

U.S.C. 640d–18(a) within 18 months of its enactment. The new subsection also required that all grazing control and range restoration activities be coordinated and executed with the concurrence of the tribe to which the land had been partitioned. In 1982, the U.S. District Court for the District of Arizona determined in *Hopi Tribe v. Watt*, 530 F. Supp. 1217 (D. Ariz. 1982), that the grazing regulations contained in part 153 of 25 CFR were invalid with respect to the 1882 reservation partitioned to both the Navajo Nation and the Hopi Tribe. The court reached that conclusion because the regulations did not provide for the concurrence of the Navajo Nation or the Hopi Tribe as required by the Relocation Act Amendments. The district court's ruling was upheld by the Ninth Circuit Court of Appeals in *Hopi Tribe v. Watt*, 719 F. 2d 314 (9th Cir. 1983).

As a result of the decision in *Hopi Tribe v. Watt*, *Id.*, the Bureau of Indian Affairs sought the concurrence of the Navajo Nation for the regulations, which are herein published. The concurrence of the Navajo Nation to these regulations was provided verbally by the Navajo-Hopi Land Commission and the Navajo Nation Natural Resource Committee which met jointly on June 26, 2003. Non-substantive, editorial changes have been made to the proposed regulations, which were approved by the Navajo Nation.

These regulations are issued to implement the Secretary of the Interior's responsibilities for the Navajo Partitioned Lands as mandated by the Navajo-Hopi Settlement Act, as amended by the Relocation Act Amendments, and the previously cited federal court decisions. In 1982, part 152 of 25 CFR was re-designated as part 167, Navajo Grazing Regulations, and part 153 of 25 CFR was re-designated as part 168, Hopi Partitioned Lands Grazing Regulations. All grazing permits issued for the joint Use Area under the old 25 CFR part 152, some of which dated from 1940, were canceled within one year pursuant to the Order of Compliance issued on October 14, 1972, by the U.S. District Court of the District of Arizona in *Hamilton v. MacDonald*, Civ. 579–PCT. From 1973 through 1978, the Bureau of Indian Affairs did not issue grazing permits for the Joint Use Area (JUA) during calculation of the range's carrying capacity and stocking rates. However, in late 1977 the Joint Use Area Administrative Office of the Bureau of Indian Affairs at Flagstaff, Arizona, completed its inventory and began issuing annual grazing permits to the residents of the JUA. These interim permits were limited to one year by

order of the federal district court. Since the 1982 ruling in *Hopi v. Watt*, 530 F.2d 1217 (1983), declaring that the pre-1982 regulations were invalid, the Bureau of Indian Affairs has been subject to the provisions of the Navajo-Hopi Settlement Act, as amended, which require the development of new grazing regulations for the Navajo Partitioned Land with the concurrence of the Navajo Nation. These regulations are the product of that consultation.

Proposed rulemaking was published in the **Federal Register** on November 1, 1995 (60 FR 55506), and invited comments for 60 days ending January 2, 1996. To allow maximum input from the Navajo and Hopi Tribes and the public, an extension of the comment period to September 9, 1996 was published in the **Federal Register** on June 10, 1996 (61 FR 29327). A total of 74 written comments were received from individuals and attorneys representing the Navajo Nation, as well as individuals commenting on their own behalf. The comments were reviewed by the Navajo-Hopi Land Commission of the Navajo Nation Council NPL Subcommittee during the week of November 17, 1996. The suggested responses to the comments were sent to the Navajo Nation Resources Committee for further review and consideration on September 10, 1998. Comments and recommendations were adopted and incorporated into a proposed rule which was never finalized. We have reviewed the comments and recommendations, and incorporated them in the proposed rule where appropriate.

This rulemaking also incorporates the requirements of the American Indian Agricultural Resource Management Act (AIARMA)(107 Stat. 2011, 25 U.S.C. § 3703 *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 the 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.

Final regulations governing grazing permits for all Indian lands were promulgated in 25 CFR part 166 on January 22, 2001, and are found at 25 CFR part 166. While part 166 applies to all Indian agricultural lands, part 161 applies only to the Navajo Partitioned Lands. Both regulations implement the requirements of AIARMA.

Section-by-Section Analysis of the Proposed Rule

Subpart A, “Definitions, Authority, Purpose and Scope,” contains key terms used throughout the proposed regulation. These terms are consistent with those found in AIARMA. This subpart also describes the Secretary's authorities under this part.

Subpart B, “Tribal Policies and Laws Pertaining to Permits,” 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 Navajo Partitioned Lands, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

Subpart C, “General Provisions,” lists the environmental compliance and management documents that are required by AIARMA. This subpart also discusses how carrying capacity and stocking rates are established.

Subpart D, “Grazing Permit Requirements,” describes the general requirements for obtaining a permit, the provisions contained in a grazing permit, the restrictions placed on permits, and other permit requirements.

Subpart E, “Reissuance of Grazing Permits,” sets forth eligibility and priority criteria for reissuance of cancelled grazing permits. This subpart makes clear that the Navajo Nation may prescribe eligibility requirement for grazing allocations within 180 days following the effective date of these regulations. 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 satisfactory action is not taken by the Navajo Nation. This subpart also describes how new permits may be granted after the initial reissuance of permits, and sets forth the procedures