

involves surveying travelers to measure customer satisfaction with their aviation security screening experience in an effort to manage TSA's performance at the airport more efficiently.

**DATES:** Send your comments by September 4, 2018.

**ADDRESSES:** Comments may be emailed to [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov) or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227-2062.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

**Information Collection Requirement**

*OMB Control Number 1652-0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.* TSA, with OMB's approval, has conducted surveys of passengers at airports nationwide and now seeks approval to continue this effort. The

surveys are administered using an intercept methodology. The intercept methodology uses TSA personnel who are not in uniform to hand deliver business card style forms to passengers immediately following the passenger's experience with TSA's checkpoint security functions. Passengers are invited, though not required, to complete and return the survey using either an online portal or by responding in writing to the survey questions on the customer satisfaction card and depositing the card in a drop-box at the airport or using U.S. mail. Prior to each survey collection at an airport, TSA personnel select the method by which all passengers surveyed on that particular occasion will be asked to complete and return the survey. TSA uses the intercept methodology to randomly select passengers to complete the survey in an effort to gain survey data representative of all passenger demographics—including passengers who—

- Travel on weekdays or weekends;
- Travel in the morning, mid-day, or evening;
- Pass through each of the different security screening locations in the airport;
- Are subject to more intensive screening of their baggage or person; and
- Experience different volume conditions and wait times as they proceed through the security checkpoints.

Each survey includes 10 to 15 questions, and each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

TSA collects this information in order to continue to assess customer satisfaction in an effort to manage TSA employee performance more efficiently. OMB has previously approved a total of 82 questions from which the 10 to 15 questions are selected. TSA is requesting an extension of the approval for the information collection.

TSA personnel have the capability to conduct this survey at 25 airports each year. Based on prior survey data and research, TSA estimates 384 responses from the passengers at each airport. The average number of respondents is estimated to be 9,600 per year (384 passengers × 25 airports). TSA estimates that the time it takes to complete the survey either online or by writing on the form ranges from 3 to 7 minutes, with an average of 5 minutes (0.083 hours) per respondent. Therefore, the annual

burden is 800 hours (9,600 responses × 0.083 hours).

Dated: June 28, 2018.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

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**BILLING CODE 9110-05-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**[189A2100DD/AAKC001030/ AOA501010.999900]**

**HEARTH Act Approval of San Manuel Band of Mission Indians, California Business Site Leasing Code**

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

**ACTION:** Notice.

**SUMMARY:** On June 11, 2018, the Bureau of Indian Affairs (BIA) approved the San Manuel Band of Mission Indians, California, leasing regulations under the HEARTH Act. With this approval, the Band is authorized to enter into business leases without BIA approval.

**FOR FURTHER INFORMATION CONTACT:** Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street, NW, MS-4642-MIB, 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's 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 San Manuel Band of Mission Indians, California.

## 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 72,440, 72,447–48 (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. 5108, 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 5108 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

72,447–48, 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).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). 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 San Manuel Band of Mission Indians, California.

Dated: June 11, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[189A2100DD/AAKC001030/  
A0A501010.999900]

### HEARTH Act Approval of the Confederated Tribes of the Warm Springs Reservation of Oregon's Tribal Code

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

**ACTION:** Notice.

**SUMMARY:** On June 11, 2018, the Bureau of Indian Affairs (BIA) approved the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe) leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

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

#### SUPPLEMENTARY INFORMATION:

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