

SAMPLE CHECKLIST FOR REGULATIONS SUBMITTED UNDER THE HEARTH ACT
 AGRICULTURAL, BUSINESS, RESIDENTIAL, WIND AND SOLAR RESOURCE, AND OTHER TYPES OF LEASING
 (EDUCATIONAL, RECREATIONAL, PUBLIC, AND RELIGIOUS)

✓	DESCRIPTION	COMMENTS:
	Tribal Name: Federally Recognized Tribal Name, If Differs From Above: Federal Register Confirming Recognized Tribal Name:	_____ _____ January 14, 2015, 80 FR 19_ _ (or most recent)
	Tribal Resolution included, if required by tribe:	
	Scope: Business, Ag., Residential, Recreational, Religious, Etc.:	
	INITIAL REVIEW OF TRIBAL REGULATIONS If Tribal regulations are consistent with 25 CFR Part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act (25 U.S.C. § 415(h), no additional requirements (also see NPM and Mandatory Provisions 25 CFR 162.413).	
	DEFINITIONS: Tribal regulations must provide definitions for all specific terms used. However, if any of the following key terms are used, they must be defined <i>substantially the same</i> as 25 CFR 162, Subpart A, or in the case of Agricultural Regulations, Subpart B. Definitions for key terms are provided for reference):	
	Agricultural Land – “means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community” (25 CFR § 162.101).	Art./Sec. ____.
	Assignment - “means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the lessee's obligations, under a lease.” <i>Note: Agricultural regulations at 25 CFR. § 162.101 use “tenant” in place of “lessee.” The term “lessee” is acceptable for both.</i>	Art./Sec. ____.
	Lease – “means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. <i>The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.</i> ” <i>Note: It is not required to include the italicized sentence above to meet the criteria of “substantially the same” as 25 CFR 162, Subpart A.</i> <i>Note: Agricultural regulations at 25 CFR. § 162.101 use “tenant” in place of “lessee.” The term “lessee” acceptable for both.</i>	Art./Sec. ____.
	Leasehold Mortgage - means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.”	Art./Sec. ____.
	LTRO – “means the Land Titles and Records Office of the BIA.”	Art./Sec. ____.
	Sublease – “a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.” <i>Note: Agricultural regulations at 25 CFR. § 162.101 use “tenant” in place of “lessee.” The term “lessee” acceptable for both.</i>	Art./Sec. ____.
	Tribal Land – “any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).” <i>Note: Unless the Tribe intends to include tribal land held in trust with other tribes, recommend deleting references to interests with other tribes and replacing with “the Tribe”.</i> <i>Note: Recommend replacing “an Indian corporation” with “the Tribe.”</i>	Art./Sec. ____.
	Trust or Restricted Land – “any tract, or interest therein, held in trust or restricted status.”	Art./Sec. ____.

SAMPLE CHECKLIST FOR REGULATIONS SUBMITTED UNDER THE HEARTH ACT, CONTINUED.

✓	DESCRIPTION	COMMENTS:
	<p>Trust or Restricted Status – “means</p> <p>(1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians; or</p> <p>(2) That one or more tribes or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.”</p> <p><i>Note: Unless the Tribe intends to include tribal land held in trust with other tribes, recommend deleting references to interests with other tribes and replacing with “the Tribe”.</i></p>	Art./Sec. ____.
	REQUIRED GENERAL PROVISIONS:	
	Identifies to what lands the regulations apply (cannot apply to unrestricted fee or individually owned land).	Art./Sec. ____. Type: _____
	Defines what types of leases are covered by the regulations (May allow for permits and mortgages of leasehold interest. May <u>not</u> allow for mortgages of tribal land or address mineral leases.)	Art./Sec. ____.
	States effective date of regulations (date approved by SOI).	Art./Sec. ____.
	States what laws, in addition to federal, may apply to leases.	Art./Sec. ____.
	<p>Identifies allowed lease terms, including any option(s) to renew: <u>Business, agricultural wind resource, or solar resource leases</u> - up to 25 years with an option to renew for up to two additional terms (each of which may not exceed 25 years), 25 U.S.C. 415 (h)(1)(A).</p> <p><u>Public, religious educational, recreational, or residential leases</u> - up to 75 years, 25 U.S.C. 415 (h)(1)(B).</p>	Art./Sec. ____. Type: Term: Art./Sec. ____. Type: Term:
	REQUIRED REGULATIONS ESTABLISH PROCESS TO OBTAIN A LEASE OR LEASE DOCUMENTS	
	Is tribal approval required separate from tribal execution of lease? - Identifies officials/entities authorized to approve leases. - Identifies officials/entities authorized to execute leases.	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____
	Identifies whether lease documents (amendment, assignment, sublease, leasehold mortgage) may be completed without further tribal action (execution and/or approval).	Art./Sec. ____.
	State any timeline(s) for approval.	Art./Sec. ____.
	REQUIRED LEASE PROVISIONS	
	State the parties to the lease.	Art./Sec. ____.
	State the term of the lease.	Art./Sec. ____.
	State effective date of the lease (all leases or lease documents).	Art./Sec. ____.
	State purpose of the lease and authorized uses of the leased premises.	Art./Sec. ____.
	Describe the land being leased. Descriptions must be of sufficient detail to meet recording requirements for BIA’s Land Title and Records Office (LTRO). See 25 CFR 150, Land Records and Title Documents.	Art./Sec. ____.
	State how much rent/compensation is due.	Art./Sec. ____.
	State when rent/compensation is due.	Art./Sec. ____.
	State who receives rent/compensation.	Art./Sec. ____.
	State what form of payment is acceptable.	Art./Sec. ____.
	State whether any late payment charges or special fees apply.	Art./Sec. ____.
	State whether any due diligence requirements apply.	Art./Sec. ____.
	State whether a performance bond is required.	Art./Sec. ____.
	State any insurance requirements.	Art./Sec. ____.
	State if plans of development or construction schedules are required.	Art./Sec. ____.
	State what reports, surveys, site assessments, etc., are needed to facilitate compliance with applicable tribal environmental, cultural resource, and land use requirements as appropriate.	Art./Sec. ____.

SAMPLE CHECKLIST FOR REGULATIONS SUBMITTED UNDER THE HEARTH ACT, CONTINUED.

✓	DESCRIPTION	COMMENTS:
	If the leased premises are within an Indian irrigation project or drainage district, lease must state the following: <i>"If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."</i>	Art./Sec. ____.
	If an agricultural lease: Lessees must be required to manage land in accordance with any agricultural resource management plan developed by the tribe.	
	If an agricultural lease: Appropriate stipulations or conservation plans to be developed and incorporated into all agricultural leases.	
Tribal Regulations Address, or Require Leases to Address:		
	<u>If</u> permanent improvements may be constructed: - ownership; - responsibility for constructing; - responsibility for operating, maintaining, and managing; - responsibility for removal .	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	<u>If</u> rental reviews or adjustments are permitted: - how and when will they be done - when do adjustments become effective; - how are disputes regarding adjustments resolved	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	Parties are required to provide BIA with all leases and lease documents, except residential subleases, for recording in the LTRO.	Art./Sec. ____.
	A process for enforcing trespass and lease violations to include: - Statement that BIA may, upon reasonable notice from the tribe and at BIA's discretion, enforce the provisions of, or cancel, a lease document. - Statement whether or not negotiated remedies are allowed. - A process for any cancellation or termination and establishing when they become effective.	Art./Sec. ____. Art./Sec. ____. Art./Sec. ____.
	Tribal regulations may not allow tribes to make major substantive changes to the regulations without BIA approval. Minor technical amendments may be made without BIA approval.	Addressed in regulation? Yes: Art./Sec. ____ or No.
REQUIRED ENVIRONMENTAL REVIEW PROCESS (25 U.S.C. § 415 (h)(3)(ii); NPM, Par. 6):		
	Identifies Tribal program that administers environmental review.	Art./Sec. ____.
	Identifies Tribal positions that administer environmental review.	Art./Sec. ____.
	<i>Suggested:</i> Identifies a time frame for review.	Art./Sec. ____.
	Identifies and evaluates any significant effects of proposed action on the environment.	Art./Sec. ____.
	<i>Suggested:</i> Identifies elements to be evaluated, i.e., air, water, cultural resources, socio-economics, etc.)	Art./Sec. ____.
	Includes a process to ensure public informed on significant environmental impacts identified by the tribe.	Art./Sec. ____.
	<i>Suggested:</i> Describes how public will be notified.	Art./Sec. ____.
	Provides a reasonable opportunity for public comment on any significant environmental impacts identified by the tribe.	Art./Sec. ____.
	<i>Suggested:</i> Identifies a time frame for comments.	Art./Sec. ____.
	Ensures tribe provides responses to relevant and substantive public comments on environmental impacts prior to Tribal approval of lease.	Art./Sec. ____.
	<i>Suggested:</i> Identifies a process for addressing comments.	Art./Sec. ____.
	<i>Suggested:</i> Describes how documented (memo, report, etc.).	Art./Sec. ____.
	<i>Suggested:</i> Defines key term <i>public</i> .	Art./Sec. ____.
	<i>Suggested:</i> Defines key term <i>significant effect</i> .	Art./Sec. ____.
	<i>Suggested:</i> Describes any appeal process.	Art./Sec. ____.
	Includes a restoration and reclamation plan, if required by tribe.	Art./Sec. ____.