

1 Supporting Statement for Paperwork Reduction Act Submissions
25 CFR 18 Tribal Probate Codes
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.

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.**

The American Indian Probate Reform Act allows for changes to be made to the probate process which will facilitate more timely probate decisions. This act allows tribes to develop their own probate codes. When tribal probate codes govern the descent and distribution of trust and restricted lands, they must be submitted to the Secretary of the Interior for approval. This will ensure that the codes promote the policies of the Indian Land Consolidation Act, including consolidating fractional interests into usable parcels, preventing further fractionation, allowing lineal descendants to inherit and allowing Indian non-tribal members to inherit, allowing life estates, and payment of fair market value of the probated lands. A copy of the relevant law is attached.

- 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.]**

When a tribal probate code covers descent and distribution of trust and restricted lands, the plan will be sent to the Regional office along with a tribal resolution. The local official will review the submission for completeness and then send to the Assistant Secretary – Indian Affairs for approval.

- 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].**

At this time, Indian Affairs is not on the internet because of litigation, making electronic submission an unavailable avenue for submitting the tribal probate codes. Because the submission must contain a tribal resolution, it may not be submitted electronically until that procedure is worked out, and after Indian Affairs is allowed on the internet.

- 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.**

Because the probate codes are developed by the tribe, there is no duplication of information already collected. Tribes are not required to develop their own probate codes, and the tribe can decide what areas of probate they wish to cover.

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

The tribes participated on a Joint Task Force which was tasked with developing a unified approach to trust issues. The impact of developing a tribal probate code has taken into account the burden that tribes will have, and only the tribes who wish to develop a probate code that covers probate areas that must be approved by the Department need submit their codes.

- 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.**

If tribes did not develop their own probate codes, they would not be using the full extent of the ability they have to govern themselves. The ability for a tribe to have a probate code is one of the requirements of the Indian Land Consolidation Act, and Interior would not be fulfilling the requirements of the law if they did not make available to the tribes the ability to have their own probate codes.

- 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;*

Respondents are not required to file reports on their use of the probate codes they develop.

- * ***requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;***

The only time respondents might have to respond in less than 30 days would be if the local BIA office determined something else was needed to complete the tribal probate code submission.

- * ***requiring respondents to submit more than an original and two copies of any document;***

Respondents are not required to submit multiple copies.

- * ***requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;***

Respondents would retain records for their own purposes and we do not require them to keep them.

- * ***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;***

The responses are not used for any statistical purposes.

- * ***requiring the use of a statistical data classification that has not been reviewed and approved by OMB;***

The responses are not used for any statistical purposes.

- * ***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;***

There is no need for a pledge of confidentiality because the information is not tied to a particular person.

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.

There are no proprietary secrets or other confidential information needed in the development of tribal probate codes.

- 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.**

The proposed rule was published August 8, 2006 in the Federal Register (71 FR 45174). The comment period was reopened November 1, 2006 (71 FR 64181) and again January 25, 2007 (72 FR 3377) to allow for more comments while we processed the systems of records needed for trust rules. We have not received any comments on the information collection.

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.

As stated above, tribes were involved in the Task Force that developed the unified approach to the trust rules. Tribal member of the Lummi Nation and Task Force member, Judith K. Bush, is a member of the public to contact at (360) 384-2258.

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

No payments or gifts are provided to the respondents.

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

There is no need for an assurance of confidentiality since no personal or proprietary information is required.

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.

There are no questions of sensitive or private 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 13.**

Out of the 500+ tribes, we estimate that 100 tribes will annually submit tribal probate codes, or an amendment to their existing tribal probate codes for approval. We estimate that it will take approximately 30 minutes at \$15./hour. The ½ hour burden for each tribe equals a total annual burden of 50 hours. The total annual cost to the tribes would be 50 hours X \$15/hour = \$750. This burden covers the tribal resolution because tribes usually have their own tribal probate codes and only submit them for approval when they include decisions concerning restricted or trust lands. Please see Attachment A, Table 1.

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers 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.**

The estimated total annual cost burden for respondents and record keepers for capital and start-up costs is zero. This collection will not require the purchase of any capital equipment nor any start-up costs because the necessary equipment is used for the

regular administration of the tribal government.

- 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.**

The estimated cost to the Federal government to review the submitted tribal probate codes is 5 hours each for a total of 500 hours. The estimated cost per hour is \$24.25 for a Federal cost of \$12,125. Please see Attachment A, Table 2.

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

This information collection is a program change caused by new regulations. The annual hourly burden being added is 50.

- 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.**

The Department does not plan to publish the collection of information other than to notify the public that the tribe has developed its own tribal probate codes which we will publish in the Federal Register.

- 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.**

The Department intends to display the expiration date with the OMB Control Number.

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

There are no exceptions to the Certification Statement on the 83-I.