians, through the development of agricultural resources on the Navajo Partitioned Lands;

(f) Manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, recreation and to regulate water runoff and minimize soil erosion;

(g) Enable the Navajo Nation to maximize the potential benefits available to its members from their lands by providing technical assistance, training, and education in conservation

practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products, and other applicable subject areas;

(h) Develop the Navajo Partitioned Lands to promote self-sustaining communities; and

(i) Assist the Navajo Nation with permitting the Navajo Partitioned Lands, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

**§ 161.4 To what lands does this part apply?**

The grazing regulations in this part apply to the Navajo Partitioned Lands within the boundaries of the Navajo Indian Reservation held in trust by the United States for the Navajo Nation. Contiguous areas outside of the Navajo Partitioned Lands may be included under this part for management purposes by BIA in consultation with the affected permittees and other affected land users, and with the concurrence of the Resources Committee. Other affected land users include those holding approved assignments, permits, leases, and rights of way for activities such as: home sites, farm plots, roads, utilities, businesses, and schools.

**§ 161.5 Can BIA waive the application of this part?**

Yes. If a provision of this part conflicts with the objectives of the agricultural resource management plan provided for in § 161.200, or with a tribal law, BIA may waive the application of this part unless the waiver would either:

(a) Constitute a violation of a federal statute or judicial decision; or

(b) Conflict with BIA's general trust responsibility under federal law.

**§ 161.6 Are there any other restrictions on information given to BIA?**

Information that the BIA collects in connection with permits for NPL in sections 161.102, 161.206, 161.301, 161.302, 161.304, 161.402, 161.500, 161.502, 161.604, 161.606, 161.703, 161.704, 161.708, 161.717, 161.800, 161.801, and 161.802 have been reviewed and approved by the Office of Management and Budget. The OMB Control Number assigned is 1076-0162. Please note that a federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Subpart B—Tribal Policies and Laws Pertaining to Permits**

**§ 161.100 Do tribal laws apply to grazing permits?**

Navajo Nation laws generally apply to land under the jurisdiction of the Navajo Nation, except to the extent that those Navajo Nation laws are inconsistent with this part or other applicable federal law. This part may be superseded or modified by Navajo Nation laws with Secretarial approval, however, so long as:

(a) The Navajo Nation laws are consistent with the enacting Navajo Nation's governing documents;

(b) The Navajo Nation has notified BIA of the superseding or modifying effect of the Navajo Nation laws;

(c) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with the Secretary's general trust responsibility under federal law; and

(d) The superseding or modifying of the regulation applies only to Navajo Partitioned Lands.

**§ 161.101 How will tribal laws be enforced on the Navajo Partitioned Lands?**

(a) Unless prohibited by federal law, BIA will recognize and comply with tribal laws regulating activities on the Navajo Partitioned Lands, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the Navajo Nation is primarily responsible for enforcing tribal laws pertaining to the Navajo Partitioned Lands, BIA will:

(1) Assist in the enforcement of Navajo Nation laws;

(2) Provide notice of Navajo Nation laws to persons or entities undertaking activities on the Navajo Partitioned Lands; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as the appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR part 2, subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of (BIA) actions by the tribal court.

(c) Where the provisions in this subpart are inconsistent with a Navajo Nation law, but the provisions cannot be superseded or modified by the Navajo Nation laws under § 161.5, BIA may waive the provisions under part 1 of 25 CFR, so long as the new waiver does not violate a federal statute or judicial

decision or conflict with the Secretary's trust responsibility under federal law.

**§ 161.102 What notifications are required that tribal laws apply to grazing permits on the Navajo Partitioned Lands?**

(a) The Navajo Nation must provide BIA with an official copy of any tribal law or tribal policy that relates to this part. The Navajo Nation must notify BIA of the content and effective dates of tribal laws.

(b) BIA will then notify affected permittees of the effect of the Navajo Nation law on their grazing permits. BIA will:

(1) Provide individual written notice; or

(2) Post public notice. This notice will be posted at the tribal community building, U.S. Post Office, announced on local radio station, and/or published in the local newspaper nearest to the permitted Navajo Partitioned Lands where activities are occurring.

**Subpart C—General Provisions**

**§ 161.200 Is an Indian agricultural resource management plan required?**

(a) Yes, Navajo Partitioned Lands must be managed in accordance with the goals and objectives in the agricultural resource management plan developed by the Navajo Nation, or by BIA in close consultation with the Navajo Nation, under the Agricultural Act.

(b) The 10-year agricultural resource management and monitoring plan must be developed through public meetings and completed within 3 years of the initiation of the planning activity. The plan must be based on the public meeting records and existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the tribe and its members and provide identified resource management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the provisions in this subpart are inconsistent with the Navajo Nation's agricultural resource management plan, the Secretary may waive the provisions under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with the Secretary's trust responsibility under federal law.

**§ 161.201 Is environmental compliance required?**

Actions taken by BIA under this part must comply with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, applicable provisions of the Council on Environmental Quality, 40 CFR part 1500, and applicable tribal laws and provisions of the Navajo Nation Environmental Policy Act CAP-47-95, where the tribal laws and provisions do not violate a federal or judicial decision or conflict with the Secretary's trust responsibility under federal law.

**§ 161.202 How are range units established?**

(a) BIA, with the concurrence of the Navajo Nation, will establish range units on the Navajo Partitioned Lands to provide unified areas for which range management plans can be developed to improve and maintain soil and forage resources. Physical land features, watersheds, drainage patterns, vegetation, soil, resident concentration, problem areas, historical land use patterns, chapter boundaries, special land uses and comprehensive land use planning will be considered in the determination of range unit boundaries.

(b) BIA may modify range unit boundaries with the concurrence of the Navajo Nation. This may include small and/or isolated portions of Navajo Partitioned Lands contiguous to Navajo tribal lands in order to develop more efficient land management.

**§ 161.203 Are range management plans required?**

Yes. BIA will:

(a) Consult with the Navajo Nation in planning conservation practices, including grazing control and range restoration activities for the Navajo Partitioned Lands.

(b) Develop range management plans with the concurrence of the Navajo Nation.

(c) Approve the range management plans, after concurrence with the Navajo Nation, and the implementation of the plan may begin immediately. The plan will address, but is not limited to, the following issues:

- (1) Goals for improving vegetative productivity and diversity;
- (2) Stocking rates;
- (3) Grazing schedules;
- (4) Wildlife management;
- (5) Needs assessment for range and livestock improvements;
- (6) Schedule for operation and maintenance of existing range improvements and development for cooperative funded projects;
- (7) Cooperation in the implementation of range studies;

(8) Control of livestock diseases and parasites;

(9) Fencing or other structures necessary to implement any of the other provisions in the range management plan;

(10) Special land uses; and

(11) Water development and management.

**§ 161.204 How are carrying capacities and stocking rates established?**

(a) BIA, with the concurrence of the Navajo Nation, will prescribe, review and adjust the carrying capacity of each range unit by determining the number of livestock, and/or wildlife, that can be grazed on the Navajo Partitioned Lands without inducing damage to vegetation or related resources on each range unit and the season or seasons of use to achieve the objectives of the agricultural resource management plan and range unit management plan.

(b) BIA, with the concurrence of the Navajo Nation, will establish the stocking rate of each range or management unit. The stocking rate will be based on forage production, range utilization, the application of land management practices, and range improvements in place to achieve uniformity of grazing under sustained yield management principles on each range or management unit.

(c) BIA will review the carrying capacity of the grazing units on a continuing basis and, in consultation with the Grazing Committee and affected permittees, adjust the stocking rate for each range or management unit as conditions warrant.

(d) Any adjustments in stocking rates will be applied equally to each permittee within the management unit requiring adjustment.

**§ 161.205 How are range improvements treated?**

(a) Improvements placed on the Navajo Partitioned Lands will be considered affixed to the land unless specifically exempted in the permit. No improvement may be constructed or removed from Navajo Partitioned Lands without the written consent of BIA and the Navajo Nation.

(b) Before undertaking an improvement, BIA, Navajo Nation and permittee will negotiate who will complete and maintain improvements. The improvement agreement will be reflected in the permit.

**§ 161.206 What must a permittee do to protect livestock from exposure to disease?**

In accordance with applicable law, permittees must:

- (a) Vaccinate livestock;

(b) Treat all livestock exposed to or infected with contagious or infectious diseases; and

(c) Restrict the movement of exposed or infected livestock.

**§ 161.207 What livestock are authorized to graze?**

The following livestock are authorized to graze on the Navajo Partitioned Lands: horses, cattle, sheep, goats, mules, burros, donkeys, and llamas.

**Subpart D—Permit Requirements****§ 161.300 When is a permit needed to authorize grazing use?**

Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by the Navajo Nation, must obtain a permit under this part before using Navajo Partitioned Land for grazing purposes.

**§ 161.301 What will a grazing permit contain?**

(a) All grazing permits will contain the following provisions:

- (1) Name of permit holder;
- (2) Range management plan requirements;
- (3) Applicable stocking rate;
- (4) Range unit number and description of the permitted area;
- (5) Animal identification requirements (*i.e.*, brand, microchip, freeze brand, earmark, tattoo, etc.);
- (6) Term of permit (including beginning and ending dates of the term allowed, as well as an option to renew, or extend);
- (7) A provision stating that the permittee agrees that he or she will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose;
- (8) A provision stating that the permit authorizes no other privilege than grazing use;
- (9) A provision stating that no person is allowed to hold a grazing permit in more than one range unit of the Navajo Partitioned Lands, unless the customary use area extends beyond the range unit boundary;
- (10) A provision reserving a right of entry by BIA and the Navajo Nation for range survey, inventory and inspection or compliance purposes;
- (11) A provision prohibiting the creation of a nuisance, any illegal activity, and negligent use or waste of resources;
- (12) A provision stating how trespass proceeds are to be distributed;
- (13) A provision stating whether mediation will be used in the event of a permit violation; and

(14) A provision stating that the permit cannot be subdivided once it has been issued.

(b) Grazing permits will contain any other provision that in the discretion of BIA with the concurrence of the Navajo Nation is necessary to protect the land and/or resources.

(c) Grazing permits containing any special land use authorized under § 161.503 of this part must be included on the permit.

#### **§ 161.302 What restrictions are placed on grazing permits?**

Only a grazing permit issued under this part authorizes the grazing of livestock within the Navajo Partitioned Lands. Grazing permits are subject to the following restrictions:

(a) Grazing permits should not be issued for less than 2 animal units (10 sheep units) or exceed 70 animal units (350 sheep units). However, all grazing permits issued before the adoption of this regulation will be honored and reissued with an adjusted stocking rate if the permittee meets the eligibility and priority criteria found in § 161.400 of this part, and only if the carrying capacity and stocking rate as determined under §§ 161.204 and 161.403 allows.

(b) A grazing permit will be issued in the name of one individual.

(c) Only two horses will be permitted on a grazing permit.

(d) Grazing permits may contain additional conditions authorized by Federal law or Navajo Nation law.

(e) A state/tribal brand only identifies the owner of the livestock, but does not authorize the grazing of any livestock within the Navajo Partitioned Lands.

(f) A permit cannot be subdivided once it has been issued.

#### **§ 161.303 How long is a permit valid?**

After its initial issuance, each grazing permit is valid for one year beginning on the following January 1. All permits will be automatically renewed annually if the permittee is in compliance with all applicable laws including tallies and permit requirements.

#### **§ 161.304 Must a permit be recorded?**

A permit must be recorded by BIA following approval under this subpart.

#### **§ 161.305 When is a decision by BIA regarding a permit effective?**

BIA approval of a permit will be effective immediately upon signature, notwithstanding any appeal, which may be filed under part 2 of this title. Copies of the approved permit will be provided to the permittee and made available to the Navajo Nation upon request.

#### **§ 161.306 When are permits effective?**

Unless otherwise provided in the permit, a permit will be effective on the date on which BIA approves the permit.

#### **§ 161.307 When may a permittee commence grazing on Navajo Partitioned Land?**

The permittee may graze on Navajo Partitioned Land on the date specified in the permit as the beginning date of the term, but not before BIA approves the permit.

#### **§ 161.308 Must a permittee comply with standards of conduct if granted a permit?**

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in Navajo Nation laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, provisions, and other legal requirements. Permittee must also pay all applicable penalties that may be assessed for non-compliance.

(c) Fulfill all financial permit obligations owed to the Navajo Nation and the United States.

(d) Conduct only those activities authorized by the permit.

#### **Subpart E—Reissuance of Grazing Permits**

#### **§ 161.400 What are the criteria for reissuing grazing permits?**

(a) The Navajo Nation may prescribe eligibility requirements for grazing allocations within 180 days following the effective date of this part. BIA will prescribe the eligibility requirements after expiration of the 180-day period if the Navajo Nation does not prescribe eligibility requirements, or if satisfactory action is not taken by the Navajo Nation.

(b) With the written concurrence of the Navajo Nation, BIA will prescribe the following eligibility requirements, where only those applicants who meet the following criteria are eligible to receive permits to graze livestock:

(1) Those who had grazing permits on Navajo Partitioned Lands under 25 CFR part 167 (formerly part 152), and whose permits were canceled on October 14, 1973;

(2) Those who are listed in the 1974 and 1975 Former Joint Use Area enumeration;

(3) Those who are current residents on Navajo Partitioned Lands; and

(4) Those who have a customary use area on Navajo Partitioned Lands.

(c) Permits re-issued to applicants under this section may be granted by BIA based on the following priority criteria:

(1) The first priority will go to individuals currently the age of 65 or older; and

(2) The second priority will go to individuals under the age of 65.

(d) Upon the recommendation of the NPL District Grazing Committee and Resources Committee, BIA or Navajo Nation will have authority to waive one of the eligibility or priority criteria.

#### **§ 161.401 Will new permits be granted after the initial reissuance of permits?**

(a) Following the initial reissuance of permits under § 161.400, the Navajo Nation can grant new permits, subject to BIA approval, if:

(1) Additional permits become available; and

(2) The carrying capacity and stocking rates as determined under §§ 161.204 and 161.403 allow.

(b) The Navajo Nation must inform BIA if it grants any permits under paragraph (a) of this section.

#### **§ 161.402 What are the procedures for reissuing permits?**

BIA, with the concurrence of the Navajo Nation, will reissue grazing permits only to individuals that meet the eligibility requirements in § 161.400. Responsibilities for reissuance of grazing permits are as follows:

(a) BIA will develop a complete list consisting of all former permittees whose permits were cancelled and the number of animal units previously authorized in prior grazing permits. This list will be provided to the Grazing Committee and Resources Committee for their review. BIA will also provide the Grazing Committee and Resources Committee with the current carrying capacity and stocking rate for each range unit within the Navajo Partitioned Lands, as determined under § 161.204.

(b) Within 90 days of receipt, the Grazing Committee will review the list developed under § 161.402(a), and make recommendations to the Resources Committee for the granting of grazing permits according to the eligibility and priority criteria in § 161.400.

(c) If the Grazing Committee fails to make its recommendation to the Resources Committee within 90 days after receiving the list of potential permittees, BIA will submit its recommendations to the Resources Committee.

(d) The Resources Committee will review and concur with the list of proposed permit grantees, and then forward a final list to BIA for the

reissuance of grazing permits. If the Resources Committee does not concur, the procedures outlined in § 161.800 will govern.

(e) The final determination list of eligible permittees will be published. Permits will not be issued sooner than 90 days following publication of the final list.

**§ 161.403 How are grazing permits allocated within each range unit?**

(a) Initial allocation of the number of animal units authorized in each grazing permit will be determined by considering the number of animal units previously authorized in prior grazing permits and the current authorized stocking rate on a given range unit.

(b) Grazing permit allocations may vary from range unit to range unit depending on the stocking rate of each unit, the range management plan, and the number of eligible grazing permittees in the unit.

**Subpart F—Modifying A Permit**

**§ 161.500 May permits be transferred, assigned or modified?**

(a) Grazing permits may be transferred, assigned, or modified only as provided in this section. Permits may only be transferred or assigned as a single permit under Navajo Nation procedures and with the approval of BIA. Permittees must reside within the same range unit as the original permittee.

(b) Permits may be transferred, assigned, or modified with the written consent of the permittee, District Grazing Committee and/or Resources Committee and approved by BIA.

(c) BIA must record each transfer, assignment, or modification that it approves under a permit.

**§ 161.501 When will a permit modification be effective?**

BIA approval of a transfer, assignment, or modification under a permit will be effective immediately, notwithstanding any appeal, which may be filed under part 2 of this title. Copies of approved documents will be provided to the permittee and made available to the Navajo Nation upon request.

**§ 161.502 Will a special land use require permit modification?**

Yes. When the Navajo Nation and BIA approve a special land use, the grazing permit will be modified to reflect the change in available forage. If a special land use is inconsistent with grazing activities authorized in the permit, the special land use area will be withdrawn

from the permit, and grazing cannot take place on that part of the range unit.

**Subpart G—Permit Violations**

**§ 161.600 What permit violations are addressed by this subpart?**

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart H.

**§ 161.601 How will BIA monitor permit compliance?**

Unless the permit provides otherwise, BIA and/or Navajo Nation may enter the range unit at any reasonable time, without prior notice, to protect the interests of the Navajo Nation and ensure that the permittee is in compliance with the operating requirements of the permit.

**§ 161.602 Will my permit be canceled for non-use?**

(a) If a grazing permit is not used by the permittee for a 2-year period, BIA may cancel the permit upon the recommendation of the Grazing Committee and with the concurrence of the Resources Committee under § 161.606(c). Non-use consists of, but is not limited to, absence of livestock on the range unit, and/or abandonment of a permittee's grazing permit.

(b) Unused grazing permits or portions of grazing permits that are set aside for range recovery will not be cancelled for non-use.

**§ 161.603 Can mediation be used in the event of a permit violation or dispute?**

A permit may provide for permit disputes or violations to be resolved with the District Grazing Committee through mediation.

(a) The District Grazing Committee will conduct the mediation before the Navajo Nation's appropriate hearing body, before BIA invokes any cancellation remedies.

(b) Conducting the mediation may substitute for permit cancellation. However, BIA retains the authority to cancel the permit under § 161.606.

(c) The Navajo Nation's appropriate hearing body decision will be final, unless it is appealed to the Navajo Nation Supreme Court on a question of law. BIA will defer to any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to BIA under § 161.606.

**§ 161.604 What happens if a permit violation occurs?**

(a) If the Resources Committee notifies BIA that a specific permit violation has occurred, BIA will initiate an appropriate investigation within 5 business days of that notification.

(b) Unless otherwise provided under tribal law, when BIA has reason to believe that a permit violation has occurred, BIA or the authorized tribal representative will provide written notice to the permittee within 5 business days.

**§ 161.605 What will a written notice of a permit violation contain?**

The written notice of a permit violation will provide the permittee with 10 days from the receipt of the written notice to:

(a) Cure the permit violation and notify BIA that the violation is cured;

(b) Explain why BIA should not cancel the permit;

(c) Request in writing additional time to complete corrective actions. If additional time is granted, BIA may require that certain actions be taken immediately; or

(d) Request mediation under § 161.603.

**§ 161.606 What will BIA do if the permittee doesn't cure a violation on time?**

(a) If the permittee does not cure a violation within the required time period, or if the violation is not referred to District Grazing Committee for mediation, BIA will consult with the Navajo Nation, as appropriate, and determine whether:

(1) The permit may be canceled by BIA under paragraph (c) of this section and §§ 161.607 through 161.608;

(2) BIA may invoke any other remedies available to BIA under the permit;

(3) The Navajo Nation may invoke any remedies available to them under the permit; or

(4) The permittee may be granted additional time in which to cure the violation.

(b) If BIA grants a permittee a time extension to cure a violation, the permittee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time from the date on which the extension is granted.

(c) If BIA cancels the permit, BIA will send the permittee and the District Grazing Committee a written notice of cancellation within 5 business days of the decision. BIA will also provide actual or constructive notice of the cancellation to the Navajo Nation, as appropriate. The written notice of cancellation will:

(1) Explain the grounds for cancellation;

(2) Notify the permittee of the amount of any unpaid fees and other financial obligations due under the permit;

(3) Notify the permittee of his or her right to appeal under 25 CFR part 2 of

this title, as modified by § 161.607, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the permittee to cease grazing livestock on the next anniversary date of the grazing permit or 180 days following the receipt of the written notice of cancellation, whichever is sooner.

**§ 161.607 What appeal bond provisions apply to permit cancellation decisions?**

(a) The appeal bond provisions in § 2.5 of part 2 of this title will not apply to appeals from permit cancellation decision. Instead, when BIA decides to cancel a permit, BIA 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 title.

(b) An appeal bond should be set in an amount necessary to protect the Navajo Nation 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.

**§ 161.608 When will a permit cancellation 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 BIA. The cancellation decision will remain ineffective if the permittee files an appeal under § 161.607 and part 2 of this title, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the permittee must continue to comply with the other terms of the permit. If an appeal is not filed in accordance with § 161.607 and part 2 of this title, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from BIA.

**§ 161.609 Can BIA take emergency action if the rangeland is threatened?**

Yes, if a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Navajo Nation land during the term of a permit, BIA will take appropriate emergency action. Emergency action may include trespass proceedings under subpart H, or judicial action seeking immediate cessation of the activity resulting in or threatening harm. Reasonable efforts will be made to notify the Navajo Nation, either before or after the emergency action is taken.

**§ 161.610 What will BIA do if livestock is not removed when a permit expires or is cancelled?**

If the livestock is not removed after the expiration or cancellation of a permit, BIA will treat the unauthorized use as a trespass. BIA may remove the livestock on behalf of the Navajo Nation, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under subpart H.

**Subpart H—Trespass**

**§ 161.700 What is trespass?**

Under this part, trespass is any unauthorized use of, or action on, Navajo partitioned grazing lands.

**§ 161.701 What is BIA's trespass policy?**

BIA will:

- (a) Investigate accidental, willful, and/or incidental trespass on Navajo Partitioned Lands;
- (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 Navajo Partitioned Lands, and enforcement costs incurred as a consequence of the trespass; and
- (d) Ensure, to the extent possible, that damage to Navajo Partitioned Lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

**§ 161.702 Who will enforce this subpart?**

(a) BIA enforces the provisions of this subpart. If the Navajo Nation adopts the provisions of this subpart, the Navajo Nation will have concurrent jurisdiction to enforce this subpart. Additionally, if the Navajo Nation so requests, BIA will defer to tribal prosecution of trespass on Navajo Partitioned Lands.

(b) Nothing in this subpart will be construed to diminish the sovereign authority of the Navajo Nation with respect to trespass.

**Notification**

**§ 161.703 How are trespassers notified of a trespass determination?**

(a) Unless otherwise provided under tribal law, when BIA has reason to believe that a trespass on Navajo Partitioned Lands has occurred, BIA or the authorized tribal representative will provide written notice within 5 business days to:

- (1) The alleged trespasser;
  - (2) The possessor of trespass property; and
  - (3) Any known lien holder.
- (b) The written notice under paragraph (a) of this section 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 BIA under paragraph (b)(4) of this section.

(c) If BIA determines 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.

(d) Trespass notices under this subpart are not subject to appeal under part 2 of this title.

**§ 161.704 What can a permittee do if they receive a trespass notice?**

The trespasser will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact BIA in writing to explain why the trespass notice is in error. The trespasser may contact BIA by telephone but any explanation of trespass must be provided in writing. If BIA determines that a trespass notice was issued in error, the notice will be withdrawn.

**§ 161.705 How long will a written trespass notice remain in effect?**

A written trespass notice will remain in effect for the same action identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

**Actions**

**§ 161.706 What actions does BIA take against trespassers?**

If the trespasser fails to take the corrective action as specified, BIA may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. BIA may keep the property seized for use as evidence.

(b) Assess penalties, damages, and costs under § 161.712.

**§ 161.707 When will BIA impound unauthorized livestock or other property?**

BIA will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after 5 days of providing notice of impoundment if the trespasser failed to correct the trespass.

**§ 161.708 How are trespassers notified of impoundments?**

(a) If the trespass is not corrected in the time specified in the initial trespass notice, BIA will send written notice of its intent to impound unauthorized livestock or other property to:

(1) The unauthorized livestock or property owner or representative; and

(2) Any known lien holder of the unauthorized livestock or other property.

(b) If BIA determines that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, a public notice of intent to impound 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) After BIA has given notice as described in § 161.707, unauthorized livestock or other property will be impounded without any further notice.

**§ 161.709 What happens after unauthorized livestock or other property are impounded?**

Following the impoundment of unauthorized livestock or other property, BIA will provide notice that the impounded property will be sold as follows:

(a) BIA will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed before the sale.

(b) BIA will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will

include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least 5 days after the publication and posting of notice.

**§ 161.710 How can impounded livestock or other property be redeemed?**

Impounded livestock or other property may be redeemed by submitting proof of ownership and paying all penalties, damages, and costs under § 161.712 and completing all corrective actions identified by BIA under § 161.704.

**§ 161.711 How will BIA sell impounded livestock or other property?**

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property before the time set by the sale, by submitting proof of ownership and settling all obligations under §§ 161.704 and 161.712, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) BIA will give the purchaser a bill of sale or other written receipt evidencing the sale.

**Penalties, Damages, and Costs****§ 161.712 What are the penalties, damages, and costs payable by trespassers?**

Trespassers on Navajo Partitioned Lands must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Navajo Partitioned Lands and/or property;

(c) The costs associated with enforcement of the provisions, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 161.707; and

(e) All other penalties authorized by law.

**§ 161.713 How will BIA determine the amount of damages to Navajo Partitioned Lands?**

(a) BIA will determine the damages by considering the costs of rehabilitation and re-vegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value,

damage to other resources, and other factors.

(b) BIA will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of the products or property.

(c) BIA will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

**§ 161.714 How will BIA determine the costs associated with enforcement of the trespass?**

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

**§ 161.715 What will BIA do if a trespasser fails to pay penalties, damages and costs?**

This section applies if a trespasser fails to pay the assessed penalties, damages, and costs as directed. Unless otherwise provided by applicable Navajo Nation law, BIA will:

(a) Refuse to issue the permittee a permit for any use of Navajo Partitioned Lands; and

(b) Forward the case for appropriate legal action.

**§ 161.716 How are the proceeds from trespass distributed?**

Unless otherwise provided by Navajo Nation law:

(a) BIA will treat any amounts recovered under § 161.712 as proceeds from the sale of agricultural property from the Navajo Partitioned Lands upon which the trespass occurred.

(b) Proceeds recovered under § 161.712 may be distributed to:

(1) Repair damages of the Navajo Partitioned Lands and property; or

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit.

(c) Reimburse for costs associated with the enforcement.

(d) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, BIA will return it to the trespasser or, where the owner of the impounded property cannot be identified within 180 days, the net proceeds of the sale will be deposited into the appropriate Navajo Nation account or transferred to the Navajo Nation under applicable tribal law.

**§ 161.717 What happens if BIA does not collect enough money to satisfy the penalty?**

BIA will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within 5 business days from the date of receipt, BIA will forward the case for appropriate legal action. BIA may send a copy of the notice to the Navajo Nation, permittee, and any known lien holders.

**Subpart I—Concurrence/Appeals/Amendments**

**§ 161.800 How does the Navajo Nation provide concurrence to BIA?**

(a) Actions taken by BIA under this part require concurrence of the Navajo Nation under section 640d–9(e)(1)(A) of the Settlement Act.

(b) For any action requiring the concurrence of the Resources Committee, the following procedures will apply:

(1) Unless a longer time is specified in a particular section, or unless BIA grants an extension of time, the Resources Committee will have 45 days to review and concur with the proposed action;

(2) If the Resources Committee concurs in writing with all or part of BIA proposed action, the action or a portion of it may be immediately implemented;

(3) If the Resources Committee does not concur with all or part of the proposed action within the time prescribed in paragraph (b)(1) of this section, BIA will submit to the Resources Committee a written declaration of non-concurrence. BIA will then notify the Resources Committee in writing of a formal hearing to be held not sooner than 30 days from the date of the non-concurrence declaration;

(4) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. BIA will take minutes of the hearing. Following the hearing, BIA may amend, alter, or otherwise change the proposed action. If, following a hearing, BIA alters or amends portions of the proposed plan of action, BIA will submit the altered or amended portions of the plan to the Resources Committee for its concurrence; and

(5) If the Resources Committee fails or refuses to give its concurrence to the

proposal, BIA may implement the proposal only after issuing a written order, based upon findings of fact, that the proposed action is necessary to protect the land under the Settlement Act and the Agricultural Act.

**§ 161.801 May decisions under this part be appealed?**

(a) Appeals of BIA decisions issued under this part may be taken in accordance with procedures in part 2 of 25 CFR.

(b) All appeals of decisions by the Grazing Committee and Resources Committee will be forwarded to the Navajo Nation's Office of Hearings and Appeals.

**§ 161.802 How will the Navajo Nation recommend amendments to this part?**

The Resources Committee will have final authority on behalf of the Navajo Nation to approve amendments to the Navajo Partitioned Lands grazing provisions, upon the recommendation of the Grazing Committee and the Navajo-Hopi Land Commission, and the concurrence of BIA.

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