

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

**Gathering of Certain Plants or Plant Parts by Federally Recognized
Indian Tribes for Traditional Purposes, 36 CFR 2**

OMB Control No. 1024-0271

Terms of Clearance. None.

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

In 2016, the National Park Service (we, NPS) published a final rule “Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes” in 36 CFR 2. This rule authorizes agreements between the NPS and federally recognized Indian tribes to allow the gathering of plants or plant parts by designated tribal members for traditional purposes in parks where Congress has not specifically authorized such gathering. The agreements explicitly recognize the special government-to-government relationship between Indian tribes and the United States, and is based upon mutually agreed upon terms and conditions subject to the requirements of 36 CFR 2.6(f). The agreements serve as the documents through which the NPS authorizes tribal gathering and are implemented by an accompanying permit authorized by 36 CFR 1.6.

The plant gathering agreements facilitates the continuation of tribal cultural traditions on traditionally associated lands that now are included within units of the National Park System without impairment to park resources and values. The plant gathering regulation respects tribal sovereignty and the government-to-government relationship between the United States and the tribes and provides system-wide consistency to this aspect of NPS-Tribal relations.

Additionally, the NPS Organic Act (54 U.S.C. 100751(a)) gives management discretion to the NPS to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values. The policies define impairment as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the

direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.

Legal Authorities

- 36 CFR 2 - Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes
- 36 CFR 1.6 - Permits
- NPS Organic Act 54 U.S.C. 100101(a); 54 U.S.C. 100751(a)
- National Environmental Policy Act 42 U.S. Code § 4321

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.

Federally recognized Indian tribes submit written requests (in the form of a letter) to NPS unit managers to initiate the consultation process for a plant gathering agreement. To make determinations NPS unit managers may need to collect additional information from the Indian tribes making the requests and from the specific tribal members who will participate in the authorization process. According to NPS statutory requirements and policy, the information will help determine

- what traditional practices are acceptable,
- what traditional uses are to be accommodated,
- what plant materials are specifically needed, and
- what locations are specifically identified for gathering the requested plant materials.

We will use the information collected to make determinations and to administer any plant gathering agreements subsequently developed.

Table 2.1 Initial Request

What NPS Collects	Why
Explanation of the traditional association that the Indian tribe has to the park area	To determine the tribe’s traditional association with the park area.
Explanation of the traditional purposes to which the plant gathering activities will relate	To determine that the proposed plant gathering is a traditional use of the park area by the Indian tribe.
Description of the plant gathering activities that the Indian tribe is interested in conducting	To analyze any potential impacts of the proposed gathering in accordance with the requirements of the National Environmental Policy Act and other applicable laws.

Table 2.2. Agreement

What NPS Collects	Why
Name of the Indian tribe authorized to gather certain plants or plant parts; and the basis for the tribe's eligibility to enter into the agreement.	Identifies the tribe authorized to gather certain plants or plant parts.
Description of the protocols used for gathering as agreed by the park and the tribe. This, including a identifying the tribal members designated by the Indian tribe to gather plants or plant parts.	This serves as a means for the tribal government to provide collecting protocols and to keep the NPS informed of the tribal members authorized to gather plants or plant parts.
Description of the specific plants or plant parts that may be gathered.	Identifies the plants or plant parts authorized for gathering.
Specification of the size and quantity of the plants or plant parts that may be gathered and removed. Identification of the times and locations at which the plants or plant parts may be gathered and removed Identification of the methods that may be used for gathering and removal Protocols for monitoring gathering and removal activities. Operating protocols and remedies for noncompliance with the terms of the agreement	Establishes NPS-Tribal protocols for monitoring park resources subject to gathering, and for administering protocols for noncompliance.
Key Officials	Identifies park and tribal leadership for contact purposes relating to the agreement.

NPS park units will issue a NPS Form 10-114, "Special Use Permit" to the tribe upon completion of a plant gathering agreement.

The regulation (36 CFR 2.6(k)) includes an appeals process that allows a tribe to appeal a Superintendent's decision not to enter into a plant gathering agreement with a tribe. If a Superintendent denies a tribe's request to enter into a gathering agreement, then the Superintendent will provide the tribe with a written decision setting forth the reasons for the denial. Within 60 days after receiving the Superintendent's written decision, the tribe may appeal, in writing, the Superintendent's decision to the Regional Director. The appeal should set forth the substantive factual or legal basis for the tribe's disagreement with the Superintendent's decision and any other information the tribe wishes the Regional Director to consider. Within 45 days after receiving the tribe's written appeal, the Regional Director will issue and send to the tribe a written decision that affirms, reverses, or modifies the Superintendent's decision. The Regional Director's appeal decision will constitute the final

agency action on the matter. Appeals under this section constitute an administrative review and are not conducted as an adjudicative proceeding.

Table 2.3 Appeals Process

What NPS Collects	Why
Information from the tribes supporting traditional association Information from the tribes on traditional use of plants or plant parts to be gathered Information from the tribes on environmental issues	Allows the tribes to provide additional information on historical relationship of the tribe with the specific park area in the event agreement is denied on this issue

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.

Since August 2016, the NPS has received four written requests to initiate the consultation process for a plant gathering agreement. There have been no appeals. Based on our recent experience, we estimate that 100% of initial requests and appeals will be submitted in writing via email. The initial written request and any appeals may also be submitted to individual parks via email.

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.

No other Federal government entity collects similar information. Each agreement describes the particular traditional association that an Indian tribe has to the park area, the traditional purposes to which the plant gathering activities will relate, and a description of the plant gathering activities that the Indian tribe is interested in conducting. Thus, each agreement is unique and the information is specific to each agreement between the requesting Indian tribe and the park.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection does not affect small businesses or other small entities.

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 NPS would not be able to enter into plant gathering agreements with federally recognized Indian tribes as required by 36 CFR 2.6. In addition, 36 CFR 2.6 requires an environmental analysis of the type, quantity, location of and collection methods for the plants or plant parts that will be gathered, before agreements can be finalized.

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 no special circumstances will cause us to collect this information in a manner that is inconsistent with OMB guidelines. We collect the information necessary to meet the requirements of 36 CFR 2.6. To the extent permitted by applicable law, including 54 U.S.C. 100707, the Archaeological Resources Protection Act, and the NHPA, the NPS will withhold from public disclosure information about the specific location, character, and nature of resources on NPS managed lands. During the consultation process, the NPS will receive information from tribes as required by regulation that the tribes may consider sensitive or confidential (e.g., names tribal members authorized to gather plants or plant parts in parks). During the consultations, the NPS will discuss ways to limit releasing such information to the extent permitted by applicable laws (e.g., using identifiers other than personal names for tribal designees).

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.

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.

On June 5, 2019, we published in the *Federal Register* (84 FR 26154) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on August 5, 2019. We did not receive any comments in response to that notice. In addition to the Federal Register Notice, we solicited comments from persons outside NPS familiar with this collection of information in order to validate our time burden estimate and provide comments on the on the following:

- (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; whether there are any questions you felt were unnecessary;
- (2) provide and estimate of the amount of time it takes to complete the initial tribal request, the plant gathering agreement, or request for appeal in order to verify the accuracy of our estimate of the burden for this collection of information;
- (3) Do you have any suggestions for us on ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Any ideas you might suggest which would minimize the burden of the collection of information on respondents.

We contacted the four parks and tribes that initiated the consultation process to enter into a plant gathering agreement between 2016 and 2018.

Park	Tribe
Saguaro National Park	Tohono O'odham Nation
Great Smoky Mountain National Park	Eastern Band of Cherokee Indians
Buffalo National River	Cherokee Nation
Indiana Dunes National Park	Pokagon Band of Potawatomi

On-going Outreach Efforts

Since the plant gathering regulation went into effect in August 2016, the NPS continues to conduct informational and technical briefings for both internal and external audiences. The American Indian Liaison and the Office of Tribal Relations and American Cultures use a dedicated e-mail account (plant_gathering@nps.gov), to answer questions from the public. In February 2017 and 2018 presentations were made at the meetings of the United South and Eastern Tribes (USET), the NPS Intermountain Region's annual tribal meeting, and the Western THPO-SHPO meeting. In 2016, 2017 and 2018, NPS staff in Arizona, Colorado and Maine hosted four in-person meetings with tribes. During those meetings, NPS and tribal representatives expressed support for agreements between tribal governments and the NPS to establish the conditions for gathering in parks. These agreements continue to respect both tribal sovereignty and NPS authority to manage park resources. Tribal representatives and the NPS express the desire to create and maintain the knowledge base needed to manage plant gathering and to protect park resources unimpaired for future generations. This would include joint research and monitoring, training programs for tribal members and park staff, and ongoing consultation regarding park resources.

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

We will not make payments or gifts to respondents.

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

The confidentiality of the information provided to NPS by the requesting Indian tribes is statutorily protected by the provisions of both the National Historic Preservation Act (54 USC 307103) and the Archaeological Resources Protection Act (16 U.S.C. 470hh).

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.

We do not ask questions of a sensitive nature, however, some tribes may consider the names of tribal members authorized to gather plants or plant parts to be private or sensitive information. The regulation requires that a permit be issued under a plant gathering agreement and that the permit must identify the tribal members who are designated by the tribe to gather plants or plant parts under the permit (36 CFR 2.6(i)(xiii)).

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.**

Based on our experience, the number of hours required for respondents to work with the NPS to complete all the requirements for the agreement is 80 hours (rather than 20 hours originally estimated). We estimate the total annual burden for this collection will be 530 hours. This includes the

- Initial requests (n=20)
- Number of consultations that lead to agreements (n=5)
- Number of appeals (n=5) from the initial requestors

We used the Bureau of Labor Statistics (BLS) News Release [USDL-19-1002, Employer Costs for Employee Compensation— March 19, 2019](#)¹, released on June 18, 2019 to calculate the total dollar value of annual burden hours. We used Table 3 to calculate employee compensation and costs for state and local government workers, by major occupational and

¹ <http://www.bls.gov/news.release/pdf/ecec.pdf>

industry group \$50.89, including benefits.

Table 12.1. Estimated dollar value of annual burden hours

Activity	Annual Number of Responses	Estimated Time per (hour)	Total Annual Burden Hours	Dollar Value of Burden Hour Including Benefits	Total Dollar Value of Annual Burden Hours*
Initial Request	20	4	80	\$50.89	\$4,071
Agreements	5	80	400	\$50.89	\$20,356
Appeals	5	10	50	\$50.89	\$2,528
TOTAL	0	94	530		0995

13. Provide an estimate of the total annual nonhour cost burden to respondents or record keepers 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, 2005, (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.

We have not identified any annual non-hour cost burdens to respondents.

NOTE: in October 2017, the Tribal Council of the Eastern Band of Cherokee Indians voted to fund \$68,000 to complete the environmental assessments related to the potential effects of plant gathering on park resources. The Eastern Band of Cherokee Indians and Great Smoky Mountains National Park have a long-standing relationship, and the tribe considered the funds an investment with long-term benefit for the community that values traditional methods. The NPS does not expect or require tribes to pay for contracting of environmental assessment consultants.

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 that the total annual cost to the Federal Government to administer this information collection will be \$100,719 (rounded). We used the Office of Personnel Management Salary Table 2019-DCB (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf) to determine hourly wage rates. To calculate benefits, we multiplied the hourly rate by 1.6, in accordance with BLS News Release [USDL-19-1002](http://www.bls.gov/news.release/pdf/ecec.pdf) (<http://www.bls.gov/news.release/pdf/ecec.pdf>).

To respond to any single request by a recognized Indian tribe we estimate that qualified staff (GS 12/5) will require the following.

- Initial Requests - 2 hours
This time is to review the request and prepare the background summary with recommendations for the NPS unit manager (20 initial requests x 2 hour per request = 40 hours)
- Consultation and Agreement - 240 hours
This time is to consult with the requesting Indian tribe, prepare a full background report and administrative record, draft an agreement, and finalize the agreement. (5 consultations x 240 hours per consultation = 1,200 hours)
- Appeals - 30 hours
This time is to review the request for appeal, consult with the Indian tribe, prepare a report, administrative record, and a decision document for the Regional Director's action. (5 appeals x 30 hours per appeal = 150 hours)

Table 14.1 Total annual cost to the Federal Government

Requirement	GS Level	Hourly Rate	Hourly Rate incl. benefits (1.6 x hourly pay rate)	Total estimated staff time (hours)	Annual Cost*
Initial Request	12/5	\$45.29	\$72.46	40	\$2,898
Consultation and Agreement	12/5	\$45.29	\$72.46	1,200	\$86,952
Appeals	12/5	\$45.29	\$72.46	150	\$10,869
					0100,719

*Rounded

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

In 2016, we underestimated the time for the agreement and consultation process (meetings, correspondence, evaluation, compliance and preparation of the agreement documents). Based upon our experiences since our previous request, we now estimated the time for the agreement and consultation process to be 400 hours versus the previously requested 100 hours. Therefore

the net increase in this request is for an additional 300 burden hours. The estimates for the program changes are below in table 15.1.

Table 15.1 Estimated program changes

Activity	Previously Approved		Requested		Net change	
	Responses	Burden	Responses	Hours	Response	Burden
Initial Request	20	80	20	80	0	0
Consultation and Agreement	5	100	5	400	0	+300
Appeals	5	50	5	50	0	0
TOTAL	0	0	0	0	0	+300

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.

We will not 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.

The OMB control number and expiration date appear on the Tribal Leaders Guide to the National Park Service Plant Gathering Regulation and that request return information from the respondent.

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

There are no exceptions to the certification statement.