

# Supporting Statement for

## Navajo Partitioned Lands Grazing Permits, 25 CFR 161

### OMB Control Number 1076-0162

**Terms of Clearance:** Prior to renewal, the Bureau of Indian Affairs must provide an update to OIRA on progress made towards processing and approving permits under this control number, including any feedback from the public regarding paperwork burden.

#### 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 statistical information is involved, 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

##### Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

This information collection is needed to implement the regulations at 25 CFR 161, Navajo Partitioned Lands Grazing Permits. The Navajo Partitioned Lands (NPL) include the Navajo-Hopi Settlement Act of 1974, 25 U.S.C. 640d - 640d-31, as amended by the Navajo-Hopi Indian Relocation Amendments Acts of 1980, 94 Stat. 929, and the Federal court decisions of *Healing v. Jones*, 174 F. Supp.211 (D. Ariz. 1959) (Healing I), *Healing v. Jones*, 210 F. Suppl 126 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963) (Healing II), *Hopi Tribe v. Watt*, 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe v. Watt*, 719 F.2d 314 (9th Cir. 1983). The regulations at 25 CFR 161 codify the above responsibilities and include the specific information collection requirements.

Other laws and rulings affecting grazing include Public Law 103-177, the American Indian Agricultural Resource Management Act (AIARMA), as amended and codified as 25 U.S.C. 3701 *et seq.*, authorizes the Secretary of the Interior, in participation with the beneficial owner of the land, to manage Indian agricultural lands in a manner consistent with trust responsibilities and with identified Tribal goals and priorities for conservation, multiple use, and sustained yield.

- 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 gathered through this collection is used by the Department of the Interior, Bureau of Indian Affairs (BIA) and the Navajo Nation to determine eligibility for a Navajo Partitioned Land (NPL) grazing permit and to administer permits once issued. Information is submitted by individual Navajo Tribal members wanting to obtain or modify a grazing permit and by departments and officials of the Navajo Nation.

Sections of 25 CFR 161 that identify individual elements of the information collection are summarized below.

**Subpart C Section 161.206**, in accordance with applicable law, individual Navajo Tribal members must have proof of vaccinated livestock, treat all livestock exposed to or infected with contagious or infectious diseases; and restrict the movement of exposed or infected livestock.

**Subpart D – Section 161.301**, lists what a grazing permit must include. This information is included on **Form 5-5015, Grazing Permit**. Of the items listed on the form, the permit applicant must provide the following:

- The permit holder's name and address;
- Number and/or description of the intended grazing area;
- Desired number and kind of livestock; and
- Animal identification brands and marks.

In coordination with the Joint NPL District Grazing Committee and Tribal Department of Agriculture the following changes were made to the form:

- Brand location be on right hip was clarified;
- Horses are no longer allowed on NPL open ranges;
- The census number of the permit holder for identification purposes was added;
- Permit will not be automatically renewed; and
- Compliance monitoring through range management plan and permit adjustment according to forage.

**Subpart E Section 161.400(a)**, the Navajo Nation prescribed eligibility requirements for grazing allocations. The permit applicant is required to provide evidence to the Navajo Nation and the Navajo Nation, will corroborate with the BIA with no public information to collect in this effort. (or corroborate evidence provided by BIA) that they meet all of the five criteria prescribed by the Navajo Nation:

- 1) Appear as a permittee on the list of permits cancelled on October 14, 1973, or be the legally recognized heir or assignee of a deceased individual appearing on said list;
- 2) Be listed on the 1974 or 1975 BIA enumeration within NPL or be legally recognized heir or assignee to the permit of a deceased individual appearing on said list;
- 3) Be a recognized full-time resident of NPL and reside within the Customary Use Area

- where the cancelled permit was used;
- 4) Be an enrolled member of the Navajo Nation and 18 years of age or older; and
  - 5) Not have received any of the following accommodations:
    - a) Signed an accommodation agreement to remain on Hopi Partitioned Lands, or have a valid grazing permit for Hopi Partitioned Lands;
    - b) Received a permit to graze livestock on New Lands; or
    - c) Reissued a permit outside the Navajo Partitioned Land on the Navajo Reservation.

**Subpart E Section 161.402**, the BIA with the concurrence of the Navajo Nation, will reissue grazing permits only to individuals that meet the eligibility requirements.

**Subpart F Section 161.500**, an existing permit can be transferred, assigned or modified. **Form 5-5022, Grazing Permit Modification/Transfer Agreement (previously Modification of Grazing Permit)**, is used to document a permit modification and requires the permittee to provide information describing the desired change in land area and/or number of head of livestock to be grazed. **Form 5-5023, Assignment of Grazing Permit**, is no longer in use because the Tribe no longer wants to allow assignments, except upon death of the permit holder, and subletting of grazing permits.

In coordination with the Joint NPL District Grazing Committee and Tribal Department of Agriculture the following changes were made to the form:

- The census number of the permit holder for identification purposes was added;
- Animal identification information, including species and brand location was added;
- Current livestock Tally Count records must be attached to the all Modification/Transfer Agreement; and
- Range Management Plan must be attached to the Grazing Permit and Modification/Transfer Agreement.

**Subpart G Section 161.605**, the BIA will provide a written notice of a permit violation to the permittee which requires action to correct the permit violation and notify the BIA.

**Subpart H Sections 161.704 & 161.710**, the BIA will issue a written notice of trespass of any unauthorized use of, or action on Navajo partition grazing lands. Section 161.704 is asking for a response to comply with the ordered corrective action, and 161.710 is asking for proof of ownership and paying all penalties, damages, and costs associated with impounded livestock.

**Subpart I Sections 161.800-802**, the BIA will seek concurrence of the Navajo Nation on 161.800. The Navajo Nation may appeal the BIA's decision under 161.801. And the Resources Committee will have final authority on behalf of the Navajo Nation to approve amendments to the Navajo Partitioned Lands grazing provisions under 161.802.

**Subpart B Section 161.102**, the Navajo Nation will provide the BIA with an official copy of any Tribal law or Tribal policy that relates to Navajo Partitioned Lands grazing provisions.

- 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.**

Tribes, Tribal organizations, and individual Indians submit required information in standard written formats. Barriers to the use of electronic technology to collect this information include; lack of telecommunications infrastructure, language barriers, and the fact that many or most of the individual respondents do not own personal computers nor have Internet access.

- 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 not duplicated in any other data collection. This information is unique to the issuance and administration of permits on Tribal and individual Indian lands. 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 any methods used to minimize burden.**

Tribes are not considered to be small entities under the Small Business Regulatory Enforcement Fairness Act (SBREFA). However, the BIA has minimized the burden on Tribes and individual Indians by restricting the information collection to only that information that is required and not available to BIA through other means.

- 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 jeopardizing implementation of the NPL Grazing Permits regulation. Grazing on Navajo partitioned lands is integral to the way of life and will occur regardless of whether the information is collected and permits are issued; the permit program and associated information collection ensure that the grazing practices are sustainable. If the collection is not conducted, or is conducted less frequently, the BIA will not be able to properly administer and monitor grazing permits on Indian lands or ensure sustainable practices are followed.

- 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 two circumstances that require exceptions to 5 CFR 1320.5(d)(2):

- **Permit Violations:** The regulations at section 161.605 require a permit holder to respond within 10 days of a written notice of violation of the terms of a permit. This is an exception to the 30-day rule because time is of the essence in correcting many violations of permit terms. A 30-day period to respond to a permit violation could endanger the integrity of the permit and possibly do irreparable damage to the corpus of the trust resource.
- **Trespass:** An alleged trespasser must contact the BIA as stated in 161.605, within the timeframes established in the trespass violation notice to explain why the notice is in error or to take appropriate corrective action. The notice document itself could specify a time period of less than 30 days, depending upon the nature of the trespass. 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, could 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.**

A 60-day notice for public comments was published in the Federal Register on November 15, 2018 (83 FR 57502). No comments were received in response to this Federal Register 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.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

BIA contacted the following individuals regarding the estimated time burdens, availability of data, etc.:

- Principal Planner, Department of Agriculture, Navajo Nation
- Principal Extension Agent, Department of Agriculture, Navajo Nation
- Department Manager, Department of Agriculture, Navajo Nation

According to the individuals interviewed, information required from the potential permit holders and the time to collect this information is adequate and the time estimates for submitting information is realistic. Since the forms were developed in coordination with the Tribe (the Navajo Nation will be the only Tribe providing the information for this program) the individuals contacted were pleased with the forms and associated instructions. Additionally, as part of the NPL program, mandatory orientations are held for potential permit holders and the information collections are discussed as part of the orientation.

The rules for obtaining a permit and grazing livestock on the NPL have been established by the Navajo Nation pursuant to the 2010 Navajo Nation Council Inter-Governmental Relations Committee (IGR) resolution IGRN11-10 relating to approving the Navajo Nation Eligibility Requirements to Qualify for Issuance of a Grazing Permit on the Navajo Partitioned Lands. BIA has received Tribal concurrence in coordination with the procedures (161.402) for reissuing permits as follows:

- (a) BIA developed and completed the list of all former permittees whose permits were cancelled and number of sheep units/year long (SUYL) previously authorized in prior grazing permits. This list was provided to the Tribal Department of Agriculture, NPL Joint District Grazing Committee Members (DGCM), and Navajo Nation's Council Resources and Development Committee (RDC) for their review. BIA also provided the Department of Agriculture (DOA), DGCM, and the RDC with the current carrying capacity and stock rate for each range units.
- (b) Within 90 days the Tribal Department of Agriculture and NPL Joint DGCM completed its review and made its recommendations to the tribal council's RDC for granting of grazing permits according to the developed Tribal Eligibility and Priority Criteria in 161.400.
- (c) The NPL Joint DGCM in coordination with the Tribal DOA completed its recommendation within the 90 days after receiving the list of potential permittees and made its recommendation to the RDC (Resolution No. NPL DGP 1,2,3-11.13.2018).
- (d) The Resources and Development Committee reviewed and concurred with tribal Resolution No. RDCM-89-18 Concurring with the Joint NPL

District Grazing Committee Recommendation for the Granting of Grazing Permits and forward the final list to BIA for the reissuance of grazing permits.

- (e) The final determination list of eligible permittees recommended by the Tribal RDC to be published in four (4) local newspapers in the second and third week of April 2019 are as follows: Gallup Independent, Navajo Times, Navajo-Hopi Observer, and Flagstaff Daily Sun. Permits will not be issued sooner than 90 days following publication of the final list.

**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 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 assurance of confidentiality provided to respondents in connection with 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 are no questions of a sensitive nature included in the information collected.

**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.**
- \* **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.**

We estimated the annualized cost would include one hour for providing the information necessary for a grazing permit and/or reissuance of a permit, and 20 minutes for modifying, assigning, or transferring a grazing permit. This results in a total hour burden of 2,123 hours per year or the amount equivalent to \$77,107.

CFR Section	Description	Respondents	Annual responses	Hour Burden per response	Total Annual Hour Burden (rounded)	Total Hourly Burden Cost
<b>Subpart C</b>						
161.206	Vaccinate/treat livestock	700	700	1/2	350	\$12,712
<b>Subpart D – Permit Requirements</b>						
161.301	Provide info for grazing permit and reissuance	700	700	1	700	\$25,424
<b>Subpart E – Reissuance of Grazing Permits</b>						
161.400(a)	Navajo Nation eligibility requirements	The Navajo Nation will corroborate with the BIA with no public information to collect in this effort (no burden hours/costs associated).				
161.402	Provide info for grazing permit reissuance	700	700	1	700	\$25,424
<b>Subpart F – Modifying a Permit</b>						
161.500	Provide info to modify, assign or transfer grazing permit	70	70	1/3	23	\$835
<b>Subpart G – Permit Violations</b>						
161.605	Response to notice of permit violation	35	35	1/2	18	\$654
<b>Subpart H – Trespass Notification and Action</b>						
161.704	Respond to notice of trespass	35	35	1/2	18	\$654
161.710	Providing proof of ownership	10	10	1	10	\$363
<b>Subpart I – Concurrence / Appeals / Amendments</b>						
161.800	Written concurrence, submission of evidence	700	700	1/4	175	\$6,356
161.801	Filing appeal	85	85	1/2	43	\$1,562
161.802	Recommend amendments	85	85	1	85	\$3,087
<b>Subpart B – Tribal Policies and Laws Pertaining to Permits</b>						
161.102	Provide copy of Tribal law or policy affecting grazing	1	1	1	1	\$36



Totals		700	3,121		2,123	\$77,107
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We estimate the salary for persons compiling the information to be **\$36.32** per hour, which includes a 1.5 benefits multiplier. This estimate is based on the Bureau of Labor Statistics' *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, September 2018: December 2018*, Table 2, at <https://www.bls.gov/news.release/pdf/ecec.pdf>.

**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 already reflected in item 12.)**

- \* 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 for form processing). 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.

There is no non-hour cost burden associated with this information collection.

**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.**

We estimate the annual cost to the Federal Government to administer this information collection to be **\$106,715**.

CFR Section	Description	Respondents	Annual Responses	Federal Burden Hours per Response	Federal Annual Burden Hours	Federal Burden Hour Cost
<b>Subpart C</b>						
161.206	Review documentation re: vaccination/treatment	700	700	1/4	175	\$8,349
<b>Subpart D – Permit Requirements</b>						
161.301	Review grazing permit	700	700	1/4	175	\$8,349
161.304	Record permit	700	700	1/4	175	\$8,349
161.502	Provide copies of permit					
<b>Subpart E – Reissuance of Grazing Permit</b>						
161.400(a)	Navajo Nation eligibility requirements	The Navajo Nation will corroborate with the BIA with no public information to collect in this effort (no burden hours/costs associated).				
161.402	Review for grazing permit reissuance	700	700	1	700	\$33,397
<b>Subpart F – Modifying a Permit</b>						
161.500	Review to modify, assign or transfer grazing permit	70	70	1	70	\$3,340
<b>Subpart G – Permit Violations</b>						
161.604	Provide written notice of violation	35	35	1	35	\$1,670
161.606	Provide written notice of cancellation	35	35	1	35	\$1,670
<b>Subpart H – Trespass Notification and Action</b>						
161.703	Provide written notice of trespass	35	35	1	35	\$1,670
161.708	Provide written notice to impound	10	10	1	10	\$477
161.717	Written demand for settlement	10	10	2	20	\$954
<b>Subpart I – Concurrence / Appeals / Amendments</b>						
161.800	Submit written declaration of nonconcurrence, plan	700	700	1	700	\$33,397
161.801	Response brief	85	85	1	85	\$4,055
161.802	File concurrence	85	85	1/4	21.25	\$1,014
<b>Subpart B – Tribal Policies and Laws Pertaining to Permits</b>						
166.102	Review Tribal law or policy affecting grazing	1	1	1/2	0.50	\$24
<b>Totals</b>		<b>700</b>	<b>3,866</b>		<b>2,237</b>	<b>\$106,715</b>

We estimate the salary for a GS-11, Step 1; Federal employee implementing this program to be \$29.82 per hour. This estimate is based on the Office of Personnel Management Salary Table 2019 – GS at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/RUS\\_h.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/RUS_h.aspx). The estimated salary includes a multiplier of 1.6 for benefits, this result in a total salary of \$47.71 per hour.

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

In coordination with the Joint NPL District Grazing Committee and Tribal Department of Agriculture the following changes were made to the 5-5015 form:

- Brand location be on right hip was clarified;
- Horses are no longer allowed on NPL open ranges;
- The census number of the permit holder for identification purposes was added;
- Permit will not be automatically renewed; and
- Compliance monitoring through range management plan and permit adjustment according to forage.

In coordination with the Joint NPL District Grazing Committee and Tribal Department of Agriculture the following changes were made to the 5-5022 form:

- The census number of the permit holder for identification purposes was added;
- Animal identification information, including species and brand location was added;
- Current livestock Tally Count records must be attached to the all Modification/Transfer Agreement; and
- Range Management Plan must be attached to the Grazing Permit and Modification/Transfer Agreement.

**Form 5-5023, Assignment of Grazing Permit**, is no longer in use because the Tribe no longer wants to allow assignments, except upon death of the permit holder, and subletting of grazing permits.

Although the forms changed with this renewal, these changes weren't substantial enough to affect the burden estimates that were previously submitted.

**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 are no plans to publish the results of this collection of 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 will display the OMB control number and expiration date on all forms and other appropriate materials.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions.