

Supporting Statement for Paperwork Reduction Act Submissions
RIN 1076-AE80
OMB Control Number 1076-0NEW

Terms of Clearance: None

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Answer

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) amends Title XXVI (Indian Energy) of the Energy Policy Act of 1992 to require the Secretary of the Interior (Secretary) to promulgate regulations that implement new provisions concerning development of energy resources on tribal lands. Specifically, Title XXVI, Section 2604, as amended, authorizes the Secretary to approve individual Tribal Energy Resource Agreements (TERA).

The intent of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an entirely new alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary.

The Act requires the Secretary to establish and implement regulations governing the TERA approval process within 365 days of its passage. The following table details the IC burden for the proposed requirements in subparts B, C, D, E, F, G, and H

Table 1 -- Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self Determination Act						
Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for respondent	Total Annual Cost (salary & benefits)
Subpart B — Procedures for Obtaining Tribal Energy Resource Agreements						
224.53 and 224.63	What must an Application for an Agreement contain and What provisions must an Agreement contain?	224.53 Provisions (a) through (p) outline Application information requirements and 225.63 Provisions (a) through (c) outline Agreement requirements	1080	4	4,320	\$151,328 (\$131,328)
224.57(d)	What must the Director do upon receipt of an Application?	Director issues written notice to Tribe listing additional information requirements	480	2	960	\$33,468 (\$29,468)
224.61	What will the Tribe provide to the Director after receipt of the Director's report on the Application consultation meeting?	Tribe must submit final proposed Agreement	32	4	128	\$4,352 (\$3,952)
224.64	How may a Tribe assume management of development of different types of energy resources?	A Tribe may assume management other types of energy resources by applying for a new Agreement under the same requirements as §224.53 and §224.54 for that additional type of energy resource.	720	1	720	\$24,888 (\$21,888)
224.65	How may a Tribe assume additional activities under an Agreement?	Outlines an amendment process for making changes to an already approved Agreement.	520	1	520	\$17,838 (\$15,838)
224.68 (d)	How will the Secretary use public comment?	If Secretary makes changes to final proposed Agreement based on public comment the Tribe must approve final changes in writing	480	4	1920	\$66,936 (\$58,936)
Subpart C — Approval of Tribal Energy Resource Agreements						
224.76	Upon notification of disapproval, may a Tribe re-submit a revised final proposed	Yes – Tribe may submit a revised final proposed Agreement	520	1	520	\$17,838 (\$15,838)

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	Agreement?					
Subpart D — Implementation of Tribal Energy Resource Agreements						
224.83	What are the responsibilities of a Tribe following execution of Leases, business Agreements, and Rights-of-Way under an Agreement?	Inform public, send copy of any agreements to the Director, and provide documentation to Director of information that would allow Secretary to discharge trust responsibilities	32	10	320	\$10,920 (\$8,920)
224.87	What are the responsibilities of a Tribe if it discovers a Violation or Breach?	Tribe must provide written notice to Director for provisions (a) through (c)	120	1	120	\$4,291 (\$3,791)
Subpart E — Interested Party Petitions						
224.108	What must a petition contain?	Provisions (a) through (j) outline petition information requirements	464	1	464	\$16,024 (\$14,024)
224.112	What may the Tribe do after it completes petition consultation with the Director?	After completion of petition consultation Tribe may submit a written response.	408	1	408	\$15,546 (\$12,546)
224.120 (a)	How must the Director proceed with a petition if it meets the threshold determinations?	The Tribe must provide a written response to the Director's determination.	120	1	120	\$4,291 (3,791)
Subpart F — Periodic Reviews						
224.139 (b)	What must a Tribe do after receiving a notice of imminent jeopardy to a physical trust asset	Submit a written response to the Director	120	1	120	\$4,291 (\$3,791)
Subpart G — Reassumption						
224.156	What information must the Tribe's response to the notice of intent to reassume include?	Information requirements for Tribes response to notice of intent to reassume.	80	1	80	\$2,696 (\$2,496)
Subpart H — Rescission						
224.173	How does a Tribe rescind an Agreement?	Tribe must submit a written tribal resolution to initiate a rescission.	32	1	32	\$1,088 (\$988)

Table 1 -- Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self Determination Act						
Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for respondent	Total Annual Cost (salary & benefits)
TOTAL BURDEN					10,752	\$375,795 (\$327,595)

2. **Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]**

Answer

The Office of Indian Energy and Economic Development (IEED) will use the information collected through these regulations to determine the capacity of tribes to manage the development of energy resources on tribal lands. Information collected in Subparts B and C will enable IEED to engage in a consultation process with tribes designed to foster optimal pre-planning of development proposals and speed up the review and approval process for TERA agreements.

Information collected in Subpart D will provide wide public notice and opportunity for review of TERA agreements by the public, industry, and government agencies. Specifically, the information collection associated with Subpart D, Section 224.83 requires a tribe to notify the public of actions taken under a TERA. This constitutes a third party notification. This third party notification is necessary so that the public is fully informed of a tribe's energy development activity and has an opportunity to comment on any potential impacts from these activities. This third party notification is a mandate of Title V, Section 503 of the Energy Policy Act of 2005. Taken together, the information collected by IEED in Subpart D and F will enhance and ensure the accountability of tribes for the prudent development of energy resources.

Information collected by IEED in Subpart E will ensure that the public has an avenue for review of the performance of tribes in implementing a TERA and creates a process for preventing damage to sensitive resources as well as ensuring that the public has fully communicated with the tribe in the petition process. This information also ensures that the tribes are not subject to complaints based on erroneous or irrelevant information, and that tribes are made fully aware of any requirements for a change in operations. As part of this process, information collected by IEED in Subpart G ensures that a tribe is fully aware of any attempt by DOI to resume management authority over energy resources on tribal lands.

If a tribe wants to voluntarily relinquish its energy resource management authority, information collected in Subpart H by IEED ensures that the tribal government fully endorses this change.

3. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other**

forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.].

Answer

While Indian Affairs remains off the internet by court order, actions to make full use of automated, electronic or other technological collections will not be possible. IEED will post the regulations (25 CFR Part 224), any operating procedures that IEED develops, and a status report on TERA applications on the Indian Affairs intranet.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Answer

The information needed in support of this Act is not available from any other collection. Other collections related to energy development on tribal lands are project specific and do not envision the wholesale assumption by a tribe of management responsibilities for the entire energy development process.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.**

Answer

Tribes are not considered small entities. However, the IEED has a preexisting grant program available to tribes to develop a tribal energy resource inventory, a feasibility study or other report necessary to develop energy resources on Indian land. Information gathered through this IEED Mineral Assessment Program would be important to tribes in developing a TERA. In addition, information collected in Subpart B allows a tribe to identify DOI resources, previously used to enforce trust responsibilities, to transfer to a tribe in the event of a TERA approval. Financial backing for energy project development is also available to tribes through the IEED Credit Guarantee program to fund activities targeted towards economic development. A tribe could use these funds to develop and enforce tribal laws/regulations relating to tribal energy resource development, to develop a technical infrastructure to protect the environment, to develop and implement corporate policies, to train employees who are engaged in developing energy resources or are responsible for protecting the environment and many other related activities.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Answer

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) requires the Secretary of

the Interior (Secretary) to promulgate regulations that implement new provisions concerning development of energy resources on tribal lands. The law is very specific in the types of information that IEED must collect to ensure Departmental and tribal accountability. Without the collections outlined in Table 1 this program of review, approval and monitoring of TERA's would not be possible to carry out.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Answer

There are no special circumstances that would necessitate any of the conditions stated in Question 7. However, Title V, Section 503 mandates a 270-day period for the review and approval of a TERA. Consequently, there are decision points during that period that will require a tribe to provide a written response in fewer than 30 days after receipt.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and

recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Answer

Title V, Section 504 of the Energy Policy Act of 2005 mandates consultation with tribes during the development of these implementing regulations. The Department of the Interior - Indian Affairs sent letters to tribal leaders on October 31, 2005 with information about the TERA provisions of Title V, Section 503 and soliciting participation in a process to develop a framework for the implementing regulations. On December 9, 2005, DOI-IA published a Federal Register notice announcing public meetings in 10 cities during the week of January 9, 2006. We held the meetings in the following cities: Tulsa OK, Denver CO, Houston TX, Albuquerque NM, Las Vegas NV, Sacramento CA, Minneapolis MN, Billings MT, Portland OR, and Washington DC. In response to these outreach efforts, we received written comments from tribes, industry and several non-governmental organizations. Comments focused on how the Department would evaluate the applications from tribes or tribal energy development organizations for TERAs. There were not any comments received with regards to information collection requirements. Ted Bland of Golden Eagle Energy and a representative of the Blackfeet Tribe (281-493-1778) attended the public meeting in Houston, TX. David Taylor a representative of the Department of Justice for the Navajo Nation (928-871-6932) attended the public meeting in Albuquerque, NM. These gentlemen may be contacted for information about respondents' reaction to the burden imposed by this program.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Answer

Respondents do not receive any payments or gifts.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Answer

We provide no assurance of confidentiality. Although, information collected is subject to what is the standard in the case where the Privacy Act covers information collected that is confidential. Any correspondence or reports that collect information covered by the Privacy Act will contain a Privacy Act statement.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Answer

There is no need for information of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Answer

The total universe of possible respondents includes all the tribes of in the 48 contiguous states of the United States and the Metlakatla Indian Community in Alaska. The timing of a tribe's applications for a TERA is entirely up to them and is not tied to a schedule. Once an application is submitted to the Department it starts a 270 day clock with several milestones for the Department to achieve before a TERA agreement is approved. The relevant sections of these regulations that require information collection are shown in table 1.

We based our estimates of the number of respondents on conversations with tribal organizations, tribal consultations, and comments received at public meetings in addition to information from the Department's in-house staff who have expertise with energy and minerals development on tribal lands. We assume that for these regulations that the total number of respondents, on an annual basis, will be 22 and will result annually in 34 instances of information collection related to these TERA regulations.

We did not receive any specific comments on the information collection burden in either public meetings or individual meetings with stakeholders. To develop the annual hourly burden and cost estimates for the information collection associated with these regulations we used data from IEED staff that have experience with providing technical assistance services for energy resource development projects on tribal lands and have also reviewed energy development proposals from tribes and personal communications with tribal representatives and organizations. Based on this information tribes or Tribal Energy Resource Development Organizations would need to acquire

the services of individuals in the project management and energy, environmental, financial and legal analyses fields as well as administrative service staff.

The information collection costs in Table 1 result from taking the number of hours multiplied by an hourly salary and benefits for staff.

$$\text{Total IC cost} = [(\text{staff hours}) * (\text{salary} + \text{benefits})]$$

Based on this data we estimate that the total annual cost to respondents for the information collection associated with these regulations is about \$327,595. The total annual hourly burden for respondents is 10,752

Please see Table 1 under Question 1 of this document and the Attachment for a breakdown of information collection cost by regulation section.

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.**

Answer

An essential component of the evaluation of proposed Tribal Energy Resource Agreements is for the tribe to demonstrate that it has preexisting capabilities to manage energy development projects. The tribe should have resident technical and environmental expertise in addition to expertise in leasing and financial management. Therefore to fulfill the information collections requirements of these regulations tribes will have to demonstrate that they have IT and other office systems already in place and have personnel with experience in their operation. Consequently, any costs for the acquisition of enterprise systems, technology, or capital equipment by a tribe, as a result of these regulations, will either be minimal or already a part of their everyday business operations. We estimate that respondents will incur a total annual cost of \$48,200 for operations and maintenance from all information collections associated with these regulations.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

Answer

Federal employees in the Office of Indian Energy and Economic Development working on the Tribal Energy Resource Agreement program will spend part of their overall time on each aspect of the approval, review, and monitoring of TERA related information collections. This work will also require extensive consultation with tribes that submit TERA applications and coordination with other affected bureaus and offices in the Department. The time involved is tied to the time limits defined in the TERA regulations (i.e. TERA Application approval – 270 days). In addition, the Office of the Solicitor, while not an IEED employee, will need to conduct extensive review of many TERA related collections. We estimate that the annual cost to the Federal government of implementation of the proposed regulations is \$869,973. See the Attachment for a cost breakdown. The information collection will not necessitate the acquisition of new IT systems or hardware; consequently the regulations will not result in additional capital or enterprise systems expenditures. It will also not result in large expenditures related to overhead.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Answer

This collection is a program change because it is a new regulation.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Answer

The Office of Indian Energy and Economic Development will administer the program and will adhere to the standard recordkeeping requirements for information generated by any Tribal Energy Resource Agreements. We have no plans to publish these collections of information associated with the TERA process except for where the regulations require public notice and opportunity for review and comment about TERA plans

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Answer

We will be displaying the OMB control number and expiration date on any correspondence with respondents, and we also display the OMB control number for this IC in the regulations in Section 224.42.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Answer

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

When Item 17 on the OMB Form 83-I is checked "Yes", the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

- 1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.**
- 2. Describe the procedures for the collection of information including:**
 - Statistical methodology for stratification and sample selection,**
 - Estimation procedure,**
 - Degree of accuracy needed for the purpose described in the justification,**
 - Unusual problems requiring specialized sampling procedures, and**
 - Any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

- 3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.**
- 4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.**
- 5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Answer

We do not intend to perform any statistical analysis on the information collected.