

Supporting Statement for Paperwork Reduction Act Submissions
Leases and Permits, 25 CFR 162
OMB Control Number 1076-0155

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.**

In January of 2001, the Bureau of Indian Affairs (BIA) issued a Final Rule for the Leasing and Permitting Regulations, 25 CFR 162, providing regulations for Agricultural Leases and Non-agricultural leases, reserving Subpart C and D for Residential and Business Leases to be drafted at a later date. The Agricultural Leasing regulations were drafted in response to Public Law 103-177, the "American Indian Agricultural Resource Management Act," as amended (the Act is attached). This reflects only the information collection requirements within the rule, not any additional information collection requirements which is currently in subpart F of the current rule. This was noted in the preamble of the Federal Register of January 22, 2001, on page 7084, which 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.]**

The information provided through information collection requirements is used by the Bureau of Indian Affairs (BIA) to determine whether or not a lease may be approved or granted, the value of such lease(s), the appropriate compensation due to landowners, the amount of administrative fees that must be levied, and the penalties, if any, that should be assessed for violations of lease provisions.

Subpart B contains provisions relating to the requirements that must be included in any agricultural lease of tribal or individual Indian lands. These items include the applicability of tribal law to the leasing process; recording requirements; basic information concerning the location and proposed use of a lease; the length of a lease; the requirements for submitting a security bond for agricultural leases; notification requirements if using a lease for collateral for a personal loan; factors which would justify an adjustment of rental fees; and information to secure minimum insurance protection. This information is collected at the time a lease is proposed and, depending upon the circumstances, throughout the life of the lease term.

This subpart also contains provisions relating to the standards and procedures for obtaining a lease. These items refer to approval of negotiated or successful bidder leases, and the justification for acting on the behalf of a minor. This information is collected before the lease is approved by the BIA and the provisions relating to the approval requirements for entering into a lease on tribal or individual Indian lands. These items refer to the tribe providing the BIA information on leases they enter into under tribal law or custom, and to the determination of fair annual rental for the interests for minority interests to a lease. This information is collected before the lease is approved by BIA.

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Residential Leasing - This type of leasing involves various parties and representatives in which to respond. Although the activity in dollar value to the Beneficiary is not substantial, the activity to respond to a transaction can require a great amount of time at the local level (**Agency**) as well at the (**Region**) contingent upon the redelegation authority for approval. The type of leasing is the key to determine how much time may be involved to respond to the approval of a lease. For example, if the Indian applicant is an individual Indian owner and has interests in an individual trust allotment,

he/she may not be required to submit as much information for review and approval for a home-site lease unless there plans to be a mortgage approval on the property. In the event, there is a planned mortgage approval with a residential lease the participation from several entities can increase ie; Housing & Urban Development (HUD), United States Department of Agriculture (USDA), Veterans Affairs (VA), Tribes Tribal Housing Authorities etc.. Also, documentation may be more substantial and include more documents to review and approve for a successful residential lease with a mortgage. If the land status is tribal it may increase the level and requirement of the burden on the transaction as well. This increases the activity time.

Business Leasing - Business Leasing within Indian Country requires a substantial amount of time and review of documents. Generally, the requirements for compliance of the appraisals for establishing the fair market value, environmental, cultural and historical for the status and condition of land and compliance of, Title Status Reports (TSR's) and probate information requires a great deal of time of preparation and review of ownership & encumbrance determinations for successful approval of a proposed business lease. The requirement of drafting and reviewing proposed leases, providing review for title ownership and encumbrances increases the burden at every level of the Bureau of Indian Affairs. If the a Real Estate Services(RES) function is under a Self-Governance Compact or a 93-638 Self-Determination Contract to a Tribe, this may also require more time in the way of compliance. In the more complex proposed leases, could and often times requires Departmental, Regional and Field Solicitor review and comment. If a business lease is going to be assigned to another Lessee, Subleased, cancelled etc in relation to an existing lease, demands more time on a program which increased the burden.

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].**

During December 2001, Indian Affairs (IA) was forced to disconnect from the Internet by a court order issued by the judge in the Cobell litigation. Hence, IA cannot implement GPEA until reconnection to the Internet is completed. Tribes and tribal organizations submit required information in non-standard written formats to meet the needs of the lease and its special considerations. The court order does not allow the BIA to use the Internet where use of electronic technology to collect the information would reduce the burden of this collection.

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.

This information is supplied in response to 25 CFR 162 – Leasing and Permitting. Leasing is covered under 25 CFR Part 162 and various leasing laws. It is not duplicated in any other data collection. In keeping with the Paperwork Reduction Act and other statutory requirements, the information collected is the minimum needed for the intended purpose.

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.

Tribes and tribal organizations are considered small governmental jurisdictions or small entities under the Small Business Regulatory Enforcement Fairness Act (SBREFA). The BIA consulted with the tribes and through various tribal-member non-governmental organizations to determine what information collection was necessary to ensure the fair and equitable administration of leases on Indian lands. Through this consultation the information collection burden has been minimized.

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.

The information collection burden cannot be reduced any further without the integrity of the leasing program being jeopardized. Information is collected, as needed, when tribes, tribal entities or individual Indians want to enter into leases for their respective lands. If the collection is not conducted, or is conducted less frequently, the BIA will not be able to properly administer and monitor leases on Indian lands.

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.

There are circumstances that require exceptions to 5 CFR 1320.5(d)(2). The regulations in sections 162.249 and 162.616 require that rents and penalties for late payment of rents are due as specified by the lease. While each lease is specific and the regulations do not specify otherwise, there is a potential for responding to a notice of delinquency in less than 30 days. In sections 162.251 and 162.618, the lessee is given 10 days from the receipt of the notice of lease violation to respond. This is an exception to the 30-day rule because time is of the essence in correcting violations of lease terms. A 30-day period to respond would endanger the integrity of the lease instrument and possibly do irreparable damage to the corpus of the trust resource. In a similar circumstance, a trespass violation requires the alleged trespasser to contact the BIA *immediately* to explain why a trespass violation notice is in error. Again, the circumstances of a trespass may be of such a serious nature that the 30-day response time would not be appropriate and, furthermore, would harm the corpus of the trust resource.

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.

The Federal Register, Volume 69, No. 27, Tuesday, February 10, 2004, Proposed Rules, 25 CFR Part 162, for Trust Management Reform: Residential Leases and Business Leases as published. The Subparts B, Agricultural Leases, and Subpart F, Non-Agricultural Leases, 25 CFR 162, have already been discussed with the tribes. These regulations had been previously distributed to the Regional Offices, the National Congress of American Indians, and the Inter-Tribal Monitoring Association, for their comments. The comments received were considered in the development of the information collection. The comments received from the consultation sessions will be taken into consideration in the formulation of the final regulation. There have been no changes to Subpart B and Subpart F in collection of information.

Mr. Ben Burshia, (202) 219-1195, Chief, Division of Real Estate Services, 1849 C Street, NW, MS: 4639-MIB, Washington, DC 20240, should be contacted in order to obtain contact information for a member of the public or to answer any questions OMB has.

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

The respondents will not receive payments or gifts.

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

There is no assurance of confidentiality provided to respondents concerning this information collection.

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 is a potential that some information collected will be of a sensitive nature. In sections 162.235 and 162.620, the lessee may be required to post a surety bond to secure performance under the lease. This is necessary if the BIA is to properly administer the leasing program on tribal and individual Indian lands. If the lessee wants to obtain a loan, sensitive information will have to be submitted in order to decide if the loan can be approved.

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.**

The estimated total annual number of respondents is 14,500. The estimated total annual hour burden is 106,065 hours. We have used an average of \$18.52 per hour for wages & benefits to convert the total annual hour burden into a dollar estimate, which resulted in an estimate of \$1,962,365.00.

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 information collection will not require the purchase of any capital equipment nor create any start-up costs because no equipment purchase is contemplated. Any computers and software used to complete this information collection are part of the respondent's customary and usual business practices.

The BIA collects fees for processing certain submitted documents as indicated under sections 162.241 of the rule. The minimum fee is \$20 and the maximum fee is \$500. About half the time the fees are waived. The average fee collected is \$250, which is collected about 7,252 times, for a total annual amount of \$1,813,000.

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 total annual number of responses reviewed by the federal government is 121,140. The estimated total annual hour burden is 106,065 hours, which involves careful checking of all records to ensure that none of the information has changed because of new liens, updated title, land records, possible probates. We used an average of \$18.52 per hour for wages & benefits to convert the total federal annual hour burden into a dollar estimate, which resulted in an estimate of \$1,964,32.80.

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

No changes.

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.**

There is no intention to publish this information.

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.**

We intend 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.**

We are not seeking any exceptions.