

information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 10, 2016.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[167 A2100DD/AAK001030/  
AOA501010.999900]

### HEARTH Act Approval of Shakopee Mdwakanton Sioux Community Regulations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** On March 3, 2016, the Bureau of Indian Affairs (BIA) approved the Shakopee Mdwakanton Sioux Community leasing regulations under the HEARTH Act. With this approval, the Tribe is authorized to enter into the following type of leases without BIA approval: Business site leases.

**FOR FURTHER INFORMATION CONTACT:** Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS-4642-MIB, 1849 C Street NW., Washington, DC 20240, at (202) 208-3615.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of the HEARTH Act

The HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012 (the Act) makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior. The Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of

those regulations prior to entering into leases. The Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (the Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Shakopee Mdwakanton Sioux Community.

##### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440 at 72447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 465 preempts State taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." *See Seminole Tribe of Florida v. Stranburg*, No. 14-14524, \*13-\*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional

notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447-48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." *Id.* at 5-6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 2043-44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Just like BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act, NPM-TRUS-29 (effective Jan. 16, 2013) (providing guidance on Federal review process to ensure consistency of proposed Tribal regulations with part 162 regulations and listing required Tribal regulatory

provisions). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Shakopee Mdewakanton Sioux Community.

Dated: March 3, 2016.

**Lawrence S. Roberts,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-IMR-YELL-20564; PPIMYELL1W, PROIESUC1.380000 (166)]

#### Proposed Information Collection; Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on October 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by May 16, 2016.

**ADDRESSES:** Please send your comments on the ICR to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114, Mail Stop 242, Reston, VA 20192 (mail); or *madonna\_baucum@nps.gov* (email). Please include “1024-0266” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Christina Mills, Outdoor Recreation Planner, Yellowstone National Park, National Park Service, P.O. Box 168, Yellowstone National Park, WY 82190; (307) 344-2320 (phone); or *christina\_mills@nps.gov@nps.gov*. Please reference “1024-0266” in your communication.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Yellowstone National Park Organic Act (16 U.S.C. 21 and 22), signed March 1, 1872, established Yellowstone National Park to “dedicate and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people” and “for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition” The Organic Act of 1916 (16 U.S.C. 1 *et seq.*) authorizes the Secretary of the Interior to develop regulations for national park units under the Department’s jurisdiction.

We (NPS) provide opportunities for people to experience Yellowstone in the winter via oversnow vehicles (snowmobiles and snowcoaches, collectively OSVs). Access to most of the park in the winter is limited by distance and the harsh winter environment, which presents challenges to safety and park operations. The park does not provide wintertime OSV tours directly, but currently authorizes OSV tours through concessions contracts (for snowcoach tours) and commercial use authorizations (for snowmobile tours) with area businesses to provide transportation to visitors (Title IV, Section 403 of the National Parks Omnibus Management Act of 1998, Pub. L. 105-391). The park issued 10-year concession contracts for all OSVs starting in December 2014.

OSV use is a form of off-road vehicle use governed by Executive Order 11644 (Use of Off-road Vehicles on Public Lands, as amended by Executive Order 11989). Implementing regulations are published at 36 CFR 2.18, 36 CFR part

13, and 43 CFR part 36. Routes and areas may be designated for OSV use only by special regulation after it has first been determined through park planning to be an appropriate use that will meet the requirements of 36 CFR 2.18 and not otherwise result in unacceptable impacts.

Information collection requirements in this renewal request include:

(1) *Emission and Sound Standards* (§ 7.13(l)(4)(vii) and (5)). Only OSVs that meet NPS emission and sound standards may operate in the park.

Before the start of each winter season:

(a) Snowcoach manufacturers or commercial tour operators must demonstrate, by means acceptable to the Superintendent, that their snowcoaches meet the standards.

(b) Snowmobile manufacturers must demonstrate, by means acceptable to the Superintendent, that their snowmobiles meet the standards.

(2) *Transportation Events* (§ 7.13(l)(11)(i)-(iii)). So that we can monitor compliance with the required average and maximum size of transportation events, as of December 15, 2014, each commercial tour operator must:

(a) Maintain accurate and complete records on the number of snowmobiles and snowcoaches he or she brings into the park on a daily basis. These records must be made available for inspection by the park upon request.

(b) Provide a monthly use report on their activities. We will use a form, which will be available on the park Web site, to collect the following information for transportation events:

- Report Month/Year
- Contract Number
- Departure Date
- Duration of Trip (in days)
- Transportation event type (snowmobile or snowcoach)
  - Number of snowmobiles or snowcoaches
    - Air/noise emissions standard (New BAT or E-BAT)
    - Number of visitors and guides
    - Route and primary destination
    - If the transportation event allocation was from another commercial tour operator
      - Administrative or guest services trip
      - Transportation event group size (previous month and season to-date)

(3) *Enhanced Emission Standards*

(§ 7.13(l)(11)(iv)). To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, each commercial tour operator must:

(a) Before the start of each winter season, demonstrate, by means