

**Supporting Statement A
for Paperwork Reduction Act Submissions**

OMB Control Number 1076-0155

Leases and Permits, 25 CFR 162

Terms of Clearance: None

1. Explain the circumstances that make the collection of information necessary.

This information collection is necessary for the Bureau of Indian Affairs (BIA) to implement its leases and permits program for land held in trust or restricted status on behalf of individual Indians and tribes. Public Law 103-177, the “American Indian Agricultural Resource Management Act,” as amended, provides the statutory authority for this program. The regulations at 25 CFR 162, implement the statutory authority. The regulations address agricultural leases and non-agricultural leases, reserving Subpart C and D to allow for more future regulations specifically addressing residential and business leases.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.

BIA uses the information it collects 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 A of Part 163 (§§ 162.100 through 162.113) provide general provisions. The two subparts of Part 163 that have substantive provisions and most of the information collections are Subpart B (§§ 162.200 through 162.256), which addresses agricultural leases, and Subpart F (§§ 162.600 through 162.623), which addresses non-agricultural leases, including business and residential leases.

Subpart B-Agricultural Leases contains the following information collection requirements:

- § 162.204 – Tribe must provide notice of tribal law or leasing policy that supersedes or modifies 25 CFR 162.
- § 162.205 – Individual landowners may submit a written objection to tribal leasing policy as a request to be exempted from the policy.
- § 162.207, 162.242-244 – The tenant must submit the lease (or assignment, amendment, or leasehold mortgage) for BIA approval, including basic information concerning the location and proposed use and length of a lease.
- § 162.213 – The tenant must submit supporting documents, such as organizational documents to show the lease will be enforceable, environmental and archeological reports, surveys, and site assessments to allow compliance with applicable laws.

- § 162.217 & 162.246 – Tribe must submit for recording those leases and amendments, assignments, subleases, and mortgages that do not require BIA approval.
- § 162.234 – The tenant must provide a bond to secure one year’s rental, construction of improvements, and other lease obligations.
- § 162.237 – The tenant must provide information to secure minimum insurance protection.
- § 162.247 – The tenant must pay rent.
- § 162.248 – The tenant must pay the required penalty for late rental payments.
- § 162.212 – Potential tenants must bid on advertised leases.
- § 162.251 – The tenant must provide notice of a cured violation.
- § 162.256 – A trespasser must respond to notice of trespass.

Most of this information is collected at the time a lease is proposed for BIA approval, except that rent payments must occur as established by lease, and penalties, notice of a cured violation, and notice of trespass is collected on an as needed basis.

Subpart F-Non-agricultural Leases contains two primary types of leasing:

- **Residential Leasing** - This type of leasing may range from the very simple to involving various parties. 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 (BIA Agency) as well at the (BIA Region). 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 residential lease. In the event there is a planned mortgage approval with a residential lease, the time involved may increase as more entities are involved (e.g., Housing & Urban Development (HUD), United States Department of Agriculture (USDA), Veterans Affairs (VA), Tribes Tribal Housing Authorities). Also, documentation may be more substantial and include more documents to review and approve for a successful residential lease with a mortgage.
- **Business Leasing** - This type of leasing involves a substantial amount of time and review of documents. Generally, compliance with applicable requirements results in a great deal of preparation and review time to determine ownership & encumbrances. Requirements include appraisals for establishing the fair market value; environmental, cultural and historical analyses for the status and condition of land; Title Status Reports (TSR's) from the BIA Land Title and Records Office; and probate information. BIA often drafts leases, based on what the beneficiaries want, and reviews proposed leases, providing review for title ownership and encumbrances.

BIA imposes the following information collection requirements for these and all other non-agricultural leases:

- § 162.603 – Provide information on authorization for use of minor’s land.
- § 162.604(a), 162.610 – The tenant must submit the lease (or assignment, amendment, or leasehold mortgage) for BIA approval, including basic information concerning the location and proposed use and length of a lease.

- § 162.604(a) – The tenant must submit supporting documents, such as organizational documents to show the lease will be enforceable, environmental and archeological reports, surveys, and site assessments to allow compliance with applicable laws.
- § 162.604(c) – The tenant must provide a bond to secure one year's rental, construction of improvements, and other lease obligations.
- § 162.604(d) – The tenant must provide information to secure minimum insurance protection.
- § 162.613 – The tenant must pay rent.
- § 162.616 – The tenant must pay the required penalty for late rental payments.
- § 162.606 – Potential tenants must bid on advertised leases.
- § 162.618 – The tenant must provide notice of a cured violation.
- § 162.623 – A trespasser must respond to notice of trespass.

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].

To the extent respondents provide information in written form, rather than orally, BIA accepts the information via fax or e-mail to reduce burden on respondents.

4. Describe efforts to identify duplication.

This information collected under 25 CFR Part 162 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, describe the 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 §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 §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. Provide 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 (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.

A notice requesting comment on renewal of this information collection was published on April 14, 2010 (75 FR 19421). BIA did not receive any comments in response to this notice.

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. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

BIA contacted Betsy Hayes-Gonzales, Lease Manager, Lamar Central Outdoor LLC, 77-583 El Duna Court, Suite J, Palm Desert, CA 92211, (760) 327-4500. Lamar Central Outdoor LLC has approximately 100 leases on trust land for which it obtains BIA approval. Ms. Hayes-Gonzales stated that the instructions for what must be submitted are clear, and that the information is available. Ms. Hayes-Gonzales indicated that the time it takes to collect the information varies widely, but a delay of up to several months occurs once the information has been submitted to BIA because the BIA must wait for an appraisal. No changes to the estimates for the information collection have been made as a result of these comments.

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.

There is a potential that some information collected will be of a sensitive nature. In §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 estimated total annual number of respondents is 14,500. The estimated total annual hour burden is 106,065 hours. The estimated salary burden is \$3,069,521.

CFR Cite	Description	Respondent Type	No. Respondents	Annual Responses	Burden Hours per Response	Total Annual Burden Hours	Salary Burden @ \$28.94/hr
162.109, 162.204, 162.205	Provide notice of tribal leasing laws, regulations, exemptions	Tribal	500	500	0.5	250	\$ 7,235
162.207, 162.242-244, 162.604(a), 162.610	Submit lease, assignment, amendment, leasehold mortgage for approval	Individuals	10,000	10,000	1	10,000	\$ 289,400
		Businesses	2500	2500	1	2500	\$ 72,350
		Tribal	2000	2000	1	2000	\$ 57,880

162.213, 162.604(a)	Provide supporting documentation	Individuals	5,000	5,000	0.25	1,250	\$ 36,175
		Businesses	2,000	2,000	0.25	500	\$ 14,470
		Tribal	250	250	0.25	63	\$ 1,823
162.217, 162.246	Submit lease for recording	Individuals	10,000	10,000	0.5	5,000	\$ 144,700
		Businesses	2500	2500	0.5	1250	\$ 36,175
		Tribal	2000	2000	0.5	1000	\$ 28,940
162.234, 162.604(c)	Provide a bond	Individuals	10,000	10,000	0.5	5,000	\$ 144,700
		Businesses	2500	2500	0.5	1,250	\$ 36,175
		Tribal	2000	2000	0.5	1,000	\$ 28,940
162.237, 162.604(d)	Provide information for acceptable insurance	Individuals	10,000	10,000	0.25	2,500	\$ 72,350
		Businesses	2500	2500	0.25	625	\$ 18,088
		Tribal	2000	2000	0.25	500	\$ 14,470
162.241	Administrative fees	Individuals	10,000	10,000	2	20,000	\$ 578,800
		Businesses	2500	2500	2	5000	\$ 144,700
		Tribal	2000	2000	2	4000	\$ 115,760
162.247, 162.613	Pay rent	Individuals	10,000	10,000	0.25	2,500	\$ 72,350
		Businesses	2500	2500	0.25	625	\$ 18,088
		Tribal	2000	2000	0.25	500	\$ 14,470
162.248, 162.616	Pay penalties for late payment	Individuals	3,000	3,000	0.25	750	\$ 21,705
		Businesses	600	600	0.25	150	\$ 4,341
		Tribal	25	25	0.25	6	\$ 174
162.212, 162.606	Bidding on advertised lease	Individuals	10,000	10,000	1	10,000	\$ 289,400
		Businesses	2500	2500	1	2,500	\$ 72,350
		Tribal	2000	2000	1	2,000	\$ 57,880
162.603	Use of a minor's land	All	7,250	7,250	3	21,750	\$ 629,445
162.251, 162.618	Provide notice of curing violation	Individuals	100	100	0.5	50	\$ 1,447
		Businesses	45	45	0.5	23	\$ 666
162.256, 162.623	Respond to notice of trespass	Individuals	100	100	0.5	50	\$ 1,447
		Businesses	45	45	0.5	23	\$ 666
162.113	Appealing decisions	Individuals	400	400	2	800	\$ 23,152
		Businesses	225	225	2	450	\$ 13,023
		Tribal	100	100	2	200	\$ 5,788
Total			14,500	121,140		106,065	\$ 3,069,521

We are estimating salary using Bureau of Labor Statistics, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—March 2010 (released June 9, 2010), USDL 10-0774, Table 1, for all civilians (\$20.67/hour x 1.4 for benefits for individuals or \$28.94/hour). The 1.4 multiplier is also derived from the Bureau of Labor Statistics, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION— March 2010 (released June 9, 2010), USDL 10-0774. See www.bls.gov/news.release/pdf/ecec.pdf.

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

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 §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 costs to the Federal Government.

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. The total salary cost to the Federal Government is **\$ 2,905,757**.

CFR Cite	Description	Annual Responses	Federal Burden per Response	Total Federal Burden Hours	Federal Salary Cost @ \$27.68/hr
162.109, 162.204, 162.205	Review notice of leasing laws, regulations, exemptions	500	0.5	250	\$ 6,920
162.207, 162.242-244, 162.604(a), 162.610	Approving a lease	10,000	1	10,000	\$ 276,800
		2500	1	2,500	\$ 69,200
		2000	1	2,000	\$ 55,360
162.213, 162.604	Review supporting documentation	5,000	0.25	1,250	\$ 34,600
		2,000	0.25	500	\$ 13,840
		250	0.25	63	\$ 1,744
162.217 162.246	Recording a lease	10,000	0.5	5,000	\$ 138,400
		2500	0.5	1,250	\$ 34,600
		2000	0.5	1,000	\$ 27,680
162.234, 162.604(c)	Processing bonds	10,000	0.5	5,000	\$ 138,400
		2500	0.5	1,250	\$ 34,600
		2000	0.5	1,000	\$ 27,680
162.237, 162.604(d)	Reviewing insurance	10,000	0.25	2,500	\$ 69,200
		2500	0.25	625	\$ 17,300
		2000	0.25	500	\$ 13,840
162.241	Collect administrative fees	10,000	2	20,000	\$ 553,600
		2500	2	5,000	\$ 138,400
		2000	2	4,000	\$ 110,720
162.247, 162.613	Processing rent	10,000	0.25	2,500	\$ 69,200
		2500	0.25	625	\$ 17,300
		2000	0.25	500	\$ 13,840
162.248, 162.616	Processing penalties for late payment	3,000	0.25	750	\$ 20,760
		600	0.25	150	\$ 4,152
		25	0.25	6	\$ 173
162.212, 162.606	Reviewing bids for advertised leases	10,000	1	10,000	\$ 276,800
		2500	1	2,500	\$ 69,200
		2000	1	2,000	\$ 55,360
162.603	Reviewing authority for use of a	7,250	3	21,750	\$ 602,040

	minor's land				
162.251, 162.618	Curing violation	100	0.5	50	\$ 1,384
		45	0.5	23	\$ 623
162.256, 162.623	Review trespass response	100	0.5	50	\$ 1,384
		45	0.5	23	\$ 623
162.113	Appealing decisions	400	0.5	200	\$ 5,536
		225	0.5	113	\$ 3,114
		100	0.5	50	\$ 1,384
	Total	121,140		104,976	\$ 2,905,757

We used an average salary of **\$27.68** per hour (\$18.45 x 1.5 for benefits), based on *Salary Table 2010-GS Incorporating the 1.50% General Schedule Increase*. See, 2010 General Schedule (Base) – Hourly Rate (GS 7, Step 5) at www.opm.gov/oca/10tables/indexGS.asp. The 1.5 multiplier for benefits is based on the Bureau of Labor Statistics, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION— March 2010 (released June 9, 2010), USDL 10-0774. See www.bls.gov/news.release/pdf/ecec.pdf.

15. Explain the reasons for any program changes or adjustments.

No changes.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

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. Certification.

We are not seeking any exceptions.